APPROPRIATIONS

CHAPTER 1

HOUSE BILL NO. 1001
(Committee on Appropriations)

STATE OFFICIALS

AN ACT making an appropriation for defraying the expenses of various elected and appointed officials of the state of North Dakota; to create and enact three new subsections to section 54-44-04 of the North Dakota Century Code, relating to the powers and duties of the director of the department of accounts and purchases and a revision of the state accounting and financial reporting system; to amend and reenact subsection 8 of section 54-44-04 of the North Dakota Century Code, relating to the powers and duties of the director of the department of accounts and purchases; and declaring 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/or 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.

GOVERNOR'S OFFICE

Salaries and wages	$ 803,202
Operating expenses	165,090
Equipment	4,000
Grants	330,000
Contingency fund	7,000
Lieutenant governor contingency	7,000
Total all funds	$ 1,316,292
Less estimated income	330,000
Total general fund appropriation	$ 986,292

Subdivision 2.

GOVERNOR'S ASSOCIATIONS

Fees and services	$ 59,600
Total general fund appropriation	$ 59,600

Subdivision 3.

OLD WEST REGIONAL COMMISSION

Fees and services	$ 100,000
Total general fund appropriation	$ 100,000

Subdivision 4.

LIEUTENANT GOVERNOR

Salaries and wages	$ 51,420
Operating expenses	9,560
Equipment	1,000
Total general fund appropriation	$ 61,980

Subdivision 5.

SECRETARY OF STATE

Salaries and wages	$ 685,107
Operating expenses	87,805
Equipment	10,280
Election law administration	50,000
Petition review	10,000
Total general fund appropriation	$ 843,192

Subdivision 6.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	$ 242,228
Total general fund appropriation	$ 242,228

Subdivision 7.

SECRETARY OF STATE
RECORDS MANAGEMENT AND MICROFILMING

Salaries and wages	$ 148,841
Operating expenses	75,950
Equipment	119,500
Total general fund transfer and appropriation	$ 344,291

Subdivision 8.

ATTORNEY GENERAL

Salaries and wages	$ 3,572,408
Operating expenses	1,261,559
Data processing	44,589
Equipment	179,400
Grants	747,000
Litigation fees	50,000
Garrison Diversion litigation	100,000
Total all funds	$ 5,954,956
Less estimated income	730,000
Total general fund transfer and appropriation	$ 5,224,956

Subdivision 9.

STATE AUDITOR

Salaries and wages	$ 2,416,279
Operating expenses	314,791
Data processing	35,053
Equipment	3,700
Total general fund appropriation	$ 2,769,823

Subdivision 10.

STATE TREASURER

Salaries and wages	$ 444,425
Operating expenses	50,931
Data processing	20,671
Equipment	1,814
Total general fund appropriation	$ 517,841

Subdivision 11.

STATE TAX COMMISSIONER

Salaries and wages	$ 5,473,146
Operating expenses	1,348,670
Data processing	954,596
Equipment	29,254
Total general fund appropriation	$ 7,805,666

Subdivision 12.

INSURANCE COMMISSIONER

Salaries and wages	$ 829,666
Operating expenses	102,057
Data processing	26,969
Equipment	4,255
Total general fund appropriation	$ 962,947

Subdivision 13.

LABOR COMMISSIONER

Salaries and wages	$ 325,586
Operating expenses	127,091
Equipment	500
Total all funds	$ 453,177
Less estimated income	45,607
Total general fund transfer and appropriation	$ 407,570

Subdivision 14.

PUBLIC SERVICE COMMISSION

Salaries and wages	$ 3,220,894
Operating expenses	5,203,248
Data processing	1,318,378
Equipment	104,110
Refunds	50,000
Total all funds	$ 9,896,630
Less estimated income	5,349,032
Total general fund transfer and appropriation	$ 4,547,598

Subdivision 15.

AGRICULTURE COMMISSIONER

Salaries and wages	$ 1,477,493
Operating expenses	597,774
Equipment	27,725
Grants	250,000
Total all funds	$ 2,352,992
Less estimated income	177,605
Total general fund transfer and appropriation	$ 2,175,387

Subdivision 16.

STATE OFFICERS EXPENSE PAYMENTS

In order to properly discharge their official duties the following elected officials shall be paid the sum set forth opposite their respective titles for the period beginning January 1, 1981, and ending December 31, 1982. The sums are for expenses and moneys expended in the discharge of official duty, and are to be paid quarterly by the department of accounts and purchases without filing of any itemized voucher or statement. The expense payments provided by this Act shall be retroactive to January 1, 1981. The legislative assembly specifically finds that the amount of unvouchered expenses set forth for each of the state officials is reasonable. It is the intent of this legislative assembly to provide for the reasonable additional expenses of the elected state officials beyond their salaries. These unvouchered expenses are reasonably deemed necessary to offset inflationary increases in personal expenses experienced by elected state officials as a result of holding their offices.

OFFICIAL	EXPENSE PAYMENT 1981	EXPENSE PAYMENT 1982
Governor	$ 7,027	$ 13,862
Secretary of State	5,008	9,880
Attorney general	5,681	11,206
Superintendent of public instruction	5,083	10,028
Tax commissioner	5,008	9,880
Insurance commissioner	5,008	9,880
Public service commissioners	29,524	44,140
Agriculture commissioner	5,008	9,880
State auditor	5,008	9,880
State treasurer	5,008	9,880
Labor commissioner	5,008	9,880
Total general fund appropriation for state officers' expense payments		$230,767

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 $230,767, or so much thereof as may be necessary, to carry out the provisions of subdivision 16 of this Act.

Grand total general fund appropriation	$ 28,280,138

Grand total special funds appropriated	$ 6,632,244
Grand total all funds H.B. 1001	$ 34,912,382

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. 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 or cause any specific appropriation for any item or set of items 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.

SECTION 5. EXEMPTION. The funds herein appropriated for subdivisions 2 and 3 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 6. INTENT. It is the intent of the legislative assembly that $142,160 included in the agriculture commissioner general fund appropriation in subdivision 15 of section 1 for salaries and wages and operating expenses for a research analyst and marketing specialist be expended only if federal funds are not available for these positions during the 1981-83 biennium. If federal funds are available for these positions, it is the intent of the legislative assembly that the emergency commission approve receipt of such funds by the agricultural commissioner.

SECTION 7. LEGISLATIVE INTENT - OLD WEST REGIONAL COMMISSION APPROPRIATION. It is the intent of the legislative assembly that the appropriation for the old west regional commission in subdivision 3 of section 1 of this Act only be expended if federal funds are available for the old west regional commission.

SECTION 8. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the tax commissioner make a report to the next legislative assembly on oil and gas tax collections resulting from oil and gas tax audits conducted by the tax department. It is also the intent of the legislative assembly that the tax commissioner be allowed to employ audit personnel within authorized numbers of positions at his discretion in the various divisions of the tax department.

SECTION 9. AMENDMENT. Subsection 8 of section 54-44-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Shall keep the general accounts, reflecting for each fund the resources and balance, together with current revenues and expenditures, and ~~may~~ shall provide for an accrual accounting system.

SECTION 10. Three new subsections to section 54-44-04 of the 1979 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Shall coordinate the development of accounting and financial related systems.

Shall create an accounting manual and provide sufficient training of current and potential users concerning the functions and use of a statewide accounting and reporting system.

Shall prepare on an annual basis comprehensive financial statements of the state of North Dakota.

SECTION 11. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $1,000,000, or so much thereof as may be necessary, to the department of accounts and purchases for the purpose of revising the state accounting system for the biennium beginning July 1, 1981, and ending June 30, 1983.

SECTION 12. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved April 6, 1981

CHAPTER 2

HOUSE BILL NO. 1002
(Committee on Appropriations)

SUPERINTENDENT OF PUBLIC INSTRUCTION AND OIL EXTRACTION TAX ALLOCATION

AN ACT making an appropriation for defraying the expenses of the superintendent of public instruction of the state of North Dakota; and to amend and reenact subsections 1 and 3 of section 7 of initiated measure No. 6 to change the allocation of the proceeds of the oil extraction tax; and declaring 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/or 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 4,620,168
Operating expenses	2,103,794
Data processing	344,544
Equipment	92,917
Grants - special education	19,558,128
Grants - foundation aid	388,704,876
Grants - motorcycle safety	247,200
Grants - career education	60,000
Grants - school lunch program	1,891,080
Grants - federal grants	47,767,045
Total all funds	$465,389,752
Less estimated income	238,849,135
Total general fund appropriation	$226,540,617

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 or cause any specific appropriation for any item or set of items should be held by the court or 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 4. APPROPRIATION. There is hereby appropriated under the income line item in section 1 of this Act the sum of $169,266,667, or such additional sums as may be available in the oil extraction tax development fund to the superintendent of public instruction for application to the foundation aid payments pursuant to section 7 of initiated measure No. 6, enacted in the general election of November 4, 1980.

SECTION 5. AMENDMENT. Subsections 1 and 3 of section 7 of initiated measure No. 6 as adopted by the people at the general election in 1980 are hereby amended and reenacted to read as follows:

1. ~~Forty-five~~ Sixty percent shall be allocated to the state school aid program for use in accordance with the provisions of chapter 15-40.1 of the North Dakota Century Code. It is the intent of the electors ~~that--other appropriations--made-by-the-legislative-assembly-for-state aid-to-schools-in-accordance-with-chapter-15-40.1--of--the North--Dakota--Century--Code--when--added--to--the--amount allocated-under-this-subsection--shall--provide--at--least seventy---percent--of--the--funds--required--to--meet--the educational-cost-per-pupil--in--elementary--and--secondary education--as--determined--under--the--provisions--of-that chapter~~ and the legislative assembly that the allocation made by this subsection shall not exceed seventy percent of the educational cost per pupil in public elementary and secondary education as determined under the provisions of chapter 15-40.1. Should the allocation exceed seventy percent, the balance of the allocation above seventy percent shall be deposited in the general fund. Should the allocation not exceed seventy percent, it is the intent of the electors and the legislative assembly that other appropriations made by the legislative assembly for state aid to schools in accordance with chapter 15-40.1, when added to the amount allocated under this subsection, shall provide at least seventy percent of the funds required to meet the educational cost per pupil in public elementary and secondary education as determined under the provisions of chapter 15-40.1.

3. ~~Forty-five~~ Thirty percent shall be allocated and credited to the state's general fund for general state purposes ~~and as--an--offset-for-the-reduction-in-income-tax-revenue-and for-the-replacement-of-the-county-twenty-one-mill-property tax--credit--for--school-as-provided-in-section-10-of-this Act~~.

SECTION 6. OIL EXTRACTION TAX COLLECTIONS. Effective on and after April 1, 1981, collections from the state oil extraction tax shall be allocated in accordance with section 5 of this Act.

SECTION 7. FEDERAL REVENUE SHARING APPROPRIATION. There is hereby appropriated to the department of public instruction, from moneys not otherwise appropriated, the sum of $700,000 of federal revenue sharing funds, or such greater amounts as may be available, for the purpose of using such funds in the foundation aid grant line item in section 1 of this Act, during the biennium beginning July 1, 1981, and ending June 30, 1983. The moneys appropriated in this section are reflected in the estimated income line item in section 1 of this Act.

SECTION 8. EMERGENCY. Sections 5 and 6 of this Act are hereby declared to be emergency measures and shall be in full force and effect from and after their passage and approval.

Approved April 6, 1981

CHAPTER 3

HOUSE BILL NO. 1003
(Committee on Appropriations)

DIRECTOR OF ACCOUNTS AND PURCHASES

AN ACT making an appropriation for defraying the expenses of the various divisions under the supervision of the director of accounts and purchases 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/or other income, to the various divisions under the supervision of the director of accounts and purchases of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Subdivision 1.
DEPARTMENT OF ACCOUNTS AND PURCHASES

Salaries and wages	$ 1,598,868
Operating expenses	1,259,946
Data processing	718,111
Equipment	20,287
Total all funds	$ 3,597,212
Less estimated income	1,266,229
Total general fund appropriation	$ 2,330,983

Subdivision 2.
CENTRAL DATA PROCESSING

Salaries and wages	$ 4,750,322
Operating expenses	7,287,728
Equipment	320,200
Total special funds appropriated	$ 12,358,250

Subdivision 3.
CENTRAL PERSONNEL DIVISION

Salaries and wages	$ 689,702
Operating expenses	199,795

Data processing	91,600
Equipment	2,800
Total all funds	$ 983,897
Less estimated income	644,570
Total general fund appropriation	$ 339,327
Grand total general fund appropriation	$ 2,670,310
Grand total special funds appropriated	$ 14,269,049
Grand total all funds appropriated H.B. 1003	$ 16,939,359

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. TRANSFER AUTHORITY. Upon approval of the emergency commission, the director of the department of accounts and purchases may transfer between appropriation authority contained in the various subdivisions in section 1 of this Act.

SECTION 5. OUT-OF-STATE TRAVEL. The legislative assembly encourages all state agencies and institutions to not expend funds for out-of-state travel during the 1981-83 biennium which exceed out-of-state travel expenditures for the 1979-81 biennium. The department of accounts and purchases shall make a report to the budget section of the legislative council of expenditures by departments for out-of-state travel during the first year of the 1981-83 biennium including the personnel involved and purposes of the travel.

Approved April 1, 1981

CHAPTER 4

HOUSE BILL NO. 1004
(Committee on Appropriations)

HOMESTEAD TAX CREDIT

AN ACT making an appropriation for the homestead tax credit; providing for the distribution of such funds; and declaring 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 tax commissioner for the purpose of reimbursing the homestead tax credit, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Grants, benefits, and claims	$ 6,290,000
Total general fund appropriation	$ 6,290,000

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 $300,000, or so much thereof as may be necessary, to the state tax commissioner for the purpose of reimbursing the homestead tax credit, for the biennium beginning July 1, 1979, and ending June 30, 1981.

SECTION 3. EMERGENCY. Section 2 of this Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 6, 1981

CHAPTER 5

HOUSE BILL NO. 1005
(Committee on Appropriations)

PERSONAL PROPERTY TAX REPLACEMENT

AN ACT making an appropriation for the distribution of funds for the replacement of personal property taxes.

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 replacement of personal property taxes, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Grants, benefits, and claims	$ 29,377,000
Total general fund appropriation	$ 29,377,000

SECTION 2. DISTRIBUTION. The distribution of funds appropriated under section 1 of this Act shall be made in accordance with the formula for personal property tax replacement payments as provided for in section 57-58-01. During the year ending June 30, 1982, such payments shall not exceed one-half of the total appropriation provided for in this Act.

SECTION 3. CONTINGENT. Notwithstanding the provisions of section 57-58-01, which contains the formula for personal property tax replacement payments, the payments shall not exceed the amounts as set forth in this Act. If the appropriation provided for in this Act in any fiscal year is less than the amount determined by applying the formula as contained in section 57-58-01, the director of the department of accounts and purchases shall pay only the amount of funds available under this Act. Under such circumstances, a method of proration shall be used that provides each eligible recipient the same proportion of these funds as the percent of total funds it would have received under the application of the formula provided for in section 57-58-01.

Approved April 1, 1981

CHAPTER 6

HOUSE BILL NO. 1006
(Committee on Appropriations)

DIRECTOR OF INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of various divisions under the supervision of the director of institutions of the state of North Dakota, to set out special contingency fund guidelines; making an appropriation to the permanent fund of the common schools for transfer of title of the judicial wing and state office building to the state; to amend and reenact section 10 of chapter 139 of the 1977 Session Laws of North Dakota, relating to the transfer of title to the office building; and declaring 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/or other income to 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.
DIRECTOR OF INSTITUTIONS

Salaries and wages	$ 2,816,078
Operating expenses	2,575,885
Institutional medical fees	660,400
Equipment	56,419
Capital improvements	3,166,450
Postage revolving	15,000
Special education contingency fund	300,000
Total general fund appropriation	$ 9,590,232

Subdivision 2.
STATE COMMUNICATIONS

Operating expenses	$ 5,390,237
Data processing	33,326

Total all funds	5,423,563
Less estimated income	2,295,838
Total general fund appropriation	$ 3,127,725

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. SPECIAL EDUCATION CONTINGENCY FUND - GUIDELINES. The money in the special education contingency fund shall be used by the state-operated schools under the control of the director of institutions for expenses incurred for services to handicapped individuals which are not provided for in the normal budget of the school. These services shall be provided pursuant to contracts between the state-operated school and the handicapped individual's local school district. The contracts shall be approved by the local school district, the superintendent of the state-operated school, and the superintendent of public instruction. However, any transfer of moneys in this fund must first be approved by the emergency commission. If the transferred funds are used to establish additional positions to provide educational or related services to a particular handicapped individual at the state-operated school, those additional positions shall be terminated when the handicapped individual leaves the state-operated school.

SECTION 5. APPROPRIATION TO THE PERMANENT FUND OF THE COMMON SCHOOLS. There is hereby appropriated out of any moneys in the lands and minerals trust fund in the state treasury, not otherwise appropriated, the sum of $11,750,000, or so much thereof as may be necessary as determined by the budget section of the legislative council, to the permanent fund of the common schools for the purpose of effecting the transfer of title to the judicial wing and state office building as provided by section 6 of this Act effective upon approval of the budget section of the legislative council.

SECTION 6. AMENDMENT. Section 10 of chapter 139 of the 1977 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 10. TRANSFER OF TITLE - LEGISLATIVE COUNCIL BUDGET SECTION APPROVAL. ~~At the end of the construction cost--amortization period--of--fifty--years~~ After approval of the budget section of the legislative council and upon deposit of the amount appropriated and

approved under section 5 of this Act, the title in the office building shall be transferred from the permanent fund of the common schools to the state of North Dakota. Such rentals as may be charged after the ~~expiration of the amortization period~~ transfer of title shall be deposited in the state general fund. The director of institutions shall be responsible for maintenance of the building after the ~~expiration of the amortization period~~ title is transferred to the state.

Grand total general fund appropriation H.B. 1006 $12,717,957
Grand total special funds appropriation H.B. 1006 $14,045,838
Grand total all funds appropriated H.B. 1006 $26,763,795

SECTION 7. EMERGENCY. The line item entitled "Capital Improvements" in subdivision 1 of section 1 of this Act is hereby declared an emergency measure and shall be in full force and effect upon its passage and approval.

Approved April 1, 1981

CHAPTER 7

HOUSE BILL NO. 1007
(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; and declaring 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/or 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 3,372,975
Operating expenses	981,328
Data processing	1,800
Equipment	68,525
Capital improvements	174,500
Total all funds	$ 4,599,128
Less estimated income	1,189,897
Total general fund transfer and appropriation	$ 3,409,231

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. EMERGENCY. The line item entitled "capital improvements" in section 1 of this Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 1, 1981

CHAPTER 8

HOUSE BILL NO. 1008
(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; and declaring 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 moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and/or 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.

SCHOOL FOR THE DEAF

Salaries and wages	$ 2,662,512
Operating expense	490,100
Data processing	300
Equipment	114,315
Capital improvements	243,500
Total all funds	$ 3,510,727
Less estimated income	525,732
Total general fund transfer and appropriation	$ 2,984,995

Subdivision 2.

SCHOOL FOR THE BLIND

Salaries and wages	$ 1,490,964
Operating expense	397,154
Data processing	250
Equipment	47,125
Capital improvements	293,000
Total all funds	$ 2,228,493
Less estimated income	343,641

Total general fund transfer and appropriation	$ 1,884,852
Grand total general fund appropriation	$ 4,869,847
Grand total special funds appropriated	$ 869,373
Grand total all funds appropriated H.B. 1008	$ 5,739,220

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. EMERGENCY. The line items entitled "Capital Improvements" in subdivisions 1 and 2 of section 1 of this Act are hereby declared an emergency measure and shall be in full force and effect upon its passage and approval.

Approved April 6, 1981

CHAPTER 9

HOUSE BILL NO. 1009
(Committee on Appropriations)

GRAFTON STATE SCHOOL AND SAN HAVEN

AN ACT making an appropriation for defraying the expenses of the Grafton state school and San Haven of the state of North Dakota; providing for a transfer of oil extraction tax funds; and declaring 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/or other income to the Grafton state school and San Haven 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.

GRAFTON STATE SCHOOL

Salaries and wages	$ 24,491,425
Operating expense	5,065,017
Data processing	30,594
Equipment	354,805
Capital improvements	14,209,432
Total all funds	$ 44,151,273
Less estimated income	17,440,718
Total general fund transfer and appropriation	$ 26,710,555

Subdivision 2.

SAN HAVEN

Salaries and wages	$ 8,193,399
Operating expense	2,203,466
Data processing	2,000
Equipment	129,100
Capital improvements	1,886,000
Total all funds	$ 12,413,965
Less estimated income	1,301,858

Total general fund transfer and appropriation	$ 11,112,107
Grand total general fund appropriation	$ 37,822,662
Grand total special funds appropriated	$ 18,742,576
Grand total all funds appropriated H.B. 1009	$ 56,565,238

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. TRANSFER. The amounts appropriated in subdivision 1 of section 1 of this Act to Grafton state school for the line item entitled "Less estimated income" includes $15,000,000 which shall be transferred to Grafton state school operating fund from the special trust fund created by subdivision 2 of section 7 of initiated measure No. 6 approved on November 4, 1980.

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 or cause any specific appropriation for any item or set of items 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.

SECTION 5. EMERGENCY. The line items entitled "Capital improvements" in subdivision 1 and subdivision 2 of section 1 of this Act are hereby declared an emergency measure and shall be in full force and effect upon its passage and approval.

Approved April 6, 1981

CHAPTER 10

HOUSE BILL NO. 1010
(Committee on Appropriations)

STATE RADIO COMMUNICATIONS

AN ACT making an appropriation for defraying the expenses of the radio communications 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/or 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 1,246,351
Operating expenses	321,452
Data processing	134,483
Equipment	39,480
Total general fund transfer and appropriation	$ 1,741,766

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 or cause any specific appropriation for any item or set of items 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 1, 1981

CHAPTER 11

HOUSE BILL NO. 1011
(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 declaring 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/or other income to the state penitentiary and the 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.

STATE PENITENTIARY

Salaries and wages	$ 5,546,804
Operating expense	2,683,034
Equipment	185,030
Capital improvements	8,049,542
Ed information center	29,200
Total all funds	$ 16,493,610
Less estimated income	587,823
Total general fund transfer and appropriation	$ 15,905,787

Subdivision 2.

ROUGHRIDER INDUSTRIES

Salaries and wages	$ 702,076
Operating expense	4,099,575
Equipment	298,700
Capital improvements	2,631,528
Total all funds	$ 7,731,879
Less estimated income	$ 5,100,351
Total general fund transfer and appropriation	$ 2,631,528

Grand total general fund appropriation	$ 18,537,315
Grand total special funds appropriated	$ 5,688,174
Grand total all funds appropriated H.B. 1011	$ 24,225,489

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. EMERGENCY. The line items entitled "capital improvements" in subdivision 1 and subdivision 2 of section 1 of this Act are hereby declared emergency measures and shall be in full force and effect upon their passage and approval.

Approved April 6, 1981

CHAPTER 12

HOUSE BILL NO. 1012
(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/or 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 986,136
Operating expenses	773,211
Data processing	26,600
Equipment	13,750
Grants, benefits, and claims	1,150,000
Total all funds	$ 2,949,697
Less estimated income	929,824
Total general fund transfer and appropriation	$ 2,019,873

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 or cause any specific appropriation for any item or set of items 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 purpose provided for herein.

SECTION 4. APPROPRIATION. Included in the line item entitled "Grants, benefits, and claims" in section 1 of this Act is $1,100,000 for aid to public libraries of which no more than one-half is to be expended during the fiscal year ending June 30, 1982.

Approved April 1, 1981

CHAPTER 13

HOUSE BILL NO. 1013
(Committee on Appropriations)

STATE HOSPITAL

AN ACT making an appropriation for defraying the expenses of the state hospital of the state of North Dakota; and declaring 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/or other income, to the state hospital of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 30,516,821
Operating expenses	5,300,951
Data processing	297,308
Equipment	574,636
Capital improvements	2,489,523
Total all funds	$ 39,179,239
Less estimated income	9,693,000
Total general fund transfer and appropriation	$ 29,486,239

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 or cause any specific appropriation for any item or set of items 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 purpose provided for herein.

SECTION 4. EMERGENCY. The line item entitled "Capital Improvements" in section 1 of this Act is hereby declared an emergency and shall be in full force and effect upon its passage and approval.

Approved April 6, 1981

CHAPTER 14

HOUSE BILL NO. 1014
(Committee on Appropriations)

SOLDIERS' HOME

AN ACT making an appropriation for defraying the expenses of the soldiers' home 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/or other income, to the soldiers' home of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 1,278,150
Operating expenses	753,484
Data processing	195
Equipment	43,642
Capital improvements	462,069
Total all funds	$ 2,537,540
Less estimated income	1,258,758
Total general fund transfer and appropriation	$ 1,278,782

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. APPROPRIATION. There is hereby appropriated from excess funds in the sinking fund for the state of North Dakota general obligation bonds, Vietnam conflict adjusted compensation series, the sum of $462,069 for capital improvements as included in section one of this Act under the income line item.

Approved April 1, 1981

CHAPTER 15

HOUSE BILL NO. 1015
(Committee on Appropriations)

MISCELLANEOUS FUNDS AND ORGANIZATIONS

AN ACT making an appropriation for defraying expenses of various commissions, departments, 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 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 defraying the expenses for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Subdivision 1.
ARREST AND RETURN OF FUGITIVES

Fees and services	$ 20,000
Total general fund appropriation	$ 20,000

Subdivision 2.
BOYS AND GIRLS CLUBWORK

Grants, benefits and claims	$ 31,800
Total general fund appropriation	$ 31,800

Subdivision 3.
CAPITOL GROUNDS PLANNING COMMISSION

Fees and services	$ 24,000
Total general fund appropriation	$ 24,000

Subdivision 4.
COMMISSION ON UNIFORM STATE LAWS

Fees and services	$ 13,860
Total general fund appropriation	$ 13,860

Subdivision 5.
COUNCIL OF STATE GOVERNMENTS

Fees and services	$ 58,600
Total general fund appropriation	$ 58,600

Subdivision 6.

EDUCATION COMMISSION OF THE STATES

Fees and services	$ 55,170
Total general fund appropriation	$ 55,170

Subdivision 7.

FIREMEN'S ASSOCIATION

Grants, benefits and claims	$ 30,000
Total general fund appropriation	$ 30,000

Subdivision 8.

MISCELLANEOUS REFUNDS

Grants, benefits and claims	$ 140,000
Total general fund appropriation	$ 140,000

Subdivision 9.

NURSES' SCHOLARSHIP

Operating expenses	$ 5,000
Grants, benefits and claims	116,000
Total all funds	$ 121,000
Less estimated income	31,000
Total general fund appropriation	$ 90,000

Subdivision 10.

THEODORE ROOSEVELT ROUGH RIDER AWARD

Grants, benefits and claims	$ 5,000
Total general fund appropriation	5,000
Grand total general fund appropriation	$ 468,430
Grand total special funds appropriated	$ 31,000
Grand total all funds H.B. 1015	$ 499,430

SECTION 2. EXEMPTION. The funds herein appropriated for subdivisions 1, 3, 4, 5, 6, and 8 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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. APPROPRIATION. There is hereby appropriated in addition to the appropriation provided in subdivision 9 of section 1 of this Act for nurses' scholarships, all funds as may be on deposit in the nurses' scholarship loan fund as provided for in North Dakota Century Code section 43-12-35.

Approved March 3, 1981

CHAPTER 16

HOUSE BILL NO. 1016
(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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 62,963
Operating expenses	51,276
Equipment	2,500
Capital improvements	350,000
Grants	500,000
Total general fund appropriation	$ 966,739

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 or cause any specific appropriation for any item or set of items should be held by the court or 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 purpose provided for herein.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the funds appropriated for salaries and wages in section 1 of this Act be spent in accordance with a flexible personnel policy which recognizes that the educational broadcasting council's role is in transition. Also, $20,000 of the funds appropriated for operating expenses in section 1 of this Act shall be spent on a study and negotiations to secure the allocation and reservation of radio frequencies, and for formation and activation of a statewide public radio network under the operational control of the board of higher education.

Approved April 1, 1981

CHAPTER 17

HOUSE BILL NO. 1017
(Committee on Appropriations)

UNEMPLOYMENT INSURANCE

AN ACT making an appropriation for defraying the expenses of unemployment insurance for the various departments and institutions 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/or other income, to the department of accounts and purchases for the purpose of making payments for unemployment insurance claims, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Grants, benefits and claims	$ 1,000,000
Total appropriation special funds	$ 1,000,000

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 or cause any specific appropriation for any item or set of items 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 February 2, 1981

CHAPTER 18

HOUSE BILL NO. 1018
(Committee on Appropriations)

EMERGENCY COMMISSION

AN ACT making an appropriation for defraying the unforeseen expenses of the various agencies and institutions 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 emergency commission for the purpose of defraying the unforeseen expenses of the various agencies and institutions of the state of North Dakota, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

State contingencies	$ 500,000
Disaster contingencies	500,000
Total general fund appropriation	$ 1,000,000

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 or cause any specific appropriation for any item or set of items 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.

SECTION 3. APPROPRIATION. The funds appropriated in section one of this Act under the line item entitled "Disaster contingencies" shall be available to defray the costs of state agencies and institutions which arise as a result of natural disasters.

Approved February 20, 1981

CHAPTER 19

HOUSE BILL NO. 1019
(Committee on Appropriations)

DIVISION OF SURPLUS PROPERTY

AN ACT making an appropriation for defraying the expenses of the division of surplus property 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/or other income, to the department of accounts and purchases of the state of North Dakota, for the purpose of defraying the expenses of the division of surplus property, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 229,035
Operating expenses	205,769
Data processing	9,962
Equipment	12,500
Contingency	20,000
Total all funds	$ 477,266
Less estimated income	366,712
Total general fund appropriation	$ 110,554

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 or cause any specific appropriation for any item or set of items 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.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the division of surplus property become self-supporting by the close of the biennium ending June 30, 1983.

Approved April 1, 1981

CHAPTER 20

HOUSE BILL NO. 1021
(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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.

PARDON BOARD

Fees and services	$ 1,200
Total general fund appropriation	$ 1,200

Subdivision 2.

PAROLE AND PROBATION OFFICE

Salaries and wages	$ 1,229,680
Operating expenses	175,300
Equipment	36,000
Total general fund transfer and appropriation	$ 1,440,980
Grand total general fund appropriation	$ 1,442,180

SECTION 2. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees added facilities 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 or cause any specific appropriation for any item or set of items 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 purpose provided for herein.

Approved April 6, 1981

CHAPTER 21

HOUSE BILL NO. 1022
(Committee on Appropriations)

FEDERAL AID COORDINATOR OFFICE

AN ACT making an appropriation for defraying the expenses of the federal aid coordinator 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, and from special funds derived from federal funds and/or other income, to the federal aid coordinator office of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 1,635,689
Operating expenses	2,387,147
Data processing	47,912
Equipment	5,210
Grants, benefits, and claims	6,629,000
Total all funds	$10,704,958
Less estimated income	9,677,333
Total general fund appropriation	$ 1,027,625

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 or cause any specific appropriation for any item or set of items 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 1, 1981

CHAPTER 22

HOUSE BILL NO. 1023
(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 declaring 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/or other income, to the adjutant general of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 1,895,809
Operating expenses	1,368,852
Inauguration	4,000
Army guard service contract	700,000
Equipment	38,000
Training site contract	400,000
Capital improvements	810,000
Recruiting and retention	200,000
Total all funds	$ 5,416,661
Less estimated income	2,791,487
Total general fund transfer and appropriation	$ 2,625,174

SECTION 2. APPROPRIATION. The funds provided for in section 1 of this Act for capital improvements in the amount of $810,000, are hereby appropriated from the sinking fund for the state of North Dakota general obligation bonds, Vietnam conflict adjusted compensation series.

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. CAPITAL IMPROVEMENTS. The portion of the capital improvement funds appropriated in section 1 of this Act in the amount of $240,000 shall be expended for participation in the construction of local armories except that an amount not to exceed $50,000 of such appropriation may be expended by the adjutant general, together with other appropriated state and federal funds for the completion and equipping of the armory to be located at Camp Gilbert C. Grafton. Any portion of the funds provided for in section 1 of this Act not required for the construction of a steam heating plant and system at Camp Gilbert C. Grafton may be expended by the adjutant general for the completion and equipping of the armory to be located at Camp Gilbert C. Grafton.

SECTION 5. APPROPRIATION. There is hereby appropriated the sum of $243,000 out of the sinking fund for the state of North Dakota general obligation bonds, Vietnam conflict adjusted compensation series, and $243,000 of the interest earned in the national guard tuition trust fund, to the adjutant general for the purpose of reimbursing appropriate schools for any tuition fees waived in accordance with chapter 37-07.1 of the North Dakota Century Code for the biennium beginning July 1, 1981, and ending on June 30, 1983. This appropriation shall not be subject to the provisions of section 54-27-10.

Grand total general fund appropriation H.B. 1023	$2,625,174
Grand total special funds appropriated H.B. 1023	3,277,487
Grand total all funds appropriated H.B. 1023	$5,902,661

SECTION 6. EMERGENCY. The portion of the capital improvement funds in the amount of $240,000 for the construction of local armories and the portion of capital improvement funds in the amount of $180,000 for a steam heating plant at Camp Grafton as appropriated in section 1 of this Act, together with section 4 of this Act, are hereby declared to be emergency measures and shall be in full force and effect from and after their passage and approval.

Approved April 1, 1981

CHAPTER 23

HOUSE BILL NO. 1024
(Committee on Appropriations)

DIVISION OF DISASTER EMERGENCY SERVICES

AN ACT making an appropriation for defraying the expenses of the division of disaster emergency services 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/or other income, to the division of disaster emergency services 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 851,565
Operating expenses	292,643
Data processing	900
Equipment	31,500
Total all funds	$1,176,608
Less estimated income	806,152
Total general fund appropriation	$ 370,456

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 or cause any specific appropriation for any item or set of items 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 1, 1981

CHAPTER 24

HOUSE BILL NO. 1025
(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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 26,453
Operating expenses	62,259
Equipment	5,600
Total general fund appropriation	$ 94,312

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. NONCONTRIBUTORY RETIREMENT PLAN. For the agency named in this Act $814 is included in the salaries and wages line item to fund a noncontributory employee retirement plan. The amount referred to in this section shall not be used for any purpose other than to fund a noncontributory retirement program for state employees. If the forty-seventh legislative assembly does not provide by statute for a noncontributory retirement program for state employees, such amounts shall remain in the salaries and wages line item until such line item is canceled on July 30, 1983.

Approved March 16, 1981

CHAPTER 25

HOUSE BILL NO. 1026
(Committee on Appropriations)

INSURANCE PREMIUM TAXES

AN ACT making an appropriation for the payment of insurance premium taxes to fire departments.

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 commissioner of insurance for the purpose of making payments of insurance premiums to fire departments, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Grants, benefits, and claims	$ 3,811,500
Total general fund appropriation	$ 3,811,500

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 or cause any specific appropriation for any item or set of items 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 March 3, 1981

CHAPTER 26

HOUSE BILL NO. 1027
(Committee on Appropriations)

STATE HISTORICAL BOARD AND INTERNATIONAL PEACE GARDEN

AN ACT making an appropriation for defraying the expenses of the state historical board and international peace garden of the state of North Dakota; and declaring 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/or other income, to the state historical board and the international peace garden of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Subdivision 1.
STATE HISTORICAL BOARD

Salaries and wages	$ 2,109,406
Operating expenses	1,054,734
Data processing	42,205
Equipment	163,140
Grants, benefits, and claims	500,000
Capital improvements	450,000
Total all funds	$ 4,319,485
Less estimated income	731,313
Total general fund appropriation	$ 3,588,172

Subdivision 2.
INTERNATIONAL PEACE GARDEN

Capital improvements	$ 25,000
Grants, benefits, and claims	317,000
Total general fund appropriation	$ 342,000
Grand total general fund appropriation	$ 3,930,172
Grand total special fund appropriation	$ 731,313
Grand total all funds appropriated H.B. 1027	$ 4,661,485

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. It is the intent of the legislative assembly that the reduction of $254,550 to the capital improvements line item recommended in the executive budget is a reduction related to improvements at Fort Totten historic site. It is also intended that $20,000 of the capital improvements line item be used to install a sprinkler system at the little theater at Fort Totten historic site.

SECTION 5. EMERGENCY. The line item entitled "capital improvements" in subdivision 2 of section 1 of this Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 6, 1981

CHAPTER 27

HOUSE BILL NO.1028
(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/or 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 147,737
Operating expenses	84,726
Equipment	1,395
Grants, benefits, and claims	1,012,200
Total all funds	$1,246,058
Less estimated income	957,200
Total general fund appropriation	$ 288,858

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. 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.

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 or cause any specific appropriation for any item or set of items 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 6, 1981

CHAPTER 28

HOUSE BILL NO. 1029
(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, and from special funds derived from federal funds and/or other income, 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 396,916
Operating expenses	343,622
Data processing	300
Equipment	750
Grants, benefits, and claims	13,000
Total general fund appropriation	$ 754,588

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 or cause any specific appropriation for any item or set of items 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 1, 1981

CHAPTER 29

HOUSE BILL NO. 1030
(Committee on Appropriations)

GEOLOGICAL SURVEY

AN ACT making an appropriation for defraying the expenses of the geological survey of the state of North Dakota; and declaring 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 lands and minerals trust fund in the state treasury as provided for in section 15-08.1-08 of the North Dakota Century Code, not otherwise appropriated, and from special funds derived from federal funds and/or other income, 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 of the various divisions thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 2,868,267
Operating expenses	684,997
Data processing	82,334
Equipment	545,089
Contingency	250,000
Total appropriation - lands and minerals trust fund	$ 4,430,687

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 13, 1981

CHAPTER 30

HOUSE BILL NO. 1031
(Committee on Appropriations)

WATER CONSERVATION COMMISSION

AN ACT making an appropriation for defraying the expenses of the water 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/or other income, to 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 3,888,404
Operating expenses	1,204,211
Data processing	177,030
Equipment	371,015
Contracts	3,280,000
Total all funds	$ 8,920,660
Less estimated income	1,377,929
Total general fund appropriation	$ 7,542,731

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. APPROPRIATION. There is hereby appropriated out of federal funds, the sum of $480,938, or so much thereof as may be necessary, to the state water commission for the rural water office for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 246,378
Fees and services	108,160
Supplies and materials	6,400
Grants, benefits, and claims	120,000
Total special fund appropriation	$ 480,938
Grand total general fund appropriation	$ 7,542,731
Grand total special fund appropriation	$ 1,858,867
Grand total all funds appropriated H.B. 1031	$ 9,401,598

Approved April 1, 1981

CHAPTER 31

HOUSE BILL NO. 1033
(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.

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/or 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 2,587,546
Operating expenses	1,817,788
Data processing	56,000
Equipment	400,000
Capital improvements	834,500
Marina - Fort Stevenson state park	800,000
Grants, benefits, and claims	9,362,500
Total all funds	$ 15,858,334
Less estimated income	10,108,682
Total general fund transfer and appropriation	$ 5,749,652

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. INTENT. It is the intent of the legislative assembly that $190,152 of funds from the young adult conservation corps included in the salaries and wages line item in section 1 be used to employ six positions during the 1981-83 biennium. If any portion of these funds is not available to the parks and recreation department, the number of positions employed with these funds shall be reduced proportionately. It is the intent of the legislative assembly that no state general fund moneys be used to pay salaries for these positions.

SECTION 5. INTENT. It is the intent of the legislative assembly that $300,000 of the operating expense line item in section 1 be used for the development of master plans at Fort Lincoln state park, Lewis and Clark state park, Turtle River state park, and Fort Stevenson state park. No capital improvement projects shall be commenced at these parks until the long-range facilities portion of these master plans is completed.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the appropriation for capital improvements and grants, benefits, and claims in section 1 of this Act be expended at the discretion of the parks and recreation department and the state outdoor recreation interagency council respectively. The parks and recreation department shall present an itemized list to the 1983 legislative assembly of the amount expended for various projects from these line item appropriations.

Approved April 6, 1981

CHAPTER 32

HOUSE BILL NO. 1034
(Committee on Appropriations)

BONDING FUND AND FIRE AND TORNADO FUND

AN ACT making an appropriation for defraying the expenses of the bonding fund and the fire and tornado fund 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/or other income, to the bonding fund and the fire and tornado fund 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.

BONDING FUND

Salaries and wages	$ 35,158
Operating expenses	18,823
Data processing	747
Contingent	3,000
Total appropriation from state bonding fund	$ 57,728

Subdivision 2.

FIRE AND TORNADO FUND

Salaries and wages	$ 138,110
Operating expenses	71,516
Data processing	16,315
Contingent	4,000
Total appropriation from state fire and tornado fund	$ 229,941
Grand total special funds appropriated H.B. 1034	$ 287,669

SECTION 2. NONCONTRIBUTORY RETIREMENT PLANS. For the agencies named in this Act the following amounts are included in the

salaries and wages line items to fund noncontributory state employee retirement programs.

Bonding Fund	$ 2,519
Fire and Tornado Fund	10,396
Total	$ 12,915

The amounts referred to in this section shall not be used for any purpose other than to fund noncontributory retirement programs for state employees. If the forty-seventh legislative assembly does not provide by statute for noncontributory retirement programs for state employees, such amounts shall remain in each salary and wages line item until such line item is canceled on July 30, 1983.

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 or cause any specific appropriation for any item or set of items 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 purpose provided for herein.

Approved March 3, 1981

CHAPTER 33

HOUSE BILL NO. 1035
(Committee on Appropriations)

UNSATISFIED JUDGMENT FUND

AN ACT making an appropriation for defraying the administrative expenses of the unsatisfied judgment fund 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 unsatisfied judgment fund in the state treasury, not otherwise appropriated, to the unsatisfied judgment fund, which is under the supervision of the commissioner of insurance, for the purpose of defraying the administrative expenses of the fund, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 36,130
Operating expenses	6,528
Equipment	550
Total appropriation from unsatisfied judgment fund	$ 43,208

SECTION 2. NONCONTRIBUTORY RETIREMENT PLAN. For the agency named in this Act $1,200 is included in the salaries and wages line item to fund a noncontributory employee retirement program. The amount referred to in this section shall not be used for any purpose other than to fund a noncontributory retirement program for state employees. If the forty-seventh legislative assembly does not provide by statute for a noncontributory retirement program for state employees, such amount shall remain in each salaries and wages line item until such line item is canceled on July 30, 1983.

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 or cause any specific appropriation for any item or set of items 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 March 9, 1981

CHAPTER 34

HOUSE BILL NO. 1036
(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 out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and/or 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.

EDIBLE BEAN COUNCIL

Fees and services	$ 239,900
Operating expenses	100
Total appropriation from edible bean fund	$ 240,000

Subdivision 2.

SUNFLOWER COUNCIL

Salaries and wages	$ 224,385
Operating expenses	913,941
Equipment	12,000
Contingency	100,000
Total appropriation from sunflower fund	$ 1,250,326

Subdivision 3.

HONEY PROMOTION FUND

Operating expenses	$ 26,000
Total appropriation from honey promotion fund	$ 26,000

Subdivision 4.

STATE POTATO COUNCIL

Fees and services	$ 556,088

Total appropriation from spud fund	$ 556,088

Subdivision 5.

STATE SEED DEPARTMENT

Salaries and wages	$ 1,790,902
Operating expenses	614,148
Equipment	21,187
Contingent	95,332
Capital improvements	4,600
Total appropriation from seed department fund	$ 2,526,169

Subdivision 6.

AGRICULTURAL PRODUCTS PROMOTION COMMISSION

Salaries and wages	$ 84,455
Operating expenses	40,620
Grants	24,925
Total appropriation from agricultural products promotion funds	$ 150,000

Subdivision 7.

TURKEY FUND

Operating expenses	$ 20,000
Total appropriation from turkey promotion fund	$ 20,000

Subdivision 8.

STATE WHEAT COMMISSION

Salaries and wages	$ 414,017
Operating expenses	1,311,158
Data processing	2,358
Equipment	3,528
Grants, benefits, and claims	65,789
Contingent	20,000
Total appropriation from wheat promotion fund	$ 1,816,850

Subdivision 9.

PREDATORY ANIMAL CONTROL

Salaries and wages	$ 371,096
Fees and services	270,850
Total general fund appropriation	$ 641,946
Grand total general fund appropriation	$ 641,946
Grand total special funds appropriated	$ 6,585,433
Grand total all funds appropriated H.B. 1036	$ 7,227,379

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 or cause any specific appropriation for any item or set of items 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 purpose provided for herein.

SECTION 4. POTATO COUNCIL APPROPRIATION. In addition to the funds appropriated to the state potato council in section 1 of this Act, there is hereby appropriated any additional funds available to the council from increased assessments pursuant to the provisions of section 4-10.1-09 of the North Dakota Century Code. Such additional funds shall only be expended upon approval of the budget section of the legislative council.

Approved April 6, 1981

CHAPTER 35

HOUSE BILL NO. 1037
(Committee on Appropriations)

STATE REVENUE SHARING

AN ACT making an appropriation for the distribution of state general fund revenue to local political subdivisions 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 state treasurer of the state of North Dakota for the purpose of distributing general fund revenue to local political subdivisions, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Grants, benefits, and claims	$ 21,840,000
Total general fund transfer and appropriation	$ 21,840,000

SECTION 2. APPROPRIATION. The funds appropriated in section 1 of this Act are to be transferred by the state treasurer to the state revenue sharing fund for distribution in accordance with the initiated measure providing for the sharing of general fund revenues of the state of North Dakota and in accordance with the attorney general's opinion, dated December 20, 1978. The distribution for the fiscal year ending June 30, 1982, shall not exceed one-half of the total appropriation contained in section 1.

Approved March 20, 1981

CHAPTER 36

HOUSE BILL NO. 1038
(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.

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/or 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.

SUPREME COURT

Salaries and wages	$ 2,500,713
Operating expenses	624,000
Data processing	70,000
Equipment	101,400
Judges retirement	152,053
Total all funds	$ 3,448,166
Less estimated income	60,000
Total general fund appropriation	$ 3,388,166

Subdivision 2.

JUDICIAL QUALIFICATIONS COMMISSION

Salaries and wages	$ 106,663
Operating expenses	50,200
Equipment	700
Total all funds	$ 157,563
Less estimated income	78,781
Total general fund appropriation	$ 78,782

Subdivision 3.

DISTRICT COURTS

Salaries and wages	$ 3,510,260
Operating expenses	268,300
Data processing	21,000
Equipment	33,200
Judges retirement	446,106
Total general fund appropriation	$ 4,278,866

Subdivision 4.

DISTRICT COURT - SUPPLEMENTAL STATE FUNDING

Salaries and wages	$ 5,284,130
Operating expenses	2,801,120
Equipment	39,000
Total general fund appropriation	$ 8,124,250
Grand total general fund appropriation	$ 15,870,064
Grand total special funds appropriation	$ 138,781
Grand total all funds appropriated H.B. 1038	$ 16,008,845

SECTION 2. TRANSFERS. The director of accounts and purchases and the state treasurer shall make such transfer of funds between lined 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 require such transfers in properly carrying on the functions of the judicial branch of government.

SECTION 3. DISTRICT JUDGES. The appropriation provided within subdivision 2 of section 1 provides for two additional district court judges to be assigned pursuant to article VI, section 93 of the state constitution with one additional judge in the southwest judicial district and one additional judge in the northwest judicial district to be assigned to chambers by the supreme court.

Approved April 6, 1981

CHAPTER 37

HOUSE BILL NO. 1039
(Committee on Appropriations)

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.

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 coal development impact fund and the general fund in the state treasury, not otherwise appropriated, to the energy development impact office of the state of North Dakota, for the purpose of defraying the expense of that office, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 216,727
Operating expenses	124,760
Equipment	8,400
Grants, benefits, and claims	22,000,000
Total all funds	$ 22,349,887
Less estimated income	12,174,944
Total general fund appropriation	$ 10,174,943

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 or cause any specific appropriation for any item or set of items 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.

SECTION 3. GRANTS, BENEFITS, AND CLAIMS. Two million dollars of the appropriation from the coal development impact fund included in section 1 of this Act, relating to the grants, benefits, and claims line item, shall be spent only in the event that construction is commenced on a new energy-producing facility during the biennium.

SECTION 4. LEGISLATIVE INTENT. It is the intent of the legislative assembly that if the impact of energy development activities diminish in future bienniums, energy development impact grants should be appropriated from the general fund.

SECTION 5. GRANTS, BENEFITS, AND CLAIMS. Section 54-44.1-11 shall not apply to appropriations made for grants, benefits, and claims in section 1 of this Act nor to the grants, benefits, and claims line item in chapter 77 of the 1979 Session Laws.

Approved April 6, 1981

CHAPTER 38

HOUSE BILL NO. 1040
(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; and to amend and reenact subsection 7 of section 20.1-02-05 of the North Dakota Century Code, relating to powers of the commissioner.

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/or 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 5,156,222
Operating expenses	2,621,925
Data processing	260,025
Equipment	805,667
Capital improvements	745,850
Grants, benefits, and claims	345,600
Noxious weed control	110,000
Deer depredation	650,000
In lieu of taxes	302,000
Contingent	150,000
Total appropriation from game and fish fund	$ 11,147,289

SECTION 2. HABITAT RESTORATION - APPROPRIATION. There is hereby appropriated the sum of $505,000, or such lesser amounts as may be collected pursuant to House Bill No. 1520, to the game and fish department to lease privately owned lands for wildlife habitat to reestablish wildlife population during the biennium beginning July 1, 1981, and ending June 30, 1983. These funds shall be spent only for purposes and utilizing guidelines as outlined in House Bill No. 1520.

SECTION 3. 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 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 or cause any specific appropriation for any item or set of items 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.

SECTION 5. AMENDMENT. Subsection 7 of section 20.1-02-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. ~~Purchase~~ With the governor's approval, purchase, lease, or condemn real estate, when it is required to carry out this title, and sell it when it is no longer required, in the name of the state ~~and subject to the approval of the governor~~.

Approved April 6, 1981

CHAPTER 39

HOUSE BILL NO. 1041
(Committee on Appropriations)

MOTOR VEHICLE FUEL TAX TRANSFER

AN ACT to transfer a portion of the motor vehicle fuel tax revenues to the general fund to cover the cost of administering the motor vehicle fuel tax laws.

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

SECTION 1. TRANSFER. There is hereby transferred to the general fund in the state treasury, out of motor vehicle fuel taxes, collected pursuant to section 57-54-08 of the North Dakota Century Code, the sum of $588,000 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.

Approved March 5, 1981

CHAPTER 40

HOUSE BILL NO. 1054
(Legislative Council)
(Interim Education Committee)

SCHOOL DISTRICT AID

AN ACT providing an appropriation based upon school districts average daily membership and transportation mileage; 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, the sum of $12,000,000, or so much thereof as may be necessary, to the department of public instruction for the purpose of making payments to school districts during the biennium ending June 30, 1981, in accordance with the provisions of this Act.

SECTION 2. AMOUNT OF PAYMENT. School districts shall receive an amount of money equal to eighteen cents per mile for school bus transportation based on the number of miles traveled in the 1979-80 school term. This payment shall be over and above the transportation payment provided for in section 15-40.1-16. The remainder of the $12,000,000 appropriated by this Act shall be distributed, notwithstanding subsection 2 of section 15-40.1-06 and sections 15-40.1-07 and 15-40.1-08, to the schools based upon their pro rata share of the average daily membership for the 1979-80 school term.

SECTION 3. AVAILABILITY OF FUNDS. Within thirty days after the effective date of this Act, the superintendent of public instruction shall certify to the department of accounts and purchases the amounts each school district is entitled to, and as soon as possible thereafter, a single payment covering each of these distributions shall be mailed to each individual school district.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved February 5, 1981

CHAPTER 41

HOUSE BILL NO. 1087
(Freborg)

SUPPLEMENTAL COAL DEVELOPMENT IMPACT GRANTS

AN ACT to provide a supplemental appropriation to the coal development impact office of the state of North Dakota to provide for additional grants; 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 not otherwise appropropriated in the coal impact fund in the state treasury, which fund was established pursuant to subsection 1 of section 57-62-02, the sum of $1,500,000, or so much thereof as may be necessary, to the coal development impact office of the state of North Dakota, for the purpose of providing supplemental grants under chapter 57-62 during the period beginning January 1, 1981, and ending June 30, 1981.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved February 12, 1981

CHAPTER 42

HOUSE BILL NO. 1341
(Peterson, Eagles, R. Hausauer, Kuchera, Wald)

CAPITAL CONSTRUCTION FUND

AN ACT for a conditional transfer of funds to a state capital construction fund; and providing an appropriation for the construction, remodeling, and equipping of, or for additions to, buildings of state agencies, departments, and institutions.

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

* SECTION 1. APPROPRIATION - TRANSFER. In the event that the amount of revenues deposited in the general fund of the state treasury for the fiscal year ending June 30, 1981, exceeds $348,500,000, the director of the department of accounts and purchases shall direct the state treasurer to transfer from the general fund to the state capital construction fund the sum of $22,189,000, which is hereby appropriated, or so much thereof as may be necessary, or the amount by which the revenues deposited in the general fund for the fiscal year ending June 30, 1981, exceeds $348,500,000, whichever is less. In the event that the revenues deposited in the general fund of the state treasury for the fiscal year ending June 30, 1982, exceed $400,000,000, the director of the department of accounts and purchases shall direct the state treasurer to transfer from the general fund to the state capital construction fund the funds that are in excess of $400,000,000, or so much thereof as may be necessary, for the projects listed in section 2 of this Act for which funds were not previously transferred from the general fund to the capital construction fund, or the amount by which the revenues deposited in the general fund for the fiscal year ending June 30, 1982, exceed $400,000,000, whichever is less. In addition to other transfers authorized by this section, if more than fifty percent of the amount appropriated in section 2 of this Act for a specific facility, in priority order, is transferred from the general fund to the capital construction fund on the dates authorized in this section, the director of the department of accounts and purchases shall direct the state treasurer to transfer the additional amounts required to complete such facility, not to exceed the total appropriation of state funds for such facility as set forth in section 2. Funds transferred

* NOTE: This section was amended by section 1 of House Bill No. 1365, chapter 383.

pursuant to this section shall be expended by the various agencies, departments, and institutions for the construction or addition, remodeling, and equipping of buildings in accordance with specific appropriation made by the legislative assembly in section 2 of this Act.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the state capital construction fund, the sum of $22,189,000, or so much thereof as may be necessary, to the state agencies, departments, and institutions listed herein, for the construction and equipping of buildings and facilities, or the remodeling of buildings and facilities within the limitations hereafter stated in this section during the biennium beginning July 1, 1981, and ending June 30, 1983.

NAME OF AGENCY, DEPARTMENT, OR INSTITUTION	TYPE OF FACILITY	STATE FUNDS
International peace garden	Superintendent's residence and utility lines	$ 85,000
Minot state college	Complete athletic facility	400,000
School for the deaf	Activities building	869,000
Dickinson state college	Multipurpose arena	990,000
Northern crop institute, North Dakota state university	New facility	1,500,000
University of North Dakota	Physical education facility addition	6,000,000
State hospital	Ward building	8,000,000
North Dakota state university	Computer center addition	1,270,000
State school of science	Agricultural mechanics and welding building	1,875,000
State fair association	Exhibition building	1,200,000
Total		$ 22,189,000

The order in which the projects are listed in this section shall be the priority list for the construction, equipping, or remodeling of such buildings or facilities. The construction or remodeling of a building or facility shall be allowed to commence if more than fifty percent of the amount appropriated in this section for such building or facility is available and has been transferred from the general fund to the state capital construction fund as provided in this Act. If on June 30, 1983, there are not sufficient funds in the capital construction fund to commence construction or remodeling of a building or facility in accordance with the provisions of this Act, such construction shall not be commenced and such funds shall be returned to the general fund. If on June 30, 1983, sufficient funds are in the capital construction fund to complete a building or facility in accordance with the provisions of this Act, but have not been paid out for all expenses to be incurred in completion of such building or facility, such funds as may be necessary to complete such project or projects shall remain in the capital construction

fund until spent for such purposes. In addition to the appropriations and authorizations set forth in this Act, there is hereby appropriated to the state agencies, departments, and institutions listed herein, any moneys available from federal or other sources to construct or remodel the buildings and facilities set forth in this Act. In no event shall any building or facility exceed the cost indicated in the column "state funds" except to the extent funds may be received from federal or other sources.

Approved March 27, 1981

CHAPTER 43

HOUSE BILL NO. 1420
(Representatives Martinson, R. Hausauer, Wagner)
(Senators Melland, Thane)

NATIONAL GUARD TUITION TRUST FUND

AN ACT to create a limited special trust fund for the North Dakota national guard tuition waiver and grant programs; and providing an appropriation - transfer.

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

SECTION 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 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. 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 treasurer and interest earned by the fund shall be credited to the fund. On July 1, 1989, any unobligated balance in the fund shall be transferred to the general fund.

SECTION 2. APPROPRIATION - TRANSFER. There is hereby appropriated and transferred out of any moneys in the sinking fund for the state of North Dakota general obligation bonds, Vietnam conflict adjusted compensation series, the sum of $3,500,000 to the national guard tuition trust fund created by section 1 of this Act.

Approved March 11, 1981

CHAPTER 44

HOUSE BILL NO. 1466
(Peltier, Berg, Moore)

RED RIVER WATERSHED FLOOD CONTROL PROJECTS

AN ACT to provide an appropriation to the North Dakota state water commission in cooperation with the Red River joint water resource board for the purpose of the investigation, development, preliminary engineering analysis, estimate of costs and construction of flood control projects and related works in the Red River watershed in North Dakota.

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 $500,000, or so much thereof as may be necessary, to the state water commission contract fund to act in cooperation with the Red River joint water resource board for the purpose of the investigation, development, preliminary engineering analysis, estimate of costs, and construction of flood control projects and related works in member districts of the Red River joint water resource board, for the biennium beginning July 1, 1981, and ending June 30, 1983. A portion of the moneys appropriated herein shall be used to develop a priority list of projects, including preliminary engineering analysis and cost estimates, which are necessary to resolve the surface water management problems in the Red River watershed to the greatest extent possible. The priority list of projects shall be developed to provide a basis for future appropriations to the state water commission for cost sharing with the Red River joint water resource board for the construction of such projects. The funds herein appropriated shall not be expended until provisions for local funds from mill levies or assessments are made to match funds from this appropriation.

SECTION 2. MATCHING FUNDS. The state water commission, in cooperation with the Red River joint water management board, may use all or any part of any of the moneys herein appropriated to match any federal funds available for the purposes set out in this Act.

Approved April 1, 1981

CHAPTER 45

HOUSE BILL NO. 1605
(Representatives G. Pomeroy, Reiten, Riehl)
(Senators Barth, Tennefos)

NATIVE AMERICAN ALCOHOL AND DRUG ABUSE EDUCATION FUND

AN ACT to provide a statement of legislative intent; to create and provide for distribution of a native American alcohol and drug abuse education program for use on Indian reservations; 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. LEGISLATIVE INTENT. The legislative assembly recognizes the uniqueness of the native American culture and that the alcohol and drug abuse problems being experienced by reservation inhabitants can best be addressed with early education on the reservations. The legislative assembly further recognizes that a great deal of human suffering can be avoided by working to prevent alcohol and drug abuse problems before they occur. With this in mind, the legislative assembly passes this Act appropriating state general funds to help finance alcohol and drug abuse education programs for native Americans on the four major Indian reservations in North Dakota.

SECTION 2. NATIVE AMERICAN ALCOHOL AND DRUG ABUSE EDUCATION FUND - CREATION AND DISTRIBUTION. There is hereby created in the state treasury a special fund to be known as the native American alcohol and drug abuse education fund. The moneys appropriated to this special fund shall be distributed by the state treasurer once each year, to the four major Indian reservations in North Dakota. Each reservation shall be entitled to receive a prorated share based upon the Indian population living on the reservation as compared with the total Indian population living on all four major reservations within the state as determined by the most recent federal decennial census. However, in order for reservations to receive funds, alcohol and drug abuse education programs on the reservation must make application to the North Dakota Indian affairs commission showing such information as required based on early educational program criteria developed and approved by the commission in consultation with the division of alcoholism and drug abuse, the state health department, and the office of Indian program development at the university of North Dakota. The state treasurer

shall disburse the funds upon notification by the Indian affairs commission that they have received adequate evidence of proposed expenditures based on the above-mentioned criteria. Before the funds are disbursed, the Indian affairs commission shall provide the state treasurer with reports of expenditures from the previous year. Any moneys in the fund to which reservations are entitled but which are not disbursed, shall be returned to the state general fund at the same time the following year's disbursement is made or at the end of the 1981-83 biennium.

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 $383,836.83, or so much thereof as may be necessary, to the native American alcohol and drug abuse education fund in the state treasury for distribution as provided in this Act for the biennium beginning July 1, 1981, and ending June 30, 1983.

SECTION 4. EXPIRATION DATE. This Act shall be effective through June 30, 1983, and after that date shall be ineffective.

Approved April 6, 1981

CHAPTER 46

HOUSE BILL NO. 1648
(Wagner)

LIEUTENANT GOVERNOR'S ADDITIONAL DUTIES

AN ACT making an appropriation for defraying the expense of additional duties of lieutenant governor prescribed by the governor; providing an exemption; stating legislative intent; 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, the sum of $87,000, or so much thereof as may be necessary, to the governor's office for the purpose of defraying the expenses of additional duties of the lieutenant governor prescribed by the governor for the biennium beginning July 1, 1981, and ending June 30, 1983.

SECTION 2. EXEMPTION. The funds herein appropriated for 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 3. LEGISLATIVE INTENT. It is the intent of the legislative assembly to defray the expenses of the lieutenant governor for additional duties as may be prescribed by the governor. The legislative assembly finds the appropriation made in section 1 of this Act to be reasonable for expenses of performing the full-time duties assigned to the lieutenant governor by the governor.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved April 1, 1981

CHAPTER 47

HOUSE BILL NO. 1659
(Peterson, Backes, Solberg, Strinden)
(Approved by the Committee on Delayed Bills)

NORTH DAKOTA BLUE BOOK REPUBLICATION

AN ACT making an appropriation to provide for the preparation, printing, and distribution of the North Dakota Blue Book and stating legislative intent.

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

SECTION 1. LEGISLATIVE INTENT CONCERNING REPUBLICATION OF BLUE BOOK. The forty-seventh legislative assembly dedicates this republication of the North Dakota Blue Book to the Honorable Brynhild Haugland, State Representative, Ward County, who is the dean of women legislators in the United States of America. The forty-seventh legislative assembly also wishes to recognize the following facts:

1. That Representative Haugland commenced serving in the North Dakota Legislative Assembly in 1939, during the Twenty-sixth Legislative Assembly.

2. That Representative Haugland is now (1981) deeply involved in her twenty-second consecutive legislative session.

3. That Representative Haugland was first elected in 1938, and has been continuously reelected every two years since that date.

4. That Representative Haugland has served in the House of Representatives of the North Dakota legislative assembly for forty-eight percent of the years during which North Dakota has been a state.

5. That Representative Haugland is the senior female legislator in the United States, and may be the senior legislator in the United States.

6. That Representative Haugland is now serving her nineteenth session as chairman of the committee on social services and veterans affairs, or its named predecessor.

The forty-seventh legislative assembly makes the foregoing findings to render obvious its decisions to dedicate this republication of the North Dakota Blue Book to the Honorable Brynhild Haugland, dean of the legislative assembly.

SECTION 2. STATEMENT OF LEGISLATIVE INTENT. The legislative assembly intends that the text of section 1 of this Act dedicating the 1981 republication of the Blue Book to Representative Brynhild Haugland be inserted as a frontispiece to the 1981 Blue Book.

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 $25,000, 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 July 1, 1981, and ending June 30, 1983.

SECTION 4. DUTIES OF SECRETARY OF STATE. The secretary of state shall print, furnish, and distribute the North Dakota Blue Book as follows:

1. One copy to each member of the legislative assembly.
2. Three copies to the state historical society.
3. Two copies to the state law library.
4. Two copies to the university of North Dakota.
5. Two copies to North Dakota state university.
6. Ten copies to the legislative council.
7. One copy to each public institution maintained by the state.
8. One copy to each elective and appointive state officer.
9. One copy to each public library in the state.
10. One copy to each county auditor.
11. One copy to each public high school and junior high school in the state.
12. One copy to each supreme court justice.
13. One copy to each district judge.

The North Dakota Blue Book shall not contain more than five hundred pages and the number to be printed shall not exceed two thousand volumes. The secretary of state may, after making the distribution required by this section, sell the remaining copies of the book to individuals at cost, and the proceeds of such sales shall be deposited in the general fund. The printing and binding of the North Dakota Blue Book shall be let as a special class of printing upon competitive bidding to the lowest bidder.

Approved April 6, 1981

CHAPTER 48

SENATE BILL NO. 2001
(Committee on Appropriations)

LEGISLATIVE BRANCH

AN ACT to appropriate money for 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 DEPARTMENT OF STATE GOVERNMENT. There are hereby appropriated out of the general fund in the state treasury, not otherwise appropriated, to the legislative branch of the state government for the purpose specified such sums as set forth in the following sections of this bill.

SECTION 2. THE PERIOD DURING WHICH APPROPRIATIONS MADE HEREIN SHALL BE AVAILABLE. Unless otherwise specifically stated, the appropriations herein made shall be available for the expenses to be incurred in and about several purposes herein set out, during the fiscal period beginning with the effective date of this Act and ending June 30, 1983, to wit:

SECTION 3. APPROPRIATION.

Subdivision 1.
FORTY-SEVENTH AND FORTY-EIGHTH LEGISLATIVE ASSEMBLIES AND BIENNIUM

Salaries and wages	$ 1,160,323
Operating expenses	3,571,730
Additional and unvouchered expense allowance for expenses of the lieutenant governor to be paid at the rate of $85 per day for each calendar day during each organizational, regular, or special session and for one day immediately prior to and immediately following such sessions, such unvouchered expense allowance to be paid in lieu of the expenses provided for in section 44-08-04	9,225
National conference of state legislatures	50,070

Equipment	15,028
Total	$ 4,806,376

Subdivision 2.

LEGISLATIVE COUNCIL

Salaries and wages	$ 1,954,654
Operating expenses	1,364,209
Equipment	10,700
Total	$ 3,329,563
Total general fund	$ 8,135,939

SECTION 4. TRANSFERS. The director of the department of accounts and purchases and the state treasurer shall make such transfers of funds between line items of appropriation for the legislative council as may be requested by the chairman of the council upon a finding by him that the nature of studies and duties assigned to the council require such transfers in properly carrying on the council's function and duties. The director of the department of accounts and purchases and the state treasurer shall similarly make transfers of funds between the line items for the forty-seventh and forty-eighth legislative assemblies, upon request of the chairman of the legislative council upon a finding by him that such transfers are required for the legislative assembly to carry on its functions and duties.

SECTION 5. EMERGENCY. This measure is hereby declared to be an emergency measure and shall be in full force and effect immediately upon its passage and approval.

Approved April 1, 1981

CHAPTER 49

SENATE BILL NO. 2002
(Legislative Council)
(Interim Legislative Procedure and Arrangements Committee)

LEGISLATIVE SPACE RENOVATION

AN ACT making an appropriation to the legislative assembly for improvements to and renovation of 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 general fund in the state treasury, not otherwise appropriated, and from special funds, the sum of $675,000, or so much thereof as may be necessary, and $1,200,000, or so much thereof as may be necessary, from the capitol building fund in the state treasury, to the legislative assembly for improvements to and renovation of the legislative wing and certain portions of the ground floor and the second floor levels of the executive tower of the state capitol. The appropriation from the capitol building fund shall not be subject to the provisions of chapter 48-10.

SECTION 2. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the director of institutions handle administration of contracts let by the legislative council, or its designee, with respect to the projects funded by this Act, and that the legislative council or its designee serve as the funding agent for the contracts it enters into pursuant to this Act. The provisions of section 54-44.1-11 shall not apply to this appropriation.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 1, 1981

CHAPTER 50

SENATE BILL NO. 2003
(Committee on Appropriations)

STATE EMPLOYEE EMERGENCY COMPENSATION

AN ACT to provide an appropriation for additional compensation to North Dakota state employees for the period beginning January 1, 1981, and ending June 30, 1981; and declaring an emergency.

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 out of the general fund and from special funds or moneys derived from federal funds or other income in the state treasury as indicated to the agencies, institutions, and enterprises of state government named herein for the purpose of providing additional compensation to employees of the various agencies, institutions, and enterprises named herein for the period beginning January 1, 1981, and ending June 30, 1981:

AGENCY, INSTITUTION, OR ENTERPRISE	GENERAL FUND	SPECIAL FUNDS	TOTAL
Governor's office	$ 10,377	$	$ 10,377
Federal aid coordinator	23,437	4,419	27,856
Lieutenant governor	557		557
Secretary of state	10,686		10,686
Central microfilm unit	2,463		2,463
Department of accounts and purchases	30,045		30,045
Central data processing division		78,319	78,319
Central personnel division	5,066	6,715	11,781
State auditor	44,315		44,315
State treasurer	6,521		6,521
Attorney general	61,070		61,070
Tax commissioner	95,375		95,375
Coal development impact office (coal development impact fund)		2,561	2,561

Director of institutions	43,818		43,818
Motor vehicle registrar (motor vehicle registration fund)		29,467	29,467
Division of surplus property	4,295		4,295
Legislative council	36,729		36,729
Supreme court	34,378		34,378
District courts	5,480		5,480
Public employees retirement system and group insurance (public employees retirement fund and group insurance fund)		8,442	8,442
Superintendent of public instruction	56,197	28,765	84,962
Division of independent study	21,641		21,641
Board of higher education	16,174		16,174
Industrial school	56,799		56,799
Commissioner of university and school lands (state land maintenance fund)		15,494	15,494
University of North Dakota	1,024,179		1,024,179
Medical center rehabilitation hospital		214,926	214,926
University of North Dakota medical center	366,485		366,485
North Dakota state university	864,981		864,981
North Dakota state university - state toxicologist	7,619		7,619
Upper great plains transportation institute	7,011		7,011
State school of science	335,437		335,437
Dickinson state college	138,175		138,175
Mayville state college	99,960		99,960
Minot state college	262,284		262,284
Valley City state college	125,445		125,445
North Dakota forest service	19,799		19,799
North Dakota state university - Bottineau branch	50,020		50,020
Educational broadcasting council	1,175		1,175
Library commission	16,106		16,106
School for the deaf	47,600		47,600
School for the blind	25,985		25,985
Teachers' fund for retirement (teachers' fund for retirement)		5,828	5,828
Board of vocational education	17,715	19,977	37,692
Department of health	188,977	42,897	231,874
Grafton state school	387,311		387,311
San Haven	140,965		140,965
State hospital	534,449		534,449

Soldiers' home	21,580		21,580
Indian affairs commission	2,683		2,683
Department of veterans affairs	5,643		5,643
Social service board	146,902	220,354	367,256
South central mental health and retardation center	25,743		25,743
Northwest human resource center	32,610		32,610
Lake Region human service center	23,042		23,042
North central mental health and retardation center	26,760		26,760
Center for human development	31,312		31,312
Southeast mental health and retardation center	70,387		70,387
Memorial mental health and retardation center	37,185		37,185
Badlands human service center	41,364		41,364
Governor's council on human resources	2,816		2,816
Insurance commissioner	11,909		11,909
Unsatisfied judgment fund (unsatisfied judgment fund)		648	648
Fire marshal	5,207		5,207
Labor commissioner	4,794		4,794
Public service commission	48,283	4,762	53,045
Weather modification board	4,404		4,404
Aeronautics commission	1,807	3,394	5,201
Department of banking and financial institutions	21,802		21,802
Securities commissioner	7,533		7,533
State laboratories department	31,787		31,787
Bonding fund (bonding fund)		619	619
Fire and tornado fund		2,556	2,556
Bank of North Dakota		77,757	77,757
Mill and elevator association		122,031	122,031
Workmen's compensation bureau (workmen's compensation fund)		49,915	49,915
Crime victims reparations division	942		942
Law enforcement council	9,499		9,499
Parole and probation office	20,780		20,780
Highway patrol	125,042		125,042
Law enforcement training center	3,645		3,645
Radio communications department	19,205		19,205
Division of disaster emergency services	5,308	10,509	15,817

Civil air patrol	228		228
State penitentiary	89,096		89,096
Penitentiary industries		10,602	10,602
Adjutant general	13,060		13,060
Business and industrial development department	10,186		10,186
Commissioner of agriculture	24,650		24,650
Predatory animal control	8,318		8,318
Milk stabilization board (milk stabilization fund)		4,716	4,716
Sunflower council (sunflower fund)		3,276	3,276
Agricultural products utilization commission (agriculturally derived alcohol motor vehicle fuel tax fund)		1,940	1,940
Livestock sanitary board	5,647		5,647
Wheat commission (wheat promotion fund)		7,353	7,353
Seed department (seed department fund)		32,621	32,621
Extension division	253,971		253,971
Extension division - expanded food and nutrition education program		12,231	12,231
Extension division - energy extension service program		8,521	8,521
Main experiment station	436,304		436,304
Dickinson experiment station	11,002		11,002
Hettinger experiment station	3,306		3,306
Langdon experiment station	3,875		3,875
North central experiment station	5,746		5,746
Williston experiment station	6,472		6,472
Carrington experiment station	10,616		10,616
Agronomy seed farm (agronomy seed farm fund)		3,508	3,508
Historical society	29,388		29,388
Natural resources council	2,232	6,078	8,310
Council on the arts	2,811		2,811
Soil conservation committee	7,482		7,482
Geological survey (lands and minerals trust fund)		39,166	39,166
Game and fish department (game and fish fund)		91,475	91,475
Parks and recreation department	26,680		26,680
Water commission	65,897		65,897
Highway department		1,031,614	1,031,614
Job service		440,787	440,787
OASIS and social security		4,082	4,082

Job service - displaced homemaker program		1,177	1,177
Total	$7,034,042	$2,649,502	$9,683,544

The amounts herein appropriated are intended to provide compensation increases of ten percent for the period January 1, 1981, through June 30, 1981. The actual amount of increases paid to individual employees shall be determined by the director of the agency, department, or enterprise in accordance, where applicable, with central personnel division classification and compensation plans, except that a director of an agency, institution, or enterprise may grant increases which exceed the maximum limit of salary ranges in such plans. Compensation increases shall only be granted to employees who are currently employed by the state on the effective date of this Act and who were employed by the state on July 1, 1980. The moneys herein appropriated shall be made available to the various executive branch agencies, institutions, and enterprises only after a determination by the director of the department of accounts and purchases that such amounts are necessary to pay the amounts of additional compensation in addition to the amounts provided in appropriation acts passed by the forty-sixth legislative assembly. For those state officers and employees whose salaries are set by line items in appropriation acts of the forty-sixth legislative assembly, the director of the department of accounts and purchases shall have authority to approve additional compensation over and above the amount of such line items in amounts not to exceed ten percent of each person's salary during the period beginning January 1, 1981, and ending June 30, 1981.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved January 16, 1981

CHAPTER 51

SENATE BILL NO. 2004
(Committee on Appropriations)

BOARD OF HIGHER EDUCATION

AN ACT making an appropriation for defraying the expenses of the board of higher education and various 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/or other income to the board of higher 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.
BOARD OF HIGHER EDUCATION

Salaries and wages	$ 848,675
Operating expenses	240,029
Equipment	6,850
Data processing	41,925
Consultation board	10,000
Contingent	500,000
Tuition assistance	400,000
National direct student loans	150,000
Student financial assistance program	1,010,000
Total all funds	$ 3,207,479
Less estimated income	425,000
Total general fund transfer and appropriation	$ 2,782,479

Subdivision 2.
RECIPROCAL AGREEMENTS

Reciprocal agreements	$ 2,733,615
Total general fund appropriation	$ 2,733,615
Grand total general fund appropriation	$ 5,516,094
Grand total special funds appropriated	$ 425,000
Grand total all funds S.B. 2004	$ 5,941,094

SECTION 2. APPROPRIATION. The contingent line item under section 1, subdivision 1 of this Act shall be used for meeting unforeseen expenses at the various institutions under the control of the board of higher education, upon approval of the emergency commission.

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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 52

SENATE BILL NO. 2005
(Committee on Appropriations)

HIGHER EDUCATION

AN ACT making an appropriation for defraying the expenses of the various institutions under the supervision of the board of higher education of the state of North Dakota; and declaring 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/or other income to the various institutions under the supervision of the state board of higher education of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

UNIVERSITY OF NORTH DAKOTA	
Salaries and wages	$ 51,346,619
Operating expense	14,493,128
Equipment	1,244,994
Total operating budget	$ 67,084,741
Less estimated income	12,991,560
Net operating budget	$ 54,093,181
Capital improvements	3,355,500
Total general fund appropriation	$ 57,448,681
UNIVERSITY OF NORTH DAKOTA MEDICAL CENTER	
Salaries and wages	$ 25,097,644
Operating expense	13,982,789
Equipment	589,976
Total operating budget	$ 39,670,409
Less estimated income	17,363,896
Net operating budget	$ 22,306,513
Capital improvements	300,000
Total general fund appropriation	$ 22,606,513

NORTH DAKOTA STATE UNIVERSITY OF AGRICULTURE AND APPLIED SCIENCE	
Salaries and wages	$ 44,771,009
Operating expense	13,768,349
Equipment	1,362,413
Total operating budget	$ 59,901,771
Less estimated income	10,950,401
Net operating budget	$ 48,951,370
Capital improvements	2,990,719
Total general fund appropriation	$ 51,942,089

STATE SCHOOL OF SCIENCE - WAHPETON	
Salaries and wages	$ 17,253,617
Operating expense	4,934,797
Equipment	1,017,820
Total operating budget	$ 23,206,234
Less estimated income	4,089,088
Net operating budget	$ 19,117,146
Capital improvements	1,456,510
Total general fund appropriation	$ 20,573,656

DICKINSON STATE COLLEGE	
Salaries and wages	$ 7,027,670
Operating expense	1,992,393
Equipment	249,775
Total operating budget	$ 9,269,838
Less estimated income	1,060,394
Net operating budget	$ 8,209,444
Capital improvements	665,250
Total general fund appropriation	$ 8,874,694

MAYVILLE STATE COLLEGE	
Salaries and wages	$ 4,983,420
Operating expense	1,754,512
Equipment	164,715
Total operating budget	$ 6,902,647
Less estimated income	926,668
Net operating budget	$ 5,975,979
Capital improvements	92,000
Total general fund appropriation	$ 6,067,979

MINOT STATE COLLEGE	
Salaries and wages	$ 13,406,407
Operating expense	2,938,882
Equipment	423,000
Total operating budget	$ 16,768,289
Less estimated income	2,752,091
Net operating budget	$ 14,016,198
Capital improvements	2,158,000
Total general fund appropriation	$ 16,174,198

VALLEY CITY STATE COLLEGE	
Salaries and wages	$ 6,355,393
Operating expense	1,859,272

Equipment	217,400
Total operating budget	$ 8,432,065
Less estimated income	1,593,843
Net operating budget	$ 6,838,222
Capital improvements	511,500
Total general fund appropriation	$ 7,349,722

STATE SCHOOL OF FORESTRY - BOTTINEAU

Junior college division:	
Salaries and wages	$ 2,571,034
Operating expense	728,164
Equipment	123,012
Total operating budget	$ 3,422,210
Less estimated income	417,406
Net operating budget	$ 3,004,804
Capital improvements	370,994
Total general fund appropriation	$ 3,375,798
North Dakota forest service:	
Salaries and wages	$ 1,008,252
Operating expense	283,513
Equipment	91,016
Total operating budget	$ 1,382,781
Less estimated income	379,126
Net operating budget	$ 1,003,655
Capital improvements	133,100
Total general fund appropriation	$ 1,136,755

NDSU - STATE TOXICOLOGIST

Salaries and wages	$ 387,073
Operating expense	90,017
Equipment	19,800
Total all funds	$ 496,890
Less estimated income	216,673
Total general fund appropriation	$ 280,217

MEDICAL CENTER REHABILITATION HOSPITAL

Salaries and wages	$ 11,299,201
Operating expense	6,256,114
Equipment	155,340
Total appropriation from institutional income	$ 17,710,655
Grand total general fund appropriation	$195,830,302
Grand total special funds appropriated	$ 70,451,801
Grand total all funds appropriated S.B. 2005	$266,282,103

SECTION 2. APPROPRIATION. All income received by the University of North Dakota Medical Center, which is in excess of the income specifically appropriated in this Act, is hereby appropriated.

SECTION 3. APPROPRIATION. The general funds appropriated to the university of North Dakota, North Dakota state university and state school of science for additional faculty positions for the second year of the biennium shall be limited to faculty entitlements

by formula based upon the previous year's enrollment or the number of positions funded by this Act, whichever is less.

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 or cause any specific appropriation for any item or set of items should be held by the court or 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 5. EMERGENCY. The line items entitled "Capital Improvements" in section 1 of this Act are hereby declared an emergency measure and shall be in full force and effect upon its passage and approval.

SECTION 6. ADDITIONAL INCOME. Any additional income not required by law to be deposited in the operating fund in the state treasury and income from increased enrollments is hereby appropriated. All income resulting from increased enrollments in excess of estimated income in the budget appropriated by the legislative assembly to the institutions of higher learning must be deposited in their operating funds in the state treasury and can be expended only by authorization of the emergency commission.

The board of higher education is hereby authorized to use operating funds in addition to appropriated plant improvement funds for the maintenance, repair, and improvement of buildings and land acquisition at the various institutions, with consent of the emergency commission during the biennium beginning July 1, 1981, and ending June 30, 1983.

SECTION 7. INTENT. It is the intent of the legislative assembly that the medical school continue its statewide development of its medical education program.

Approved April 8, 1981

CHAPTER 53

SENATE BILL NO. 2006
(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/or 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 2,027,794
Operating expenses	547,015
Data processing	45,237
Equipment	37,447
Grants, benefits, and claims	20,328,588
State advisory council	250,000
Total all funds	$ 23,236,081
Less estimated income	9,096,061
Total general fund transfer and appropriation	$ 14,140,020

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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 54

SENATE BILL NO. 2007
(Committee on Appropriations)

JUNIOR COLLEGE AID

AN ACT making an appropriation for defraying the expenses of community or junior colleges and the educational center; 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/or other income, the sums as hereinafter provided, or so much thereof as may be necessary, to the various community or junior colleges and the educational center, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

BISMARCK JUNIOR COLLEGE	
Salaries and wages	$ 7,595,120
Operating expenses	2,202,584
Equipment	305,665
Land, structures, and major improvements	293,086
Total all funds	$10,396,455
Less estimated income	6,847,265
Total general fund appropriation	$ 3,549,190

LAKE REGION JUNIOR COLLEGE	
Salaries and wages	$ 2,439,531
Operating expenses	1,414,273
Equipment	98,600
Land, structures, and major improvements	90,200
Total all funds	$ 4,042,604
Less estimated income	2,578,128
Total general fund appropriation	$ 1,464,476

UNIVERSITY OF NORTH DAKOTA - WILLISTON CENTER	
Salaries and wages	$ 2,073,004
Operating expenses	768,868
Equipment	215,283

Land, structures, and major improvements	61,509
Total all funds	$ 3,118,664
Less estimated income	2,021,294
Total general fund appropriation	$ 1,097,370
Grand total general fund appropriation	$ 6,111,036
Grand total special funds appropriated	$11,446,687
Grand total all funds appropriated	$17,557,723

SECTION 2. APPROPRIATION. There is hereby appropriated, upon approval of the emergency commission, to the community or junior colleges or educational center named in this Act, any income in addition to the amounts appropriated in section 1 of this Act for the biennium beginning July 1, 1981, and ending June 30, 1983.

SECTION 3. LAKE REGION JUNIOR COLLEGE. The amount of the general fund appropriation to Lake Region junior college in section 1 of this Act that is not expended on July 1, 1982, shall only be made available to Lake Region junior college for the fiscal year beginning July 1, 1982, and ending June 30, 1983, upon approval of the budget section of the legislative council.

SECTION 4. APPROPRIATION - LOAN. There is hereby appropriated out of the general fund in the state treasury, $200,000, or so much thereof as may be necessary, to the department of accounts and purchases for the purpose of making a loan to Lake Region junior college to pay operating expenses during the year ending June 30, 1983. The director of the department of accounts and purchases shall make such loan funds available to Lake Region junior college only upon budget section approval. Such amounts received pursuant to this appropriation by Lake Region junior college shall be paid to the state treasurer on or before July 1, 1983, at a simple rate of interest of ten percent per annum.

SECTION 5. EMERGENCY. The appropriations to Lake Region junior college, to the university of North Dakota Williston center, and all line items entitled land, structures, and major improvements in section 1 of this Act are hereby declared to be emergency measures and shall be in effect from and after the passage and approval of this bill.

Approved April 3, 1981

CHAPTER 55

SENATE BILL NO. 2008
(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.

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/or 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 1,161,816
Operating expenses	357,513
Equipment	263,800
Total all funds	$ 1,783,129
Less estimated income	640,458
Total general fund transfer and appropriation	$ 1,142,671

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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 56

SENATE BILL NO. 2009
(Committee on Appropriations)

EXTENSION DIVISION AND EXPERIMENT STATIONS

AN ACT making an appropriation for defraying the expenses of the extension division and the experiment stations of North Dakota state university of agriculture and applied science; and declaring 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/or other income to the extension division and experiment stations of North Dakota state university of agriculture and applied science of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

EXTENSION DIVISION	
Salaries and wages	$ 14,124,048
Operating expense	2,636,363
Equipment	292,145
Total all funds	$ 17,052,556
Less estimated income	10,430,972
Total general fund appropriation	$ 6,621,584

EXTENSION DIVISION SPECIAL PROGRAM - FOOD AND NUTRITION	
Salaries and wages	$ 607,507
Operating expense	48,100
Equipment	500
Total special fund appropriation	$ 656,107

EXTENSION DIVISION ENERGY SERVICE	
Salaries and wages	$ 396,398
Operating expenses	97,368
Equipment	2,500

Total special fund appropriation	$ 496,266

EXPERIMENT STATION - MAIN STATION

Salaries and wages	$ 22,371,763
Operating expense	4,796,347
Equipment	1,283,135
Total operating budget	$ 28,451,245
Less estimated income	11,838,311
Net operating budget	$ 16,612,934
Capital improvements	1,435,160
Total general fund appropriation	$ 18,048,094

DICKINSON EXPERIMENT STATION

Salaries and wages	$ 556,335
Operating expense	269,932
Equipment	82,400
Total operating budget	$ 908,667
Less estimated income	125,000
Net operating budget	$ 783,667
Capital improvements	25,477
Total general fund appropriation	$ 809,144

HETTINGER EXPERIMENT STATION

Salaries and wages	$ 173,070
Operating expense	100,757
Equipment	57,335
Total operating budget	$ 331,162
Less estimated income	75,000
Net operating budget	$ 256,162
Capital improvements	47,600
Total general fund appropriation	$ 303,762

LANGDON EXPERIMENT STATION

Salaries and wages	$ 204,850
Operating expense	81,543
Equipment	40,042
Total operating budget	$ 326,435
Less estimated income	40,000
Net operating budget	$ 286,435
Capital improvements	40,000
Total general fund appropriation	$ 326,435

NORTH CENTRAL EXPERIMENT STATION

Salaries and wages	$ 295,879
Operating expense	157,370
Equipment	49,606
Total operating budget	$ 502,855
Less estimated income	217,606
Net operating budget	$ 285,249
Capital improvements	85,500
Total general fund appropriation	$ 370,749

WILLISTON EXPERIMENT STATION

Salaries and wages	$ 328,546

Operating expense	105,157
Equipment	48,900
Total operating budget	$ 482,603
Less estimated income	60,000
Net operating budget	$ 422,603
Capital improvements	46,500
Total general fund appropriation	$ 469,103

CARRINGTON EXPERIMENT STATION

Salaries and wages	$ 540,698
Operating expense	333,319
Equipment	90,900
Total operating budget	$ 964,917
Less estimated income	291,600
Net operating budget	$ 673,317
Capital improvements	30,000
Total general fund appropriation	$ 703,317

AGRONOMY SEED FARM

Salaries and wages	$ 177,751
Operating expense	297,686
Equipment	120,000
Total special fund appropriation	$ 595,437

CENTRAL GRASSLAND RESEARCH STATION

Salaries and wages	$ 196,153
Operating expenses	141,593
Equipment	225,000
Total operating budget	$ 562,746
Less estimated income	50,000
Total general fund appropriation	$ 512,746

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, and the cooperative extension division, except as otherwise provided by law, are hereby appropriated for the purpose designated in the gift, grant, or donation; however, public moneys from local sources, which shall include receipts from sale of grains, personal services, dairy products, livestock, and other agricultural products at the North Dakota main experiment station, branch experiment stations, and cooperative extension division, may be expended in excess of that specifically appropriated through biennial appropriations bills of the legislative assembly only in the event that an authorization has first been received from the emergency commission. The balances of all existing moneys on deposit in the name of the North Dakota state university main experiment station, the branch experiment stations, and the cooperative extension division, except grants, gifts, and donations from private sources, along with all subsequent receipts of such moneys, shall be deposited in a special fund in the state treasury. Hereafter, this fund shall be referred to as an operating fund and shall also be the depository for transfers from the general fund, and balances therein shall not revert to any other fund under the terms of section 54-44.1-11. 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 encumbered balance in the operating fund on June 30, 1981, exceeds the estimated income for the biennium ending June 30, 1983. The state board of higher education is authorized to approve transfer of funds between categories of expenditures, and will notify the director of the department of accounts and purchases of any such transfers within ten days following such authorization.

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 or cause any specific appropriation for any item or set of items 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 purpose provided for herein.

SECTION 4. TRANSFER. There is hereby authorized, as included in the income line item of the appropriation to the main experiment station in section 1 of this Act, a transfer of $500,000, from the coal development impact fund to the main experiment station operating fund for the purpose of funding the coal reclamation research project. Such funds shall be transferred by the director of the department of accounts and purchases from the coal development impact fund to the main experiment station operating fund, upon receipt of an itemized statement of expenditures from the main experiment station.

SECTION 5. 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 $25,000, in cost.

SECTION 6. EMERGENCY. The line items entitled "Capital Improvements" and the total appropriation to the central grassland research station in section 1 of this Act are hereby declared an emergency measure and shall be in full force and effect upon its passage and approval.

SECTION 7. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury the sum of $200,000, or so much thereof as may be necessary, to the main experiment station during the biennium beginning July 1, 1981, and

ending June 30, 1983, for the purpose of defraying the expenses of research in the areas of edible bean breeding and calf scours. General fund moneys are to be used only in the event of a reduction and only to the extent of such reduction in the receipt of federal funds by the main experiment station. The main experiment station shall not expend funds pursuant to this appropriation without the approval of the legislative council's committee on budget.

SECTION 8. APPROPRIATION. 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, 1981, and ending June 30, 1983.

Grand total general fund appropriation S.B. 2009	$28,364,934
Grand total special funds appropriation S.B. 2009	$25,176,299
Grand total all funds appropriated S.B. 2009	$53,541,233

Approved April 3, 1981

CHAPTER 57

SENATE BILL NO. 2010
(Committee on Appropriations)

DEPARTMENT OF HEALTH

AN ACT making an appropriation for defraying the expenses of the department of health 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/or other income, to the department of health of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Subdivision 1.
DEPARTMENT OF HEALTH

Salaries and wages	$ 12,464,547
Operating expenses	11,940,461
Data processing	543,228
Equipment	495,363
Grants, benefits, and claims	4,787,131
Air pollution control	195,000
Total all funds	$ 30,425,730
Less estimated income	21,109,476
Total general fund transfer and appropriation	$ 9,316,254

Subdivision 2.
DIVISION OF COMMUNITY MENTAL HEALTH AND ALCOHOL AND DRUG ABUSE

Salaries and wages	$ 637,381
Operating expenses	342,183
Data processing	97,648
Equipment	17,529
Grants, benefits, and claims	580,654
Total all funds	$ 1,675,395
Less estimated income	12,772
Total general fund appropriation	$ 1,662,623

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. HUMAN SERVICE CENTERS AND MENTAL HEALTH AND RETARDATION CENTERS. Moneys shall be paid to human service centers and mental health and retardation centers pursuant to the provisions of this Act, only after the department of human services has been furnished reports by such centers indicating that funds from local sources have, except for necessary operating funds, first been expended for the operation of such centers.

SECTION 5. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the human service centers, mental health and retardation centers and the health department shall cooperatively attempt to procure available federal funding for services in order to reduce the net cost to the state for delivery of services.

SECTION 6. MENTAL HEALTH, ALCOHOL AND DRUG ABUSE, AND MENTAL HEALTH AND RETARDATION UNITS. The control over the appropriations in subdivision 2 and subdivision 3 of section 1 of this Act shall be transferred to the department of human services upon the effective date of House Bill No. 1418.

SECTION 7. HUMAN SERVICE CENTER AND MENTAL HEALTH AND RETARDATION CENTER APPROPRIATIONS. Moneys shall be disbursed to human service centers and mental health and retardation centers pursuant to the provisions of Senate Bill Nos. 2010 and 2011, except that, upon reports being furnished to the governor by the department of human services indicating a need for a transfer of moneys between centers, the governor may authorize transfers of funds between centers.

SECTION 8. COLLOCATION. Notwithstanding section 1 of chapter 338 of the 1979 Session Laws of the state of North Dakota, mental health and retardation service units established under chapter 25-12 and area social service centers under the jurisdiction of the social service board shall, not later than July 1, 1982, collocate their respective regional offices in each region of the state.

SECTION 9. LEGISLATIVE INTENT. It is the intent of the legislative assembly that any funds collected through the issuance of licenses or registration certificates for sources of ionizing radiation are included in the health department estimated income line item and are to be used to defray the costs of the ionizing radiation licensing and certification program.

Subdivision 3.

MENTAL HEALTH AND RETARDATION CENTERS

SOUTHEAST MENTAL HEALTH AND RETARDATION CENTER

Salaries and wages	$ 2,478,496
Operating expenses	1,010,157
Equipment	101,206
Total all funds	$ 3,589,859
Less estimated income	1,602,729
Total general fund appropriation	$ 1,987,130

SOUTH CENTRAL MENTAL HEALTH AND RETARDATION CENTER

Salaries and wages	$ 1,381,099
Operating expenses	469,705
Equipment	47,810
Total all funds	$ 1,898,614
Less estimated income	479,612
Total general fund appropriation	$ 1,419,002

CENTER FOR HUMAN DEVELOPMENT

Salaries and wages	$ 1,681,000
Operating expenses	1,089,302
Equipment	9,500
Total all funds	$ 2,779,802
Less estimated income	1,202,412
Total general fund appropriation	$ 1,577,390

MEMORIAL MENTAL HEALTH AND RETARDATION CENTER

Salaries and wages	$ 1,884,995
Operating expenses	662,275
Equipment	9,000
Total all funds	$ 2,556,270
Less estimated income	569,190
Total general fund appropriation	$ 1,987,080

NORTH CENTRAL MENTAL HEALTH AND RETARDATION CENTER

Salaries and wages	$ 1,440,749
Operating expenses	898,891
Equipment	36,391
Total all funds	$ 2,376,031
Less estimated income	532,535
Total general fund appropriation	$ 1,843,496
Total all funds	$ 13,200,576
Less estimated income	4,386,478
Total general fund appropriation	$ 8,814,098
Grand total general fund appropriation	$ 19,792,975
Grand total special funds appropriated	$ 25,508,726
Grand total all funds appropriated S.B. 2010	$ 45,301,701

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

Approved April 8, 1981

CHAPTER 58

SENATE BILL NO. 2011
(Committee on Appropriations)

SOCIAL SERVICE BOARD

AN ACT making an appropriation for defraying the expenses of the social service board, the human service centers, and 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/or other income, to the social service 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 19,189,691
Operating expenses	9,407,923
Data processing	2,440,117
Equipment	185,000
Grants, benefits, and claims	271,765,747
Total all funds	$302,988,478
Less estimated income	223,655,945
Total general fund appropriation	$ 79,332,533

SECTION 2. 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/or other income, to the social service board and the state department of health of the state of North Dakota for the purpose of defraying the expenses of the deinstitutionalization program, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 551,753
Operating expenses	415,636
Data processing	72,898

Equipment	18,388
Grants	15,328,787
Total all funds	$ 16,387,462
Less estimated special funds	5,476,925
Total general fund appropriation	$ 10,910,537

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 $3,610,312, or so much thereof as may be necessary, and $2,913,936 in special funds, or so much thereof as may be necessary, to the human service centers of the state of North Dakota, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

BADLANDS HUMAN SERVICE CENTER, DICKINSON

Salaries and wages	$ 2,237,957
Operating expenses	568,130
Equipment	13,300
Total all funds	$ 2,819,387
Less estimated income	1,359,950
Total general fund appropriation	$ 1,459,437

NORTHWEST HUMAN RESOURCE CENTER, WILLISTON

Salaries and wages	$ 1,711,754
Operating expenses	391,328
Equipment	14,779
Total all funds	$ 2,117,861
Less estimated income	660,639
Total general fund appropriation	$ 1,457,222

LAKE REGION HUMAN SERVICE CENTER, DEVILS LAKE

Salaries and wages	$ 1,293,456
Operating expenses	284,744
Equipment	8,800
Total all funds	$ 1,587,000
Less estimated income	893,347
Total general fund appropriation	$ 693,653

SECTION 4. HUMAN SERVICE CENTERS. The control over the appropriations in section 3 of this Act shall be transferred to the department of human services upon the effective date of House Bill No. 1418.

SECTION 5. HUMAN SERVICE CENTERS - TRANSFERS. With the approval of the governor the director of the department of human services shall have the authority to make such transfers and allocations between the state office and the human service centers, and between the human service centers as may be necessary to effectively and efficiently implement a comprehensive plan for provision of human services through the regional human service centers.

SECTION 6. DEINSTITUTIONALIZATION - ALLOCATION OF APPROPRIATION. In order to effectively and efficiently implement

the deinstitutionalization plan, no funds appropriated in section 2 of this Act may be expended by the social service board or the division of mental health and retardation of the department of health, or their successor agency, except within the limitations of such allocations as may be approved by the governor.

SECTION 7. 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 8. 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 or cause any specific appropriation for any item or set of items 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.

SECTION 9. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the human service centers and the social service board shall cooperatively attempt to procure available federal funding for services in order to reduce the net cost to the state for delivery of services.

SECTION 10. 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/or other income to the industrial commission of the state of North Dakota for the purpose of defraying the expenses of the housing assistance program, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 556,257
Operating expenses	98,744
Data processing	28,292
Equipment	500
Grants	7,872,000
Total special fund appropriation	$8,555,793

SECTION 11. APPROPRIATION. There is hereby appropriated, in addition to any other appropriations, $200,000, or so much thereof as may be necessary, out of any moneys received as administrative fees by the housing assistance program, to the industrial commission of the state of North Dakota for the biennium beginning July 1, 1981, and ending June 30, 1983, for the purpose of administering the housing finance agency.

SECTION 12. DEPARTMENT OF HUMAN SERVICES - STAFF LEVELS - REDUCTIONS - BUDGET SECTION REVIEW. The director of the department of human services, while establishing the department on the state and regional level, shall reduce the number of positions in the

total system by ten employees by June 30, 1983. In addition, the director shall periodically report to the budget section on the progress made in implementing the provisions of House Bill No. 1418 and the reduction in staff levels required by this section.

SECTION 13. LEGISLATIVE INTENT. It is the intent of the legislative assembly that if additional case management services are needed to provide services to developmentally disabled individuals receiving services under the appropriation provided in section 2 of this Act, that these services be provided by the staff of the human service centers in each region of the state.

Grand total general fund appropriation S.B. 2011	$ 93,853,382
Grand total special funds appropriation S.B. 2011	$240,802,599
Grand total all funds appropriated S.B. 2011	$334,655,981

Approved April 8, 1981

CHAPTER 59

SENATE BILL NO. 2012
(Committee on Appropriations)

GOVERNOR'S COUNCIL ON HUMAN RESOURCES

AN ACT making an appropriation for defraying the expenses of the governor's council on human resources 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/or other income to the governor's council on human resources of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 154,885
Operating expenses	187,284
Equipment	800
Total all funds	$ 342,969
Less estimated income	100,000
Total general fund appropriation	$ 242,969

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. OPERATING EXPENSES. The appropriation in section 1 of this Act for operating expenses shall be allocated as follows to the administrative program, executive committee, committee on aging, committee on children and youth, commission on the status of women, committee on employment of the handicapped, and the developmentally disabled advocacy plan:

	Operating Expenses
Administration	$ 1,000
Executive committee	5,325
Committee on aging	27,507
Committee on children and youth	43,263
Commission on the status of women	23,974
Committee on employment of the handicapped	39,918
Developmentally disabled advocacy plan	46,297
Total	$ 187,284

Approved April 3, 1981

CHAPTER 60

SENATE BILL NO. 2013
(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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 150,314
Operating expenses	35,520
Equipment	2,650
Grants, benefits, and claims	195,000
Total general fund transfer and appropriation	$ 383,484

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 or cause any specific appropriation for any item or set of items 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 purpose provided for herein.

Approved April 3, 1981

CHAPTER 61

SENATE BILL NO. 2014
(Committee on Appropriations)

DEPARTMENT OF VETERANS' AFFAIRS

AN ACT making an appropriation for defraying the expenses of the department of veterans' affairs 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 department of veterans' affairs of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 299,632
Operating expenses	53,354
Equipment	2,211
Total general fund appropriation	$ 355,197

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 or cause any specific appropriation for any item or set of items 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 purpose provided for herein.

Approved April 3, 1981

CHAPTER 62

SENATE BILL NO. 2015
(Committee on Appropriations)

STATE LABORATORIES DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the state laboratories 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, to the state laboratories department of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 1,700,721
Operating expenses	465,667
Data processing	59,198
Equipment	72,677
Total general fund appropriation	$ 2,298,263

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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 63

SENATE BILL NO. 2016
(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/or 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 303,199
Operating expenses	97,567
Equipment	26,565
Capital improvements	550,000
Grants, benefits, and claims	3,500,000
Total all funds	$ 4,477,331
Less estimated income	2,825,649
Total general fund transfer and appropriation	$ 1,651,682

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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 64

SENATE BILL NO. 2017
(Committee on Appropriations)

WEATHER MODIFICATION BOARD

AN ACT making an appropriation for defraying the expenses of the weather modification 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, and from special funds derived from federal funds and/or other income, to the weather modification board of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 327,097
Operating expenses	1,218,738
Data processing	47,523
Equipment	2,600
Research - weather mod.	2,050,000
Total all funds	$ 3,645,958
Less estimated income	2,776,013
Total general fund appropriation	$ 869,945

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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 65

SENATE BILL NO. 2018
(Committee on Appropriations)

DEPARTMENT OF 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.

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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$1,160,179
Operating expenses	276,614
Data processing	37,125
Equipment	49,900
Total general fund appropriation	$1,523,818

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 or cause any specific appropriation for any item or set of items 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 purpose provided for herein.

Approved April 3, 1981

CHAPTER 66

SENATE BILL NO. 2019
(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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 425,663
Operating expenses	60,518
Data processing	800
Equipment	3,219
Total general fund appropriation	$ 490,200

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 or cause any specific appropriation for any item or set of items 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 8, 1981

CHAPTER 67

SENATE BILL NO. 2020
(Committee on Appropriations)

STATE FIRE MARSHAL

AN ACT making an appropriation for defraying the expenses of the state fire marshal 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/or other income, to the state fire marshal of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 283,506
Operating expenses	68,916
Equipment	1,700
Total all funds	$ 354,122
Less estimated income	53,000
Total general fund appropriation	$ 301,122

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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 68

SENATE BILL NO. 2021
(Committee on Appropriations)

DEFICIENCY APPROPRIATIONS

AN ACT making an appropriation for defraying the expenses of various departments and institutions of the state of North Dakota; 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/or other income, the sums as hereinafter provided or so much thereof as may be necessary, 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, 1981, and ending June 30, 1981, as follows:

Subdivision 1.

INSURANCE COMMISSIONER

Grants, benefits, and claims - insurance tax to fire departments	$ 775,000
Total general fund appropriation	$ 775,000

Subdivision 2.

DISASTER EMERGENCY SERVICES

Grants, benefits, and claims	$ 242,603
Total general fund appropriation	$ 242,603

Subdivision 3.

STATE TREASURER

Grants, benefits, and claims - state revenue sharing	$1,326,338
Total general fund appropriation	$1,326,338

Subdivision 4.

TAX COMMISSIONER

Grants, benefits, and claims - personal property tax replacement	$ 147,954

Grants, benefits, and claims - homestead tax credit	$ 357,555
Total general fund appropriation	$ 505,509

Subdivision 5.

TAX COMMISSIONER

Board of equalization - lump sum	$ 50,000
Total general fund appropriation	$ 50,000

Subdivision 6.

ACCOUNTS AND PURCHASES

Salaries and wages	$ 10,000
Supplies and materials	12,000
Data processing	30,000
Equipment	8,000
Total general fund appropriation	$ 60,000

Subdivision 7.

DIRECTOR OF INSTITUTIONS

Salaries and wages	$ 34,512
Fees and services	308,496
Supplies and materials	3,100
Capital improvements	275,000
Total general fund appropriation	$ 621,108

Subdivision 8.

STATE COMMUNICATIONS

Fees and services	$ 173,500
Data processing	25,000
Total all funds	$ 198,500
Less estimated income	105,075
Total general fund appropriation	$ 93,425

Subdivision 9.

SUPERINTENDENT OF PUBLIC INSTRUCTION

Grants - special education	$ 322,497
Total general fund appropriation	$ 322,497

Subdivision 10.

BUSINESS AND INDUSTRIAL DEVELOPMENT DEPARTMENT

Salaries and wages	$ 20,554
Total general fund appropriation	$ 20,554

Subdivision 11.

NORTH DAKOTA STATE UNIVERSITY

Music education center:	
Recital hall completion	$ 350,000
Site work	86,877
Case work and lockers	136,700
Sound systems	113,000
Stage lighting	121,500
Concert shell	150,000
Acoustical curtains	90,000
Classroom and office furnishings	50,000

Stage rigging, curtains	40,000
Total all funds	$1,138,077
Less estimated income	538,077
Total general fund appropriation	$ 600,000

Subdivision 12.

SCHOOL FOR THE DEAF

Residential facilities	$ 195,337
Total	$ 195,337
Less estimated income	45,000
Total general fund appropriation	$ 150,337

Subdivision 13.

SCHOOL FOR THE BLIND

Operating expenses	$ 24,000
Total	$ 24,000
Less estimated income	10,619
Total general fund appropriation	$ 13,381

Subdivision 14.

NURSES SCHOLARSHIPS

Grants, benefits, and claims	$ 11,000
Total appropriation from nurses scholarship loan fund	$ 11,000

Subdivision 15.

HEALTH DEPARTMENT

Salaries and wages	$ 98,030
Fees and services	118,260
Supplies and materials	13,010
Equipment	5,545
Total general fund appropriation	$ 234,845

Subdivision 16.

GRAFTON STATE SCHOOL

Operating expenses	$ 543,135
Data processing	2,072
Total all funds	$ 545,207
Less estimated income	325,000
Total general fund appropriation	$ 220,207

Subdivision 17.

SAN HAVEN

Operating expenses	$ 142,150
Acquisition and installation of food service and laundry equipment for combined services building	504,000
Total all funds	$ 646,150
Less estimated income	40,000
Total general fund appropriation	$ 606,150

Subdivision 18.

SOLDIERS' HOME

Operating expenses	$ 72,469

Capital improvements	9,121
Total	$ 81,590
Less estimated income	27,109
Total general fund appropriation	$ 54,481

Subdivision 19.

PUBLIC SERVICE COMMISSION

Fees and services	$ 37,500
Total general fund appropriation	$ 37,500

Subdivision 20.

OASIS AND SOCIAL SECURITY

Salaries and wages	$ 9,962
Fees and services	7,369
Equipment	1,900
Total special funds appropriated	$ 19,231

Subdivision 21.

ADJUTANT GENERAL

Fees and services	$ 57,000
Supplies and materials	15,000
Total general fund appropriation	$ 72,000

Subdivision 22.

SUNFLOWER COUNCIL

Fees and services	$ 112,290
Supplies and materials	11,070
Total appropriation from sunflower fund	$ 123,360

Subdivision 23.

SEED DEPARTMENT

Fees and services	$ 113,670
Total general fund appropriation	$ 113,670

Subdivision 24.

GEOLOGICAL SURVEY

Capital improvements	$ 60,000
Total appropriation from land and minerals trust fund	$ 60,000

Subdivision 25.

SOCIAL SERVICE BOARD

Grants, benefits, and claims	$ 461,157
Total general fund appropriation	$ 461,157

Subdivision 26.

GOVERNOR'S OFFICE

Salaries and wages	$ 20,000
Fees and services	15,300
Governor Link transition	5,000
Equipment	4,000
Total general fund appropriation	$ 44,300

Subdivision 27.

NATURAL RESOURCES COUNCIL

Salaries and wages	$ 20,000
Fees and services	9,000
Total general fund appropriation	$ 29,000

Subdivision 28.

SECURITIES COMMISSIONER

Salaries and wages	$ 9,600
Total general fund appropriation	$ 9,600
Grand total general fund appropriation	$6,663,662
Grand total special funds appropriated	1,304,471
Grand total all funds appropriated SB 2021	$7,968,133

SECTION 2. AUTHORIZATION. The director of the coal development impact office is hereby directed to transfer funds from the coal development impact fund to the main experiment station operating fund in the amount of $506,310, or so much thereof as may be necessary, for defraying the expenses of the coal reclamation research project at North Dakota state university in accordance with the intent of the appropriations act approved by the forty-sixth legislative assembly and included in chapter 8 of the 1979 Session Laws.

SECTION 3. SCHOOL FOR THE DEAF. The director of institutions is authorized during the biennium ending June 30, 1981, to construct residential facilities at a cost not to exceed $540,337 at the school for the deaf utilizing the $345,000 appropriated for three residential cottages in section 2 of chapter 87 of the 1979 Session Laws of North Dakota and the $195,337 appropriated in section 1 of this Act.

SECTION 4. CARRYOVER OF APPROPRIATIONS. The appropriations to North Dakota state university in subdivision 11 of section 1 and San Haven for the line item entitled "acquisition and installation of food service and laundry equipment for combined services building" in subdivision 17 of section 1 shall not be subject to the provisions of section 54-44.1-11 of the North Dakota Century Code.

SECTION 5. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in full force and effect upon its passage and approval.

Approved March 31, 1981

CHAPTER 69

SENATE BILL NO. 2022
(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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 298,060
Operating expenses	186,573
Equipment	2,800
Total general fund appropriation	$ 487,433

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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 70

SENATE BILL NO. 2023
(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; and to amend and reenact section 4-18.1-04 of the North Dakota Century Code, relating to the per diem reimbursement of members of the milk stabilization board.

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, 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 250,293
Operating expenses	156,886
Equipment	422
Contingencies	7,500
Total special fund appropriation	$ 415,101

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 or cause any specific appropriation for any item or set of items 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.

SECTION 3. AMENDMENT. Section 4-18.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-18.1-04. MILK STABILIZATION BOARD.

1. There is hereby created a milk stabilization board to consist of five members, who shall be appointed by the

governor. The board shall consist of one person who is a dairy farmer selling to a processor, who shall be selected by the governor from two names submitted to him by the North Dakota Milk Producers Association; one person who is a processor, who shall be selected by the governor from two names submitted to him by the North Dakota Dairy Industries Association; one person who is a retailer, who shall be selected by the governor from two names submitted to him by the North Dakota Association of Food Retailers; and two persons shall be selected by the governor who are consumers, and who are not otherwise engaged in the milk business. No appointee shall have held elective or appointive public office during the period of two years immediately preceding his appointment and no appointee shall hold any other public office, either elective or appointive, during his term of office as a member of the milk stabilization board; and not more than three members of the said milk stabilization board shall, at the time of the appointment or thereafter during their respective terms of office, be members of the same congressional district.

2. The members of said milk stabilization board shall be appointed within thirty days after passage and approval of this chapter. The term of office of one member shall expire on July 1, 1968; the term of office of one member shall expire on July 1, 1969; the term of office of one member shall expire on July 1, 1970; the term of office of one member shall expire on July 1, 1971; the term of office of one member shall expire on July 1, 1972; and each succeeding member shall hold his office for a term of five years and until his successor shall have been appointed and qualified. Any vacancy shall be filled by appointment by the governor as heretofore stated.

3. Three members of the board shall constitute a quorum for the regular transaction of business. The board shall choose one of its members as the chairman, who shall hold office as a chairman for one year; provided, election as chairman shall not interfere with the member's right to vote on all matters before the board.

4. Each member of the board shall receive ~~twenty-five~~ fifty dollars per diem for each day actually spent in the performance of his official duties, plus mileage and expenses as are allowed to other state officers, but in no event shall a member's per diem payments exceed fifteen hundred dollars in any one year.

5. Each member of the board shall give bond conditioned for the faithful performance of his duties in the manner required by law in the sum of five thousand dollars.

6. The board shall employ an executive secretary who shall serve under the direction and at the pleasure of the board and whose qualifications, and duties, and compensation shall be determined by the board. The executive secretary shall serve as financial officer of the board and shall be authorized to accept money paid to the board in accordance with this chapter. Before entering upon the discharge of his duties, he shall execute and file a bond in an amount as may be fixed by the board or as may be provided by law for public officers.

7. The board shall employ, in addition to the executive secretary, such assistants and employees, permanent and temporary, as may be necessary to carry out the duties and responsibilities of the board under the provisions of this chapter. The board shall determine the qualifications, duties and compensation of such employees. The board may employ a licensed attorney of the state of North Dakota as its legal counsel, who shall serve on a full-time or a part-time basis, and the board may obtain the services of such additional attorneys as it deems necessary. The board may also contract for auditing, economic research, and other technical services, whenever it determines that such services are needed.

8. All expenditures under this chapter shall be paid from the receipts hereunder. Meetings of the board shall be ~~had~~ held at least every sixty days at the call of the chairman or a majority of the board.

Approved April 3, 1981

CHAPTER 71

SENATE BILL NO. 2024
(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.

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/or other income to the state fair association of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Capital improvements	$ 150,000
Premiums	165,000
Total general fund appropriation	$ 315,000

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 or cause any specific appropriation for any item or set of items 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 8, 1981

CHAPTER 72

SENATE BILL NO. 2025
(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.

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/or other income to the economic development 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 1,014,280
Operating expenses	1,301,296
Data processing	1,500
Equipment	8,500
Total all funds	$ 2,325,576
Estimated income	1,260,676
Total general fund appropriation	$ 1,064,900

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 or cause any specific appropriation for any item or set of items 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.

SECTION 4. TRANSFER. The estimated income included in section 1 of this Act is a transfer of $1,260,676 from the state highway fund to the economic development commission. The funds shall be transferred from the state highway fund to the economic development commission operating fund as directed by the office of the budget during the biennium beginning July 1, 1981, and ending June 30, 1983.

Approved April 8, 1981

CHAPTER 73

SENATE BILL NO. 2026
(Committee on Appropriations)

ABANDONED MOTOR VEHICLES

AN ACT making an appropriation for defraying the expenses of the abandoned motor vehicles division 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 abandoned vehicle disposal fund in the state treasury, not otherwise appropriated, to the abandoned motor vehicle division of the health department of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Grants, benefits, and claims	$ 400,000
Total special funds appropriation	$ 400,000

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 or cause any specific appropriation for any item or set of items 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 8, 1981

CHAPTER 74

SENATE BILL NO. 2028
(Committee on Appropriations)

HIGHWAY PATROL

AN ACT making an appropriation for defraying the expenses of the highway patrol and the various 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/or 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.

HIGHWAY PATROL

Salaries and wages	$ 6,860,521
Operating expenses	1,862,919
Data processing	43,142
Equipment	867,723
Total all funds	$ 9,634,305
Less estimated income	229,604
Total general fund transfer and appropriation	$ 9,404,701

Subdivision 2.

LAW ENFORCEMENT TRAINING CENTER

Salaries and wages	$ 238,935
Operating expenses	193,265
Equipment	8,050
Capital improvements	38,229
Total all funds	$ 478,479
Less estimated income	86,492
Total general fund transfer and appropriation	$ 391,987
Grand total general fund appropriation	$ 9,796,688
Grand total special funds appropriated	$ 316,096
Grand total all funds appropriated S.B. 2028	$ 10,112,784

SECTION 2. APPROPRIATION. Each patrolman of the state highway patrol shall receive from funds appropriated in the fees and services line item in subdivision 1 of section 1 of this Act an amount not to exceed $99 per month for the fiscal year ending June 30, 1982, and not to exceed $109 per month for the fiscal year ending June 30, 1983. 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. 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 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 or cause any specific appropriation for any item or set of items 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.

SECTION 5. VACANT POSITIONS. The moneys herein appropriated for salaries and wages and allocated for positions which subsequently become vacant shall not be expended except for paying the salaries or wages of persons employed to fill such vacant positions.

Approved April 3, 1981

CHAPTER 75

SENATE BILL NO. 2029
(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/or 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 59,017,618
Operating expenses	45,765,779
Data processing	1,218,922
Equipment	6,697,005
Grants, benefits, and claims	8,332,900
Capital improvements	13,696,500
Contracts	146,550,000
Legal drain openings	100,000
Railroad crossing protection	100,000
Total all funds	$ 281,478,724
Less estimated special funds	281,084,224
Total general fund appropriation	$ 394,500

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 or cause any specific appropriation for any item or set of items 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.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the legislative assembly that $437,500 included in the estimated income line item in section 1 of this Act from the transfer of excess funds in the abandoned motor vehicle disposal fund pursuant to the provisions of Senate Bill No. 2079 be used for the intermodal and rail planning program.

Approved April 3, 1981

CHAPTER 76

SENATE BILL NO. 2030
(Committee on Appropriations)

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

AN ACT making an appropriation for defraying the expenses of the upper great plains transportation institute 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/or other income to the upper great plains transportation institute of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 446,064
Operating expenses	122,382
Equipment	7,900
Total all funds	$ 576,346
Less estimated income	228,800
Total general fund transfer and appropriation	$ 347,546

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 or cause any specific appropriation for any item or set of items 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 purpose provided for herein.

Approved April 3, 1981

CHAPTER 77

SENATE BILL NO. 2031
(Committee on Appropriations)

MOTOR VEHICLE DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the motor vehicle 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 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 1,669,198
Operating expenses	1,315,046
Data processing	771,444
License plates and tabs	518,095
Equipment	12,525
Special refunds	25,700
Contingency fund	50,000
Motor cycle safety	2,000
Total appropriation from motor vehicle registration fund	$ 4,364,008

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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 78

SENATE BILL NO. 2032
(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.

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 state lands maintenance fund in the state treasury, not otherwise appropriated, 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, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 805,782
Operating expenses	164,680
Data processing	96,803
Equipment	17,005
Grants	34,650
Contingent fund	135,000
Total state lands maintenance fund	$1,253,920

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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 79

SENATE BILL NO. 2033
(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/or 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

Salaries and wages	$ 46,558
Operating expenses	43,800
Equipment	4,000
Contingent fund	10,000
Total land and mineral trust fund appropriation	$ 104,358

Subdivision 2.

BANK OF NORTH DAKOTA

Salaries and wages	$ 4,621,341
Operating expenses	2,852,491
Data processing	933,267
Equipment	561,868
Contingent	327,500
Total appropriation from Bank of North Dakota fund	$ 9,296,467

Subdivision 3.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	$ 8,247,449
Operating expenses	5,987,024
Contingent	600,000
Total appropriation from mill and elevator fund	$ 14,834,473
Grand total special funds appropriated	$ 24,235,298
Grand total all funds S.B. 2033	$ 24,235,298

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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 80

SENATE BILL NO. 2034
(Committee on Appropriations)

PUBLIC EMPLOYEES RETIREMENT SYSTEM AND GROUP INSURANCE

AN ACT making an appropriation for defraying the administrative expenses of the public employees retirement system and the group insurance program 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/or other income, to the public employees retirement system and group insurance program of the state of North Dakota, for the purpose of defraying the administrative costs of the divisions thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Subdivision 1.
PUBLIC EMPLOYEES RETIREMENT BOARD

Salaries and wages	$ 442,056
Operating expenses	740,350
Data processing	300,000
Equipment	3,750
Contingent	100,000
Total appropriation from state employees retirement fund	$1,586,156

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 or cause any specific appropriation for any item or set of items should be held by the court or 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 3, 1981

CHAPTER 81

SENATE BILL NO. 2035
(Committee on Appropriations)

TEACHERS' FUND FOR RETIREMENT

AN ACT making an appropriation for defraying the expenses 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. 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 expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 301,419
Operating expenses	445,087
Data processing	132,718
Equipment	2,818
Contingent	15,000
Total appropriation from teachers' fund for retirement	$ 897,042

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 or cause any specific appropriation for any item or set of items 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 March 31, 1981

CHAPTER 82

SENATE BILL NO. 2036
(Committee on Appropriations)

JOB SERVICE NORTH DAKOTA

AN ACT making an appropriation for defraying the expenses of the 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/or 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.

JOB SERVICE NORTH DAKOTA

Salaries and wages	$ 24,491,239
Operating expenses	6,439,851
Equipment	588,466
Total special funds appropriated	$ 31,519,556

Subdivision 2.

NORTH DAKOTA OASIS AND SOCIAL SECURITY

Salaries and wages	$ 296,296
Operating expenses	148,291
Equipment	5,750
Total appropriation from social security contribution fund	$ 450,337

Subdivision 3.

DISPLACED HOMEMAKER PROGRAM

Salaries and wages	$ 60,782
Operating Expenses	38,850
Grants	375,000
Total special funds appropriation	$ 474,632
Grand total special funds appropriated S.B. 2036	$ 32,444,525

SECTION 2. APPROPRIATION. All federal funds received by the employment security bureau in excess of those funds appropriated in subdivision 1 of section 1 of this Act are hereby appropriated.

SECTION 3. 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 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 or cause any specific appropriation for any item or set of items 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 3, 1981

CHAPTER 83

SENATE BILL NO. 2037
(Committee on Appropriations)

WORKMEN'S COMPENSATION BUREAU

AN ACT making an appropriation for defraying the expenses of the workmen's compensation bureau 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 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, 1981, and ending June 30, 1983, as follows:

Subdivision 1.
WORKMEN'S COMPENSATION BUREAU

Salaries and wages	$ 2,746,404
Operating expenses	791,341
Data processing	289,239
Equipment	106,113
Contingent	20,000
Total appropriation from workmen's compensation fund	$ 3,953,097

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 or cause any specific appropriation for any item or set of items 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 purpose provided for herein.

Approved April 3, 1981

CHAPTER 84

SENATE BILL NO. 2038
(Committee on Appropriations)

CRIME VICTIMS REPARATIONS

AN ACT to create and enact a new subsection to section 65-13-15 of the North Dakota Century Code, relating to placing funds in reserve for the payment of claims; and to make an appropriation for defraying the expenses of the Crime Victims Reparations Act under the supervision of the workmen's compensation bureau of the state of North Dakota.

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

SECTION 1. A new subsection to section 65-13-15 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

No funds shall be placed in reserve by the board on any claim.

SECTION 2. 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 workmen's compensation bureau of the state of North Dakota for the purpose of defraying the expenses of the Crime Victims Reparations Act, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Salaries and wages	$ 15,000
Operating expenses	7,634
Equipment	2,000
Grants, benefits, and claims	215,000
Total general fund appropriation	$ 239,634

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 or cause any specific appropriation for any item or set of items 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. It is the intent of the legislative assembly that the Uniform Crime Victims Reparations Act moneys appropriated by this Act be expended and the program administered as provided in chapter 65-13 with a view to the possibility that the program may be terminated or the responsibility for its administration reassigned at some future time.

Approved April 8, 1981

CHAPTER 85

SENATE BILL NO. 2039
(Committee on Appropriations)

TRANSFER FROM MILL AND ELEVATOR

AN ACT to transfer moneys from the accumulated and undivided profits of the North Dakota mill and elevator association to the general fund of the state of North Dakota.

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

SECTION 1. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of $2,000,000 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, 1981, and ending June 30, 1983, upon order of the industrial commission.

Approved April 3, 1981

CHAPTER 86

SENATE BILL NO. 2040
(Committee on Appropriations)

BANK OF NORTH DAKOTA TRANSFERS

AN ACT to transfer moneys from the accumulated and undivided profits of the Bank of North Dakota to the general fund and to the community water facility loan fund of the state of North Dakota.

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

SECTION 1. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of $5,000,000 from the accumulated and undivided profits of the Bank of North Dakota. Such moneys shall be transferred during the biennium beginning July 1, 1981, and ending June 30, 1983, upon order of the industrial commission.

SECTION 2. TRANSFER TO COMMUNITY WATER FACILITY LOAN FUND. The sum of $5,000,000 is hereby transferred from the accumulated and undivided profits of the Bank of North Dakota to the community water facility loan fund authorized by section 6-09.5-03. This transfer shall be made upon order of the industrial commission in quarterly installments of $1,250,000 on each of the following dates: July 1, 1981; October 1, 1981; January 1, 1982; and April 1, 1982. In the event the total amount to be transferred on a given date is not available, the balance shall be transferred as soon as possible.

Approved March 6, 1981

CHAPTER 87

SENATE BILL NO. 2202
(Senators Wenstrom, R. Christensen, Lips)
(Representatives Berg, Hughes, Wagner)

JUNIOR COLLEGE AID REALLOCATION

AN ACT providing for a reallocation of the appropriation to the junior colleges of the state of North Dakota for the biennium ending June 30, 1981; and declaring an emergency.

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

SECTION 1. AMENDMENT. Sections 1 and 2 of chapter 6 of the 1979 Session Laws are hereby amended and reenacted to read as follows:

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 $4,727,113 or so much thereof as may be necessary, to the junior colleges hereinafter named of the state of North Dakota for the purpose of assisting in defraying the expenses thereof, for the biennium beginning July 1, 1979, and ending June 30, 1981, as follows:

Bismarck junior college	$ ~~2,730,146~~	2,782,728
Lake region junior college	~~1,126,520~~	1,073,938
UND - Williston center	870,447	
Total general fund appropriation	$ 4,727,113	

Section 2. LEGISLATIVE INTENT. It is the intent of the legislative assembly that payments for state aid to junior colleges be made in accordance with provisions of section 15-18-07 of the North Dakota Century Code relating to pro rata distribution of state aid to junior colleges.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 31, 1981

CHAPTER 88

SENATE BILL NO. 2207
(Senators Melland, Nething)
(Representative Martinson)

ARMY NATIONAL GUARD AND 164th INFANTRY REGIMENT HISTORY

AN ACT to direct the adjutant general to compile, publish, and distribute a history of the North Dakota army national guard and the 164th infantry regiment; and to provide an appropriation.

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

SECTION 1. HISTORY OF NORTH DAKOTA ARMY NATIONAL GUARD AND THE 164TH INFANTRY REGIMENT. The adjutant general shall compile, publish, and distribute a history of the North Dakota army national guard and the 164th infantry regiment. The history shall trace the 164th infantry regiment from its origin as the Dakota territorial infantry until the regiment was dissolved in 1955 and its involvement in each war and conflict during its existence. Distribution of the published history shall be in accordance with rules promulgated by the adjutant general pursuant to chapter 28-32.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the sinking fund for the state of North Dakota general obligation bonds, Vietnam conflict adjusted compensation series, not otherwise appropriated, the sum of $100,000, or so much thereof as may be necessary, to the adjutant general for the purpose of compiling, publishing, and distributing a history of the North Dakota army national guard and the 164th infantry regiment for the biennium beginning July 1, 1981, and ending June 30, 1983.

The adjutant general shall be authorized to seek matching funds from the national endowment for the humanities through the institute for regional studies of North Dakota state university in carrying on this project, under such agreements relating thereto as shall be satisfactory to the adjutant general and the institute for regional studies. Any such matching funds that may be received are hereby appropriated for such project in accordance with this Act.

The appropriations provided in this Act shall not be subject to the provisions of section 54-44.1-11.

Approved March 31, 1981

CHAPTER 89

SENATE BILL NO. 2259
(Hanson)

CAPITOL SECURITY SYSTEM

AN ACT making an appropriation to the capitol grounds planning commission to defray the expenses of planning and implementing an internal and external capitol security system on the capitol grounds of the state of North Dakota.

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 capitol building fund in the state treasury, not otherwise appropriated, the sum of $125,000, or so much thereof as may be necessary, to the capitol grounds planning commission for the purpose of planning and implementing an external and internal capitol security system for the biennium beginning July 1, 1981, and ending June 30, 1983. The capitol grounds planning commission is authorized to use this appropriation as it deems necessary to accomplish the purposes of this Act, and may pay salaries directly or by agreement, and may purchase necessary equipment relating to a security system.

Approved March 19, 1981

CHAPTER 90

SENATE BILL NO. 2283
(Senator Thane)
(Representative Dietz)

SCHOOL OF SCIENCE CLASSROOM — AUDITORIUM

AN ACT to provide an appropriation for the construction of a classroom-auditorium building at the state school of science.

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

SECTION 1. APPROPRIATION. There is hereby appropriated to the state school of science from any federal or private funds the sum of $2,500,000, or so much thereof as may be necessary, for the purpose of constructing a classroom-auditorium building at the state school of science during the biennium beginning July 1, 1981, and ending June 30, 1983.

Approved March 11, 1981

GENERAL PROVISIONS

CHAPTER 91

HOUSE BILL NO. 1069
(Legislative Council)
(Interim Judiciary "C" Committee)

TECHNICAL CORRECTIONS ACT

AN ACT to amend and reenact sections 4-30-52, 6-09-27, 10-19-31, 11-05.1-04, 11-11-49, 12-60-19, 12.1-04-10, 15-47-42, subsection 2 of section 15-62.3-01, sections 16.1-06-07, 19-01-14, 23-17-11, 26-03-35, 26-11.1-05, 27-10-12, 29-02-24, 29-06-25, subsection 1 of section 30.1-21-03, sections 33-01-21, 33-05-01, 33-12-19, 35-22-12, subsection 3 of section 37-01-40, sections 39-01-08, 39-04-01, 39-04-15.1, paragraph 21 of subdivision a of subsection 3 of section 39-06.1-10, sections 39-16.1-07, 40-01-12, 40-18-19, 40-22-05, 40-33.1-04, 40-34-07, 40-35-10, 40-42-04, 40-57-11, subsection 2 of section 40-60-02, subsection 3 of section 40-61-03.1, sections 41-09-41, 43-11-20.4, 49-16-05, subsection 1 of section 51-13-03, section 51-13-07, subsection 3 of section 54-01.1-03, sections 54-07-01.2, 54-49.1-02, 55-01-01, 57-02-20, 57-20-01, 57-20-09, 57-20-22, 57-22-29, 57-24-12, 57-28-20, 57-28-21, 57-29-01, 57-29-04, 57-29-05, 57-38-61, 57-52-11, 58-03-07, 58-06-01, 59-05-58, 60-07-05, and 61-21-65 of the North Dakota Century Code, relating to disposal of illegal milk or milk products, civil actions on bank transactions, voting list for meeting of shareholders, approval of county consolidation plans, the board of county commissioners offering a reward for theft and related offenses, cooperation of bureau of criminal investigation with combined law enforcement council, petition to clerk of court when defendant is acquitted on the ground of mental disease or defect which excludes responsibility, status and authority of student teachers, definition of agency in the chapter on the tuition assistance grant program, arrangement of names on the ballot, service and return of a search warrant pursuant to the chapter on the state laboratories department, the acceptance of federal funds, supplies, and equipment for chiropractic hospitals, provisions required in a life insurance policy issued on other than a standard form, exceptions to the application of the title on insurance, the accused being discharged from arrest on delivery of an undertaking, when law enforcement officers may disperse an assembly, the procedure used when a person is arrested without a warrant, closing estates by the sworn statement of a

personal representative, when moneys collected by the county justice should be paid to the county treasurer, when a writ of attachment on personal property may be issued by a county justice, a jury trial in county justice court, the right to costs when foreclosing a mortgage by advertisement, definition of Indian wars in the chapter on the military, state and political subdivisions authorization to carry insurance on vehicles, definition of reconstructed vehicle in the chapter on motor vehicle registration, penalty for failure to register vehicles, entries against driving records, reasons for revocation of a license, audit of claims and accounts against municipalities, appeals from determinations of the municipal judge, condemnation of land and rights of way for special improvements, methods for financing projects by the municipal steam heating authority, negotiability of first mortgage bonds, negotiability of bonds and interim receipts or certificates, the requirement that the proof at trial must conform to the claim filed with the municipality, powers of municipalities pertaining to parking areas, methods for financing projects by the municipal parking authority, formal requisites of a financing statement, permit requirements for persons who solicit business for a school of hairdressing, contracts exempting railroads from liability, finance charge limitation on retail installment contracts, penalties for violation of provisions in the chapter on retail installment sales, moving and related expenses under the Model Relocation Assistance Act, power of the governor to appoint the majority of members of certain boards and commissions, composition of the natural resources council, composition of the state historical board, personal property tax exemption for farm machinery for one year, due date for real and personal taxes, discount for early payment of real estate taxes, disposition of penalties on general taxes and interest on certificates of sale issued, contracts for tax collection, sale of lands at public auction by the county auditor, disposition of proceeds from sale of land for delinquent taxes, cancellation from the record of all taxes after the sale of the real estate, suspension of tax liens on state acquired lands, the auditor disclosing tax information on lands in which the state is interested, applicability of provisions in the chapter on income tax, distribution of the special fuels tax, powers of electors at annual township meetings, general powers of the board of township supervisors, application of laws to powers in trust and the trustees of such powers, passage of title by negotiable warehouse receipts to goods stored, consolidation of drainage districts into water management districts; and to repeal sections 9-11-08, 29-22-16, 29-22-36, 30-26-26, and 57-24-11 of the North Dakota Century Code, relating to definitions in the chapter on assignment of account receivables, contents of general verdicts, procedure for commitment of defendant acquitted when defense was "mental disease or defect which excludes responsibility", costs of an appeal, court clerks issuing blank subpoenas for defendants, verdicts of the jury in county justice court, and sale of

general and hail indemnity taxes; all such amendments and repeals constituting a composite Technical Corrections Act.

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

SECTION 1. AMENDMENT. Section 4-30-52 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-52. DISPOSAL OF ILLEGAL MILK OR MILK PRODUCTS. Any milk or cream offered for sale and which is in violation of any provisions of this chapter or the rules and regulations of the dairy department shall be colored with a harmless food coloring and returned to the owner. Any other milk product which is in violation of this chapter or the rules and regulations of the dairy department and has been seized or ordered held by the dairy commissioner shall be disposed of as any other illegal food or drug as outlined in chapter ~~19-02*~~ 19-02.1.

SECTION 2. AMENDMENT. Section 6-09-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-27. CIVIL ACTIONS ON BANK TRANSACTIONS - NAME OF PARTIES - SERVICE - VENUE - AUDIT BOARD PROVISIONS INAPPLICABLE. Civil actions may be brought against the state of North Dakota on account of causes of action claimed to have arisen out of transactions connected with the operation of the Bank of North Dakota upon condition that the provisions of this section are complied with. In such actions, the state shall be designated as "The State of North Dakota, doing business as The Bank of North Dakota", and the service of process therein shall be made upon the president of the Bank. ~~Such~~ The actions may be brought in the same manner and shall be subject to the same provisions of law as other civil actions. ~~Such~~ The action shall be brought, however, in the county where the Bank of North Dakota shall have its principal place of business, except as provided in sections 28-04-01, 28-04-02, 28-04-03, 28-04-04, and 28-04-06. ~~The--provisions-of-sections-54-14-01*-and-54-14-06-shall not-apply-to-claims-against-the-state-affected-by-the-provisions--of this-section.~~

SECTION 3. AMENDMENT. Section 10-19-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-19-31. VOTING LIST. The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at ~~such~~ the meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. ~~Such~~ The list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection

of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine ~~such~~ the lists or transfer book or to vote at any meeting of shareholders.

Failure to comply with the requirements of this section shall not affect the validity of any action taken at ~~such~~ the meeting.

An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders, or keep it on file for a period of ten days, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of ~~such~~ the failure, to the extent of such damage.

The provisions of chapter ~~10-18--as--amended-or-renumbered~~ 41-08, except where in conflict with this section, shall ~~continue-to apply-and~~ control the transfer of shares.

SECTION 4. AMENDMENT. Section 11-05.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-05.1-04. APPROVAL OF CONSOLIDATION PLAN. If the committee shall approve a consolidation plan, it shall submit a report and a map showing the boundaries of the proposed county consolidation to the board of county commissioners of the county and of each affected adjoining county. ~~Such~~ The reports may also be made available to all interested persons. When ~~such~~ the reports and maps have been received by the respective boards of county commissioners, the board of county commissioners of the county to be consolidated and the board of county commissioners of all affected adjoining counties shall act pursuant to sections 11-05-04 ~~through~~, 11-05-05, 11-05-06, 11-05-07, 11-05-08, 11-05-09, 11-05-10, 11-05-11, 11-05-12, 11-05-13, 11-05-14, 11-05-16, 11-05-17, 11-05-18, 11-05-19, 11-05-20, 11-05-21, 11-05-22, 11-05-23, 11-05-24, 11-05-25, 11-05-26, and 11-05-27.

SECTION 5. AMENDMENT. Section 11-11-49 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-49. BOARD MAY OFFER REWARD. The board of county commissioners may offer a reward of a sum not exceeding one hundred dollars nor less than ten dollars for the apprehension and conviction of each person violating any of the provisions of chapters ~~12-40--and--12-41,--or-who-takes,-by-fraud-or-stealth,-any wheat,-oats,-rye,--barley,--flax,--or--other--grain,--or--any--other property--of--another,--with--intent--to--deprive--the-owner-thereof~~ 12.1-21 and 12.1-23.

SECTION 6. AMENDMENT. Section 12-60-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-60-19. COOPERATION OF BUREAU. The bureau shall work and cooperate with the ~~commission--on--peace--officers'--standards--and~~

~~training~~ combined law enforcement council as heretofore established in the ~~fields~~ course of training specified in ~~section--54-50-02*~~ sections 12-61-09, 12-61-10, and 12-61-11, and in such other related fields as said ~~commission~~ council and the bureau may deem feasible.

SECTION 7. AMENDMENT. Section 12.1-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-04-10. ACQUITTAL DUE TO MENTAL DISEASE OR DEFECT - ~~APPLICATION-TO-MENTAL-HEALTH-BOARD~~ PETITION TO CLERK OF COURT. When the defendant is acquitted on the ground of mental disease or defect which excludes responsibility, the state's attorney shall file a written ~~application--with--the--county-mental-health-board~~ petition with the clerk of court as provided in section 25-03.1-08 for determination of the defendant's need for institutional custody, care, or treatment pursuant to ~~section-25-03-11~~ chapter 25-03.1.

SECTION 8. AMENDMENT. Section 15-47-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-42. STATUS AND AUTHORITY OF STUDENT TEACHERS. Any student teacher, during the time ~~such~~ the student teacher is assigned as a student teacher, shall be given the same legal authority and status as if the student teacher were a certificated employee of the school district in which he is assigned. The authority of the student teacher shall extend to all aspects of student management or discipline, in the handling of confidential records of students, and in all other aspects of legal authority granted to certificated employees of the school districts in the state. The student teacher shall be deemed a certificated employee of the district with respect to acts performed by him at the direction, suggestion, or consent of the certificated employees under whose supervision and control the holder performs his duties, whether or not ~~such~~ the duties are performed entirely in the presence of the employees of the district assigned to supervise the holder, and shall be deemed an employee of the school district within the meaning of sections 39-01-08 and ~~40-43-07~~ 32-12.1-05 relating to liability insurance carried by political subdivisions.

SECTION 9. AMENDMENT. Subsection 2 of section 15-62.3-01 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Agency" means the ~~North--Dakota--student--financial assistance-agency~~ state board of higher education.

SECTION 10. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly, then section 16.1-06-07, as created by section 16, chapter 271, of the 1979 Session Laws and printed as a footnote in the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-06-07. ARRANGEMENT OF NAMES ON BALLOT FOR PRESIDENTIAL ELECTORS. The ballot provided for in section ~~16.1-06-05~~ 16-11-05 shall be arranged as follows:

1. Initially, the names of the candidate of the party casting the highest number of votes in the state for members of Congress at the last preceding general election shall be arranged in the first or left-hand column of such ballot; of the party casting the next highest number of votes in the second column; of the party casting the next highest number of votes in the third column; and of such other party as the secretary of state may direct in the fourth and successive columns.

2. In printing each set of official ballots for the various election precincts, one-half of the ballots shall be printed with the political party columns arranged as prescribed by subsection 1 of this section, and the other half of the ballots shall be printed by interchanging only the first two political party columns.

3. After the ballots are printed as prescribed in subsection 2 of this section, they shall be kept in separate piles and then repiled by taking one ballot from each pile and placing it upon the new pile so that every other ballot in the new pile has the first two political party columns in different positions. This repiling for political party column rotation shall be done in conjunction with the required rotation of names within the political party columns. After the repiling is completed, the ballots shall be cut and packaged for the various election precincts.

4. In presidential election years the names of presidential electors presented in one certificate of nomination shall be arranged in a group enclosed in brackets to the right and opposite the center of which shall be printed in bold type the surname of the presidential candidate represented. To the right and in a line with such surname, near the margin, shall be placed a single square, and a mark within such square shall be designated a vote for all the electors, and such group shall be placed at the head of the column under the party designated or represented in such certificate.

5. In precincts in which voting machines are used, the rotation of political party columns required by this section shall be performed in the same manner as provided for the primary election ballot.

SECTION 11. AMENDMENT. Section 19-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-14. SERVICE AND RETURN OF SEARCH WARRANT AND PROCEEDINGS THEREON. The provisions of sections 29-29-01 ~~to 29-29-19, inclusive~~ and 29-29-18 and rule 41 of the North Dakota Rules of Criminal Procedure, as to the service and return of a search warrant, and hearing, and return thereon to the district court, shall govern in cases of search warrants issued pursuant to the provisions of this chapter except that testimony of witnesses need not be reduced to writing. If the magistrate finds that the property seized is property of the kind described in the search warrant and that there is probable cause to believe that the grounds on which the search warrant was issued existed, he shall send the property so seized to the district court, together with his return. If he finds that there is not probable cause to believe that the grounds on which the search warrant was issued existed, he shall order the property returned to the person from whom it was taken.

SECTION 12. AMENDMENT. Section 23-17-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17-11. ACCEPTANCE OF FEDERAL FUNDS, SUPPLIES AND EQUIPMENT FOR CHIROPRACTIC HOSPITALS. The state board of chiropractic examiners is hereby authorized and empowered for, and on behalf of the chiropractic profession and their patients in the state of North Dakota to accept any funds or grants through appropriate channels ~~appropriation of the counties of the United States~~ and any supplies and equipment which may be made available to this state for hospital facilities, goods and services.

SECTION 13. AMENDMENT. Section 26-03-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-03-35. PROVISIONS REQUIRED IN LIFE INSURANCE POLICY ISSUED ON OTHER THAN STANDARD FORM. No policy of life insurance in form other than a standard form prescribed in this chapter shall be issued or delivered in this state, unless the same shall contain the following:

1. A provision that all premiums shall be payable in advance either at the home office of the company, or to an agent of the company, upon delivery of a receipt signed by one or more of the officers who shall be named in the policy.

2. A provision for a grace of one month for the payment of every premium after the first, which may be subject to an interest charge, during which month the insurance shall continue in force, which provision may contain a stipulation that if the insured shall die during the month of grace, the overdue premium will be deducted in any settlement under the policy.

3. A provision that the policy shall constitute the entire contract between the parties and shall be incontestable after it shall have been in force during the lifetime of the insured for two years from its date, except for

nonpayment of premiums and except for violations of the policy relating to naval or military service in time of war, and, at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident also may be excepted.

4. A provision that all statements made by the insured, in the absence of fraud, shall be deemed representations and not warranties, and that no such statement shall avoid the policy unless it is contained in a written application and a copy of ~~such~~ the application shall be endorsed upon or attached to the policy when issued.

5. A provision that if the age of the insured has been understated, the amount payable under the policy shall be such as the premium would have purchased at the correct age.

6. A provision that the policy shall participate in the surplus of the company and that, beginning not later than the end of the third policy year, the company annually will determine and account for the portion of the divisible surplus accruing on the policy, and that the owner of the policy shall have the right each year to have the current dividend arising from such participation paid in cash; and if the policy shall provide other dividend options, it shall provide further which one of the four standard options shall be effective if the owner of the policy shall not elect any of ~~such~~ the other options. This provision, however, shall not be required in nonparticipating policies.

7. A provision that after the policy has been in force three full 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 ~~section 26-10-01~~ chapter 26-10.1, 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 ~~such~~ 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; which provision may provide further that ~~such~~ the loan may be deferred for not exceeding six months after the application thereof is made. It shall be stipulated further in the policy that failure to repay any

such advance or to pay interest thereon shall not void the policy unless the total indebtedness thereon to the company shall equal or exceed ~~such~~ the loan value at the time of ~~such~~ the failure nor until one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any. No condition other than as herein provided shall be exacted as a prerequisite to any such advance. This provision shall not be required in a policy of term insurance.

~~8. Repealed by S.L. 1977, ch. 247, § 11.~~

~~9. Repealed by S.L. 1977, ch. 247, § 11.~~

~~10.~~ A provision that if, in event of default in premium payments, the value of the policy shall be applied to the purchase of other insurance, and if ~~such~~ the insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three years from ~~such~~ the default upon evidence of insurability satisfactory to the company and payment of arrears of premiums with interest.

~~11.~~ 9. A provision that when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death, or not later than two months after receipt of ~~such~~ the proof.

~~12.~~ 10. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.

~~13.~~ 11. A title on the face and on the back of the policy correctly describing the same.

Any of the foregoing provisions or portions thereof, relating to premiums not applicable to single premium policies, shall not be incorporated to the extent to which they are inapplicable in a single premium policy.

SECTION 14. AMENDMENT. Section 26-11.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-11.1-05. EXCEPTIONS. Except for the provisions entitled "loans", "options on surrender or lapse", "continuance of insurance on lapse", "reinstatement", "options at maturity", and the "grace" paragraph of the provision entitled "payment of premiums" of sections 26-03-26 through 26-03-31, and except for subsections 2, 7, 8, 9, and 10, ~~and 12~~ of section 26-03-35, and except as otherwise provided in this chapter, all pertinent provisions of title 26 shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance contract, delivered or issued for delivery in this state, shall contain grace, reinstatement, and nonforfeiture provisions appropriate to such a contract. The

reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

SECTION 15. AMENDMENT. Section 27-10-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-10-12. ACCUSED DISCHARGED FROM ARREST ON DELIVERING UNDERTAKING - NATURE OF UNDERTAKING. When a person accused of a ~~criminal--or~~ civil contempt is arrested upon a warrant of attachment upon which the amount of the undertaking to be given for his appearance is endorsed, the accused must be discharged from arrest upon his executing and delivering to the sheriff, at any time before the return day of the warrant, an undertaking to the state in the sum specified in the endorsement with sufficient surety to the effect that he will appear on the return of ~~such~~ the attachment and abide the direction of the court. If required by the sheriff, ~~such~~ the surety must justify as provided in chapter ~~32-08~~ 32-08.1 of the title Judicial Remedies.

SECTION 16. AMENDMENT. Section 29-02-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-02-24. WHEN OFFICERS MAY DISPERSE ASSEMBLY. If the persons assembled and commanded to disperse do not immediately disperse, any magistrate or law enforcement officer ~~mentioned in section 12-19-17~~ may command the aid of a sufficient number of persons and may proceed in such manner as in his judgment is necessary to disperse the assembly and arrest the offenders.

SECTION 17. AMENDMENT. Section 29-06-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-06-25. PROCEDURE AGAINST PERSON ARRESTED WITHOUT WARRANT. When an arrest is made by a peace officer or a private person without a warrant, the person arrested without unnecessary delay must be taken:

1. Before the nearest or most accessible magistrate in the county where the arrest is made; or

2. If there is no magistrate in said county qualified to act, then before the nearest or most accessible magistrate authorized to act for the county where the arrest is made.

A complaint stating the charge against the person arrested must be made before such magistrate, as is provided in ~~section 29-05-04~~ rule 5 of the North Dakota Rules of Criminal Procedure.

SECTION 18. AMENDMENT. Subsection 1 of section 30.1-21-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-21-03. (3-1003) CLOSING ESTATES - BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE.

1. Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court a verified statement stating that he, or a prior personal representative whom he has succeeded, has or have:

   a. Fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration, and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities.

   b. Sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.

   If the personal representative has published notice to creditors as provided by section 30.1-19-01, he may not file the verified statements until ~~six~~ three months after the date of the first publication.

* SECTION 19. AMENDMENT. Section 33-01-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-01-21. WHEN MONEYS COLLECTED PAYABLE BY COUNTY JUSTICE TO COUNTY TREASURER. ~~Subject to the provisions of section 33-12-23, each~~ Each county justice shall pay over to the county treasurer of his county all fines or other moneys collected or received by him ~~in~~ on behalf of the county or state and remaining in his hands in reasonable intervals of not more than thirty-five days.

** SECTION 20. AMENDMENT. Section 33-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-05-01. WHEN WRIT OF ATTACHMENT ISSUED. In a case mentioned in section ~~32-08-01~~ 32-08.1-01, a writ to attach the personal property of the defendant may be issued by the county justice at the time of or after issuing the summons and before answer, on receiving an affidavit by or on behalf of the plaintiff

* NOTE: Chapter 33-01 was repealed by section 51 of House Bill No. 1060, chapter 319.

** NOTE: Chapter 33-05 was repealed by section 51 of House Bill No. 1060, chapter 319, and by section 2 of House Bill No. 1064, chapter 350.

stating the same facts as are required to be stated by the affidavit specified in section ~~32-08-05~~ 32-08.1-03.

* SECTION 21. AMENDMENT. Section 33-12-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-12-19. WHEN ISSUE TRIED BY COURT OR JURY ~~--SIZE OF JURY~~. When the defendant in a criminal action in a county justice court makes any plea other than a plea of guilty, the issue shall be tried by the court unless a jury is demanded~~,--but if either party--demands a jury before the court hears any testimony,-the issue must be tried by a jury of twelve persons~~.

SECTION 22. AMENDMENT. Section 35-22-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-22-12. COSTS - DISBURSEMENTS - ATTORNEY'S FEES. The person foreclosing a mortgage by advertisement shall be entitled to his costs and disbursements out of the proceeds of the sale ~~and also shall be entitled to the attorney's--fees--as--provided--by--section 35-22-13~~.

SECTION 23. AMENDMENT. Subsection 3 of section 37-01-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Indian wars. Since the Indian wars were fought intermittently over a period of years, the determination as to whether a person shall be considered as having rendered military service during these wars will be carefully considered by the ~~state--veterans'--affairs commission~~ administrative committee on veterans' affairs. January 1, 1817, through December 31, 1898, is considered Indian war period.

** SECTION 24. AMENDMENT. Section 39-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-01-08. STATE AND POLITICAL SUBDIVISIONS AUTHORIZED TO CARRY INSURANCE ON VEHICLES - WAIVER OF IMMUNITY TO EXTENT ONLY OF INSURANCE PURCHASED.

1. The state of North Dakota or any department, agency, or bureau, as well as any county, city, or other political subdivision including townships, school and park districts using or operating motor vehicles and aircrafts, are hereby authorized to carry insurance for their own protection and for the protection of any employees from claims for loss or damage arising out of or by reason of the use or operation of ~~such~~ the motor vehicle or aircraft, whether ~~such~~ the vehicle or aircraft at the time the loss or damage in question occurred was being operated in a governmental undertaking or otherwise. If a premium savings will result therefrom, ~~such~~ the policies of

* NOTE: Chapter 33-12 was repealed by section 51 of House Bill No. 1060, chapter 319.

** NOTE: Subsection 3 of section 39-01-08 was also amended by section 9 of Senate Bill No. 2251, chapter 131.

insurance may be taken out for more than one year, but in no event beyond a period of five years.

2. If insurance is purchased pursuant to subsection 1, then the purchaser waives its immunity to suit only to the extent of allowing a determination of liability to the extent of the waiver of the immunity against liability described in subsection 3.

3. If insurance is purchased pursuant to subsection 1, then the purchaser waives its immunity against liability only to the types of its insurance coverage and only to the extent of the policy limits of ~~such~~ the coverage.

4. If any dispute exists concerning the amount or nature of the insurance coverage, the dispute shall be tried separately before the main trial determining the claims and damages of the claimant.

5. This statute confers no right for a claimant to sue the insurer directly.

6. When liability insurance is carried pursuant to this section or pursuant to section ~~40-43-07~~ 32-12.1-05, no defense in a negligence action shall be raised by the insurance carrier upon the basis of section 39-07-05.

* SECTION 25. AMENDMENT. Section 39-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

1. "Commercial freighting" means the carriage of things other than passengers, for hire, except that ~~such~~ the terms shall not include:

   a. The carriage of things other than passengers within the limits of the same city;

   b. The carriage by local dray lines of baggage or goods to or from a railroad station from or to places in ~~such~~ the city or in the immediate vicinity thereof, in this state, and not to exceed two miles [1.61 kilometers] from the corporate limits of said city; or

   c. Hauling done by farmers for their neighbors in transporting agricultural products to or from market.

2. "Commercial passenger transportation" means the carriage of passengers for hire, except that ~~such~~ the term shall not include:

* NOTE: Section 39-04-01 was also amended by section 7 of Senate Bill No. 2069, chapter 378.

a. The carriage of passengers within the limits of a city; or

b. The carriage by local bus lines of passengers to or from a railroad station from or to places within any city or within two miles [1.61 kilometers] of the limits thereof.

3. "Dealer" means every person, partnership, or corporation engaged in the business of buying, selling, or exchanging motor vehicles, or who advertises, or holds himself out to the public as engaged in the buying, selling, or exchanging of motor vehicles, or who engages in the buying of motor vehicles for resale. Any person, partnership, corporation, or association doing business in several cities or in several locations within a city shall be considered a separate dealer in each ~~such~~ location.

4. "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.

5. "Foreign vehicle" means every motor vehicle which shall be brought into this state otherwise than in the ordinary course of business by or through a manufacturer or dealer and which has not been registered in this state.

6. "Gross weight" means the total of the unloaded weight of the vehicle, or combination of vehicles, and the load carried thereon.

7. "Reconstructed vehicle" means any vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used. A reconstructed vehicle may be registered upon the payment of the same fees for the calendar year that are paid for a motor vehicle of comparable make and year as the reconstructed vehicle, excluding ~~penalties as provided in section 39-04-16 and~~ nonuse fees as provided in section 39-04-18.

8. "Specially constructed vehicle" means any vehicle which shall not have been constructed originally under the distinct name, make, model, or type, by a generally recognized manufacturer of vehicles.

* SECTION 26. AMENDMENT. Section 39-04-15.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-15.1. INSTALLMENT REGISTRATION OF VEHICLES LICENSED FOR A GROSS WEIGHT IN EXCESS OF THIRTY-SIX THOUSAND POUNDS [16329.33

* NOTE: Section 39-04-15.1 was also amended by section 15 of Senate Bill No. 2069, chapter 378.

KILOGRAMS] - DELINQUENCIES - PENALTY. All motor vehicles registered for a gross weight in excess of thirty-six thousand pounds [16329.33 kilograms] may be registered by the payment of registration fees in two installments, each equal to one-half of the annual fee. ~~Such~~ The installments shall be due on January first and July first of each year and delinquent on February first, and August first, respectively. A penalty~~,--in-addition-to-that-provided-in-section 39-04-16,~~ of twenty-five dollars shall be added to any installment delinquent under the provisions of this section. When any vehicle is initially registered between installment dates hereunder, the registrar may prorate the fee in equal installments consisting of the date of ~~such~~ the initial registration and any unexpired installment dates. The license plates shall be issued upon the payment of the first installment, plus five dollars, but upon default in the payment of any installment, the registrar shall cause the license plates to be removed from the vehicle involved and shall not reissue them until the installment plus penalties have been paid.

SECTION 27. AMENDMENT. Paragraph 21 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

(21)	Knowingly drove with defective brakes in violation of sections 39-21-32, 39-21-33, ~~or~~ ~~39-21-34,~~ or equivalent ordinances	2 points

SECTION 28. AMENDMENT. Section 39-16.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16.1-07. REVOCATION OF LICENSE FOR REASONS OTHER THAN PROVISIONS OF THIS CHAPTER.

1. Whenever the commissioner under any other law of this state, except subsections 1 through ~~6~~ 5 of section 39-06-40 and section 39-06-40.1, revokes the license of any person, ~~such~~ the license shall remain revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, unless and until he shall give and thereafter maintain proof of financial responsibility.

2. If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for: any offense requiring the revocation of license, driving while under the influence in violation of section 39-08-01 or equivalent ordinance, or operating a motor vehicle upon the highway while his license or privilege to drive is under suspension,

revocation, or cancellation, ~~such~~ the license or driving privilege shall remain suspended, revoked, or canceled and shall not at any time thereafter be renewed, nor shall any license be thereafter issued or returned to ~~such~~ the person, unless and until he shall give and thereafter maintain proof of financial responsibility.

3. Whenever the commissioner revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, ~~such~~ the privilege shall remain so revoked unless ~~such~~ the person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

SECTION 29. AMENDMENT. Section 40-01-12 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-01-12. CLAIMS AND ACCOUNTS AGAINST MUNICIPALITIES AUDITED. No account or claim against a municipality to be paid from any fund, including a municipal utilities fund, shall be allowed by the governing body thereof until a full itemized statement in writing 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. Every account or claim which is allowed by the governing body shall be shown in the minutes of the proceedings of the governing body except that wages and salaries of persons employed by the city may be consolidated and allowed in one order as provided by subsection 15 of section ~~40-17-06~~ 40-16-03 and reference made in the proceedings of the governing body to the payroll record certified to the city auditor.

* SECTION 30. AMENDMENT. Section 40-18-19 of the 1979 Supplement to 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 to the county court of increased jurisdiction as provided for in section 27-08-21 from a judgment of conviction in a municipal judge's court in the same form and manner as appeals are taken and perfected from a judgment of conviction of a defendant in county justice court, and in accordance with sections 33-12-34, ~~33-12-35, and~~ 33-12-39, and rule 37 of the North Dakota Rules of Criminal Procedure, and shall be tried in the district court or county court of increased jurisdiction in accordance with ~~sections 33-12-40 and~~ section 33-12-41, and rule 37 of the North Dakota Rules of Criminal Procedure, and bail shall be taken in accordance with ~~sections 33-12-36 and 33-12-37~~ rule 46 of the North Dakota Rules of Criminal Procedure, and witnesses may be placed under bond as provided for in ~~section 33-12-38~~ rule 46 of the

* NOTE: Section 40-18-19 was also amended by section 99 of House Bill No. 1061, chapter 320, and by section 1 of Senate Bill No. 2423, chapter 414.

North Dakota Rules of Criminal Procedure. On all appeals from a determination in a municipal judge's court the 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 conviction for the violation of a municipal ordinance.

SECTION 31. AMENDMENT. Section 40-22-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-05. CONDEMNATION OF LAND AND RIGHTS OF WAY FOR SPECIAL IMPROVEMENTS - TAKING OF POSSESSION - TRIAL - APPEAL - VACATION OF JUDGMENT. Whenever property required to make any improvement authorized by this chapter is to be taken by condemnation proceedings, the court, upon request by resolution of the governing body of the municipality making such improvement, shall call a special term of court for the trial of ~~such~~ the proceedings and may summon a jury for ~~such~~ the trial whenever necessary. ~~Such~~ The proceedings shall be instituted and prosecuted in accordance with the provisions of chapter 32-15, except that when the interest sought to be acquired is a right of way for the opening, laying out, widening, or enlargement of any street, highway, avenue, boulevard, or alley in the municipality, or for the laying of any main, pipe, ditch, canal, aqueduct or flume for conducting water, storm water, or sewage, whether within or without the municipality, the municipality may make an offer to purchase ~~such~~ the right of way and may deposit the amount of ~~such~~ the offer with the clerk of the district court of the county wherein the right of way is located, and may thereupon take possession of ~~such~~ the right of way forthwith. ~~Such~~ The offer shall be made by resolution of the governing body of the municipality, a copy of which shall be attached to the complaint filed with said clerk of court in accordance with section 32-15-18. The clerk shall immediately notify the owner or owners of the land wherein the right of way is located of ~~such~~ the deposit, by causing a notice to be appended to the summons when served and published in said proceedings as provided in ~~sections 32-15-08 to 32-15-11~~ the North Dakota Rules of Civil Procedure, stating the amount deposited or agreed in ~~such~~ the resolution to be deposited. The owner may thereupon appeal to the court by filing an answer to the complaint in the manner provided in ~~chapter 32-15~~ the North Dakota Rules of Civil Procedure, and may have a jury trial, unless a jury be waived, to determine the damages. However, upon due proof of the service of said notice and summons and upon deposit of the aggregate sum agreed in said resolution, the court may without further notice make and enter an order determining the municipality to be entitled to take immediate possession of the right of way. In the event that under laws of the United States proceedings for the acquisition of any right of way are required to be instituted in or removed to a federal court, ~~such~~ the proceedings may be taken in ~~such~~ that court in the same manner and with the same effect as ~~herein~~ provided in this section; and the clerk of the district court of the county ~~wherein~~ in which the right of way is located shall perform any and all of the duties ~~herein~~ set forth in this section, if ~~and to the extent that~~ he is directed ~~so~~ to do so by ~~such~~ the federal court. ~~Such~~ The proceedings shall be

determined as speedily as practicable. An appeal from a judgment in ~~such~~ the condemnation proceedings shall be taken within sixty days after the entry of the judgment, and ~~such~~ the appeal shall be given preference by the supreme court over all other civil cases except election contests. No final judgment in ~~such~~ the condemnation proceedings awarding damages to property used by a municipality for street, sewer, or other purposes shall be vacated or set aside if the municipality shall pay to the defendant, or shall pay into court for the defendant, in cash, the amount so awarded. The municipality may levy special assessments to pay all or any part of ~~such~~ the judgment and at the time of the next annual tax levy, may levy a general tax for the payment of ~~such~~ the part of the judgment as is not to be paid by special assessment. For the purpose of providing funds for the payment of ~~such~~ the judgment, or for the deposit of the amount offered for purchase of a right of way as ~~hereinabove~~ provided above, the municipality may issue warrants on the fund of the improvement district as provided in section 40-24-19, in anticipation of the levy and collection of special assessments and of any taxes or revenues to be appropriated to ~~such~~ the fund in accordance with the provisions of this title. ~~Such~~ The warrants may be issued upon the commencement of ~~said~~ the condemnation proceedings or at any time thereafter. Upon the failure of the municipality to make payment in accordance with this section, the judgment in the condemnation proceedings may be vacated.

SECTION 32. AMENDMENT. Section 40-33.1-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-33.1-04. FINANCING PROJECTS AND FACILITIES. An authority may provide funds for its purposes by using the following methods or any combination thereof:

1. Charging a fee for the sale or use of steam produced by ~~such~~ the authority.

2. Issuing notes of an authority as authorized by this chapter.

3. In cooperation with cities whereby cities may agree to assist in financing projects and facilities through the issuance of municipal bonds or other obligations, budgeting of current funds, the levy of taxes or special assessments, or by any combination of these means pursuant to or in accordance with the provisions of chapters 21-03, 40-22 to 40-27, 40-35, 40-40, ~~40-41,~~ and 40-57, and all other applicable laws now in force or hereafter enacted.

4. Making a special assessment against any property directly benefited by the steam produced by the authority, as provided in section 40-33.1-15.

SECTION 33. AMENDMENT. Section 40-34-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-34-07. FIRST MORTGAGE BONDS ARE NEGOTIABLE. All first mortgage bonds issued under the provisions of this chapter may be negotiated in the same manner and with the same legal effect as negotiable instruments under title 41, ~~Negotiable---Instruments~~ Uniform Commercial Code.

SECTION 34. AMENDMENT. Section 40-35-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-35-10. BONDS AND RECEIPTS OR CERTIFICATES ISSUED PENDING PREPARATION OF BONDS - NEGOTIABILITY. Pending the preparation of the definitive bonds, interim receipts or certificates, in ~~such~~ the form and with ~~such~~ the provisions ~~as~~ the governing body may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be negotiable within the meaning of and for all the purposes specified in title 41, ~~Negotiable--Instruments~~ Uniform Commercial Code.

SECTION 35. AMENDMENT. Section 40-42-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-42-04. PROOF ON TRIAL TO CONFORM TO CLAIM FILED WITH MUNICIPALITY. Upon the trial of an action for the recovery of damages by reason of an injury ~~of-the-kind-described-in-section 40-42-01~~ from the defective, unsafe, dangerous, or obstructed condition of any street, crosswalk, sidewalk, culvert, or bridge, the claimant shall not be permitted to prove any time, place, cause, manner, or extent of the injury complained of differing from that specified in the claim filed with the municipality, nor to recover damages in excess of the amount demanded in such claim.

SECTION 36. AMENDMENT. Section 40-57-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57-11. BONDS AND RECEIPTS OR CERTIFICATES ISSUED PENDING PREPARATION OF BONDS - NEGOTIABILITY. Pending the preparation of the definitive bonds, interim certificates or receipts, in ~~such~~ the form and with ~~such~~ the provisions ~~as~~ the governing body may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. ~~Said~~ The bonds and interim receipts or certificates shall be negotiable within the meaning of and for all purposes specified in title 41, ~~Negotiable--Instruments~~ Uniform Commercial Code.

SECTION 37. AMENDMENT. Subsection 2 of section 40-60-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. To provide funds for this purpose by the budgeting of current funds, the levy of taxes or special assessments, or the issuance of bonds or other obligations, or by any combination of these means, pursuant to and in accordance with the provisions of the North Dakota Century Code,

chapters 21-03, 40-22 to 40-27, 40-35, 40-40, ~~40-41~~ and 40-57, and of all other applicable laws now in force or hereafter enacted.

SECTION 38. AMENDMENT. Subsection 3 of section 40-61-03.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. In cooperation with cities whereby cities may agree to assist in financing projects and facilities through the issuance of municipal bonds or other obligations, budgeting of current funds, the levy of taxes or special assessments, or by any combination of these means pursuant to or in accordance with the provisions of North Dakota Century Code, chapters 21-03, 40-22 to 40-27, 40-35, 40-40, ~~40-41,~~ and 40-57 and all other applicable laws now in force or hereafter enacted.

SECTION 39. AMENDMENT. Section 41-09-41 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-41. (9-402) FORMAL REQUISITES OF FINANCING STATEMENT - AMENDMENTS - MORTGAGE AS FINANCING STATEMENT.

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. 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 ~~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 6~~. 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.

2. A financing statement which otherwise complies with subsection 1 is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

   a. Collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. ~~Such a~~ The financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances;

   b. Proceeds under section 41-09-27 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral;

   c. Collateral as to which the filing has lapsed; or

   d. Collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection 7).

3. A form substantially as follows is sufficient to comply with subsection 1:

   Name of debtor (or assignor) _____
   Address _____
   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 is applicable) _____ Signature of Debtor (or Assignor)
      _____ Signature of Secured Party (or

Assignor)

4. A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

5. A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection 5 of section 41-09-03, or a financing statement filed as a fixture filing (section 41-09-34) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

6. A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if: (a) The goods are described in the mortgage by item or type; (b) The goods are or are to become fixtures related to the real estate described in the mortgage; (c) The mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and (d) The mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

7. A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name, or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

8. A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

9. A financing statement covering crops growing or to be grown ~~or a financing statement filed as a fixture filing (section 41-09-34)~~ must show that it covers crops ~~or fixtures~~ and where the debtor is not a transmitting utility the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state.

~~10. If (a) goods are or are to become fixtures related to the real estate described in a mortgage of the real estate, (b) the goods are described in the mortgage by item or type and the mortgage provides for a security interest in the goods, (c) the mortgage complies with the requirements for a financing statement in this section, and (d) the mortgage is duly recorded, the mortgage is effective from the date of recording as a financing statement filed as a fixture filing. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.~~

SECTION 40. AMENDMENT. Section 43-11-20.4 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-20.4. SOLICITOR'S PERMIT REQUIRED. Schools of hairdressing and cosmetology licensed under the provisions of this chapter shall be exempt from the license requirement of chapter ~~15-50~~ 15-20.4, but all persons who solicit business for a school of hairdressing and cosmetology, or who sell any course or courses of instruction, shall secure a solicitor's permit and bond as required by chapter ~~15-50~~ 15-20.4.

SECTION 41. AMENDMENT. Section 49-16-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-16-05. CONTRACTS EXEMPTING RAILROAD FROM LIABILITY VOID. Any contract, rule, regulation, or device whatsoever the purpose or intent of which shall be to enable any railroad corporation to exempt itself from any liability created by ~~section~~ sections 49-16-02 ~~through section 49-16-10~~, 49-16-03, 49-16-04, 49-16-05, and 49-16-08 to that extent shall be void. In any action brought against ~~such~~ the railroad corporation, under or by virtue of any of the provisions of this chapter, ~~such~~ the corporation may set off therein any sum it has contributed or paid to any insurance relief benefit or indemnity that may have been paid to the injured employee or to the person entitled thereto on account of the injury or death for which said action was brought.

* SECTION 42. AMENDMENT. Subsection 1 of section 51-13-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A retail seller may contract for in a retail installment contract and charge, receive, and collect the ~~credit service~~ finance charge computed on the principal balance of the contract or obligation from the date thereof until paid, at not exceeding eighteen percent simple interest per annum upon the unpaid balance of the contract.

SECTION 43. AMENDMENT. Section 51-13-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-07. PENALTIES. Any person who shall willfully violate any provisions of this chapter shall be guilty of a class A misdemeanor. A willful violation of sections 51-13-02 or 51-13-03 by any person shall bar his recovery of any ~~credit--service~~ finance charge, delinquency or collection charge, or refinancing charge on the retail installment contract involved.

SECTION 44. AMENDMENT. Subsection 3 of section 54-01.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Any displaced person eligible for payments under subsection ~~2~~ 1 of this section, who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1 of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that ~~such~~ the payment shall not be less than two thousand five hundred dollars, nor more than ten thousand dollars. In the case of a business, no payment shall be made under this subsection unless the agency is satisfied that the business:

   a. Cannot be relocated without a substantial loss of its existing patronage; and

   b. Is not a part of a commercial enterprise having at least one other establishment not being acquired by the agency, which is engaged in the same or similar business.

   For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation before federal and state income taxes during the two taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for ~~such~~ the project, or during such other period as the agency

* NOTE: Section 51-13-03 was also amended by section 1 of Senate Bill No. 2308, chapter 498.

determines to be more equitable for establishing ~~such~~ the earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

* SECTION 45. AMENDMENT. Section 54-07-01.2 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-07-01.2. GOVERNOR TO HAVE POWER TO APPOINT MAJORITY OF MEMBERS OF CERTAIN BOARDS AND COMMISSIONS - LIMITATIONS.

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, 50-06-02, 50-06-03.1, 50-26-01, 51-10-13, ~~54-03-20.2,~~ 54-34-03, ~~54-42-01,~~ 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.

* NOTE: Subsection 1 of section 54-07-01.2 was also amended by section 10 of House Bill No. 1443, chapter 528, and by section 29 of House Bill No. 1418, chapter 486.

o. The air pollution control advisory council.

p. The livestock sanitary board.

q. The administrative committee on veterans' affairs.

r. The social service board of North Dakota.

s. The governor's council on human resources.

t. The North Dakota trade commission.

u. ~~The legislative compensation commission.~~

~~v.~~ The business and industrial development commission.

~~w. The merit system council.~~

~~x.~~ v. The North Dakota council on the arts.

~~y.~~ w. The state historical board.

~~z.~~ x. The Yellowstone-Missouri-Fort Union commission.

~~aa.~~ y. The state water conservation commission.

~~bb.~~ z. The state water pollution control board.

~~cc.~~ aa. The workmen's compensation bureau.

2. The governor shall have the option of reappointing any member to any board or commission to complete the term to which he was appointed, or the governor may appoint a simple majority of any board or commission to complete the terms of those resigned members who do not receive reappointments. In order to assure continuity, the governor shall reappoint for the completion of their original terms no fewer than one less than a simple majority of the former members of each board or commission.

3. If the governor has not acknowledged in writing the resignation of any members of any board or commission prior to July first of the first year of the governor's term, ~~such~~ the board or commission member shall be considered to have been reappointed to complete the term to which he was originally appointed. All members of boards and commissions shall continue to serve until ~~such~~ the time as they are notified of the acceptance of their resignation by the governor, and in all cases the members of boards and commissions shall continue to serve until their successors have been named and qualified.

4. In those instances where nominations for the filling of vacancies on boards and commissions are submitted to the governor pursuant to state law, the governor shall notify such persons and organizations of his acceptance of the resignation of any board or commission member. Such persons and organizations shall furnish the governor with the number of required nominations to fill ~~such~~ the vacancies within sixty days after ~~such~~ the notice or the governor may, in his discretion, nominate and appoint such members as are otherwise qualified.

5. The provisions of this section shall not apply to those constitutional officers who serve on boards and commissions, except insofar as a governor may count such constitutional officers among those he reappoints in order to conform to the continuity requirements of this section.

6. All vacancies created by resignation after July first of the first year of each term of a governor shall be filled as provided by law. If any person refuses an appointment, the governor shall fill such position as otherwise provided by law.

SECTION 46. AMENDMENT. Section 54-49.1-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-49.1-02. NATURAL RESOURCES COUNCIL CREATED - MEMBERSHIP - OFFICERS - EXECUTIVE DIRECTOR. There is hereby established a North Dakota natural resources council. The council shall be composed of the state engineer, the game and fish commissioner, the executive secretary of the state soil conservation committee, the reclamation director of the public service commission, the director of the state parks and recreation department, the state forester, state geologist, the ~~director-of-the-state-planning-division~~ federal aid coordinator or a representative appointed by the coordinator from the planning division of the coordinator's office, and the chief of the environmental health and engineering services division of the state department of health.

The governor shall appoint a chairman and determine his salary within the limits of legislative appropriations made to the office of the governor. The chairman may appoint whatever employees are necessary to carry out the provisions of this chapter, within the limitations of legislative appropriations made to the office of the governor.

SECTION 47. AMENDMENT. Section 55-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-01-01. STATE HISTORICAL BOARD. There shall be a state historical society of North Dakota which will be under the supervision and control of the state historical board. The board shall consist of nine members who shall be appointed by the governor

with the consent of the senate. Each member appointed to ~~such~~ the board must be a citizen and resident of the state of North Dakota. Interim appointments may be made by the governor if the senate is not in session and such interim appointees may hold office until the senate has had an opportunity to confirm or reject such appointments. Appointments shall be for a term of three years from the first day of July to the thirtieth day of June of the third year or until a successor has been appointed and qualified except that the first appointments under this section shall be staggered so that the term of three members shall expire each year. Vacancies occurring other than by the expiration of an appointive term shall be filled by appointment for the remainder of the term only in the same manner as regular appointments. The board of directors shall select from its membership a president, vice president, and secretary to serve as officers of the board. The secretary of state, state engineer, state highway commissioner, state forester, state game and fish commissioner, director of the state library ~~commission~~, and state treasurer shall be ex officio members of the board and shall take care that the interests of the state are protected.

* SECTION 48. AMENDMENT. Section 57-02-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-20. EXEMPTION OF FARM MACHINERY FOR ONE YEAR. The part of the value of farm machinery on which sales or use tax is paid, to be used by the buyer in his farming operations or rented by the buyer for farming purposes, shall be exempt to the buyer from the personal property tax which would be assessed and levied against it in the first year after its purchase were this section not in force. No exemption shall be allowed, however, unless the buyer exhibits to the assessor satisfactory written proof, on a form furnished by the state tax commissioner to retail sales or use tax permit holders only, that the North Dakota sales or use tax has been paid on ~~such~~ the farm machinery. A duplicate copy of ~~such~~ the form shall be attached to the assessment sheet which is filed with the county auditor. In addition, for each unit of farm machinery with a value exceeding three hundred dollars, if any buyer shall fail or refuse to exhibit such proof of the payment of ~~such~~ the sales or use tax, the assessor shall report ~~such~~ the fact, together with a description of the farm machinery involved to the tax commissioner on forms to be prescribed by the commissioner. The commissioner shall promptly proceed to determine the amount of any sales or use tax due with respect to the sale or purchase of ~~such~~ the farm machinery and shall have available any of the methods provided in chapter ~~57-39*~~ 57-39.2 or ~~57-40*~~ 57-40.2 to secure collection of the amount due, including the authority to collect from the consumer or user any sales tax due; provided that any assessment made by the assessor on ~~such~~ the farm machinery may be abated, and the personal property tax refunded if paid, pursuant to the provisions of chapter 57-23 if the machinery was assessed because sales or use tax was not paid but was thereafter collected from the consumer or user by the retailer or tax commissioner. Any dealer in farm machinery may not claim the exemptions provided for in this section even though farm machinery

* NOTE: Section 57-02-20 was repealed by section 4 of Senate Bill No. 2144, chapter 581.

owned by him is used in farming operations, but this restriction shall not prevent any dealer or person from claiming the exemption as provided in this section if ~~such~~ the farm machinery is rented by him in the course of a bona fide rental business where fair rental value is charged.

SECTION 49. AMENDMENT. Section 57-20-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-20-01. REAL AND PERSONAL PROPERTY TAXES - WHEN DUE AND DELINQUENT - PENALTIES. All real and personal property taxes~~,--hail insurance--taxes,*~~ and yearly installments of special assessment taxes shall become due on the first day of January following the year for which ~~such~~ the taxes were levied. The first installment of real estate taxes, all personal property taxes~~,--hail--insurance taxes,~~ and yearly installments of special taxes shall become delinquent on the first day of March following and, if not paid on or before said date, shall be subject to a penalty of two percent, and on May first following an additional penalty of two percent, and on July first following an additional two percent, and an additional penalty of two percent on October fifteenth following. From and after January first of the year following the year in which the taxes become due and payable, simple interest at the rate of seven percent per annum upon the principal of the unpaid taxes on personal property shall be charged until ~~such~~ the taxes and penalties are paid, with ~~such~~ the interest charges to be prorated to the nearest full month for a fractional year of delinquency. The second installment of real estate taxes shall become delinquent on October fifteenth, and, if not paid on or before that date shall become subject to a penalty of two percent.

SECTION 50. AMENDMENT. Section 57-20-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-20-09. DISCOUNT FOR EARLY PAYMENT OF TAX. The county treasurer shall allow a five percent discount to all taxpayers who shall pay all of the real estate taxes levied on any tract or parcel of real property in any one year in full on or before February fifteenth prior to the date of delinquency. Such discount shall apply to all general real estate taxes levied for state, county, city, township, school district, fire district, park district, and any other taxing districts, but shall not apply to personal property taxes, or special assessment installments~~,-or-hail-indemnity-taxes*~~. Whenever the county commissioners, by resolution, determine that an emergency exists in any county by virtue of weather or other catastrophe they may extend the discount period for an additional thirty days.

SECTION 51. AMENDMENT. Section 57-20-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-20-22. DISPOSITION OF PENALTY AND INTEREST. All penalties on general taxes and interest on certificates of sale issued, or deemed to be issued to the county, shall belong to the county and

become a part of the general fund or of such other fund as the county commissioners may direct, except penalties and interest collected on the following items:

1. Taxes and parts of taxes due to townships, cities, school districts, and park districts; and

2. ~~Hail indemnity taxes*, and~~

3. ~~,~~ Special assessments for public improvements,

which shall be paid to the municipality levying the same, or whatever other taxing district or agency thereof is entitled to the original amount of such taxes or assessments.

SECTION 52. AMENDMENT. Section 57-22-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-22-29. CONTRACT FOR TAX COLLECTION - CONTRACTS VALIDATED.

1. In any county where for any reason personal property taxes that have been delinquent more than one year remain unpaid and uncanceled, whether put into judgment or not, the board of county commissioners may contract with the sheriff of the county, or with any elector of the state, to pay a percentage of ~~such~~ the delinquent personal property taxes, not exceeding ten percent of the amount collected, as compensation for collecting the same, in lieu of, or in addition to, the compensation provided by law for said sheriff. When a contract is made with any person other than the sheriff, the county commissioners may in their discretion pay any reasonable salary or expenses or a percentage of the tax collected, or combination thereof, and the contract may cover all or only certain taxing districts within the county, and contracts may be made with different collectors for different portions of the county. ~~No collection fee shall be paid to the sheriff or any other collector for any moneys deducted from warrants under the provisions of section 57-22-26.~~ In the event delinquent personal property taxes are owed by a person not residing in North Dakota the county commissioners may contract with any person, firm, or corporation, to pay a reasonable percentage of ~~such~~ the delinquent taxes collected, as compensation for ~~such~~ the collection. Such contractors shall execute either a personal or corporate surety bond conditioned upon satisfactory performance of the provisions of the contract and shall be in an amount and of a type approved by the county commissioners.

2. All contracts heretofore made and entered into by county commissioners for the collection and recovery of personal property taxes are declared legal and valid notwithstanding the provisions of law to the contrary.

* SECTION 53. AMENDMENT. Section 57-24-12 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-24-12. COUNTY AUDITOR TO SELL LANDS AT PUBLIC AUCTION - TIME OF SALE. The sale of lands by the county auditor shall be conducted as follows:

1. On the second Tuesday in December of each year, the county auditor, at his office or the usual place of holding court in the same building, shall sell at public auction the lands, lots, or tracts of real property described in the tax list posted as provided in this chapter. ~~Such~~ The sale shall commence at the hour of ten a.m., but may be adjourned from day to day for a period of ten days, whenever adjournment is necessary for the disposal of the lands advertised.

2. Before any tract or parcel of land is offered for sale, the auditor shall announce the total amount of taxes, penalties, interest, and cost of advertising the same for sale, and the part representing personal property taxes, if any, extended against such land.

3. The lands, lots, or parcels of land shall be offered for sale by the county auditor, or his deputy, in the order in which they appear in the advertised list, and each tract or lot shall be offered separately and struck off to the bidder who will pay the total amount as announced by the county auditor under the provisions of subsection 2 of this section, and who will agree to accept the lowest rate of interest from the date of sale on such total amount, ~~such~~ the rate in no case to exceed six percent per annum.

4. ~~Such lands, lots, or parcels likewise shall be offered for sale and sold for the total amount of hail indemnity taxes, plus accrued penalties and cost of advertising, to the bidder who will pay such total amount and accept the lowest rate of interest on such total amount from the date of sale, such rate in no case to exceed six percent per annum.~~

~~5.~~ If the sum bid for any tract, lot, or parcel of land is not paid before the sale closes, ~~such~~ the tract, lot, or parcel again shall be offered for sale in like manner.

SECTION 54. AMENDMENT. Section 57-28-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-28-20. DISPOSITION OF PROCEEDS OF SALES. All proceeds realized from the sales of ~~such~~ the lands, either at public or private sale, shall be apportioned as regular tax payments are apportioned, as follows:

* NOTE: Section 57-24-12 was also amended by section 1 of House Bill No. 1249, chapter 580.

1. The county treasurer shall issue a regular tax receipt in the name of the county, commencing with the earliest year for which the taxes were delinquent. Tax receipts shall be written for the original amount of the tax, without penalty and interest. If the property was sold for an amount sufficient to cover all taxes, including the year in which the county acquired tax title, tax receipts shall be written for all such years, including ~~hail--insurance taxes,*-and~~ all special assessments, and the remainder, if any, shall be credited to the general fund of the county;

2. If the property is sold under a contract, the county treasurer shall issue a tax receipt for the oldest year's taxes without penalty and interest, and all subsequent payments made on ~~such~~ the contracts shall be applied in a similar manner; and

3. If the property is sold for less than the total amount of the taxes due, including the year in which a tax deed is issued, the treasurer shall write receipts beginning with the oldest year, and for as many subsequent years as the proceeds realized from ~~such~~ the sale will satisfy, and the remainder of any unpaid general taxes, or special assessments, ~~or-hail-indemnity-taxes*~~ shall be canceled by the board of county commissioners by general resolution at the time prescribed in this chapter.

SECTION 55. AMENDMENT. Section 57-28-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-28-21. CANCELLATIONS FROM RECORD. After any real estate has been sold for cash or upon a contract for deed which has been fully performed and a deed has been issued and delivered to the purchaser thereof, the board of county commissioners, by general resolution, shall provide for the cancellation and removal from the record of all general taxes, ~~--hail--indemnity--taxes,*~~ and special assessments remaining of record against the premises sold at the date of sale, except those installments of special assessments certified or to be certified to the county auditor which had not become due at the date of ~~such~~ the sale. It shall be the duty of the county auditor immediately to send a copy of the said resolution to ~~the-state-hail-insurance-department*-and~~ the state department of accounts and purchases and to notify the county treasurer of the cancellation and removal thereof.

SECTION 56. AMENDMENT. Section 57-29-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-29-01. SUSPENSION OF TAX LIENS ON STATE ACQUIRED LANDS. In any transaction where the state treasurer as trustee for the state of North Dakota, prior to the taking effect of this code, has acquired, or thereafter shall acquire, title to any tract of land pursuant to the provisions of chapter 54-30 of the title State Government, and there are listed and legally charged against ~~such~~

the tract unpaid general property~~,-hail-indemnity,*~~ or other taxes, or tax sale certificates, or tax deeds, the holders of the liens of ~~such~~ the taxes or certificates or tax titles shall be without power to enforce or to effectuate the same. All remedies for the enforcement or enjoyment of ~~such~~ the liens or titles shall be suspended wholly and all proceedings to enforce or effectuate ~~such~~ the liens or titles subsequent to the acquisition of ~~such~~ the tract of land by the said trustee and during the time ~~such~~ the tract is owned by said trustee, shall be null and void, except that any tax title acquired previous to the acquisition of title by the said trustee may be made effectual and may be enjoyed until ~~such~~ the time as the said trustee acquires title based upon a mortgage or other conveyance previous in time to the due date of the taxes upon which ~~such~~ the tax title is based, whereupon all rights, interests, powers, privileges, and immunities theretofore owned and enjoyed under ~~such~~ the tax title shall be suspended forthwith, and the said trustee may enter into possession of ~~such~~ the tracts of land and shall have the entire control, use, and enjoyment thereof.

SECTION 57. AMENDMENT. Section 57-29-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-29-04. ABATEMENT TO PURCHASER OF TAX SALE CERTIFICATES ON STATE ACQUIRED LAND. Whenever any land sold under contract by the state of North Dakota, or mortgaged to the state of North Dakota, has been sold for taxes and a tax certificate has been issued, and the said contract for sale thereafter has been canceled, or said mortgage foreclosed, or a deed taken in lieu thereof, the holder of said unpaid tax certificate, upon due and proper application to the county, shall be entitled to an abatement and refund thereof as well as for any subsequent taxes paid on said land by ~~such~~ the certificate holder, but without interest. This section also shall apply to ~~hail-indemnity-taxes*-and~~ special assessments.

SECTION 58. AMENDMENT. Section 57-29-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-29-05. AUDITOR TO GIVE TAX INFORMATION ON LANDS IN WHICH STATE IS INTERESTED. The county auditor of each county is required and directed, on or before July first of each year, to inform the Bank of North Dakota of any delinquent and unpaid taxes upon real estate in his county owned or mortgaged to the Bank of North Dakota or assigned by it to the state treasurer as trustee for the state of North Dakota. He shall give a description of the land for which the taxes are unpaid, the amount of unpaid taxes for each year, showing ~~separately--hail-indemnity*-and~~ special assessment taxes if any, and the names of the purchaser, if the land was sold for taxes.

SECTION 59. AMENDMENT. Section 57-38-61 of the 1979 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 ~~through-57-38-40,--57-38-43*--through~~

~~57-38-47,---and--57-38-52--through~~, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-52, 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, and 57-38-60. The term "employer" as used in sections 57-38-58, 57-38-59, and 57-38-60 shall also mean "taxpayer" as used in this chapter. No refund shall be made by the tax commissioner to a taxpayer unless the amount to be refunded shall exceed one dollar. In addition, the authority of the tax commissioner to prescribe rules and regulations shall include 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 the state of North Dakota.

SECTION 60. AMENDMENT. Section 57-52-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-52-11. DISTRIBUTION OF TAX. All money collected by the state tax commissioner under the provisions of this chapter shall be transferred to the state treasurer who shall credit seventy-nine percent of all ~~such~~ the money so received to the state highway department construction fund and ~~such~~ the moneys are hereby appropriated for use by the state highway department in the construction and reconstruction of highways, roads, streets, and bridges of this state under the jurisdiction of the state highway department.

From and after July 1, 1961, the balance of the money so received by the state treasurer shall be distributed as follows:

1. An amount equal to the sum credited and transferred to the county highway aid fund from the imposition and collection of such tax for the fiscal year which ended June 30, 1960, shall be credited by the state treasurer to the county highway aid fund and be distributed by the department of accounts and purchases to the counties on or before the first day of August each year in the ~~manner,-and-for-the purpose-provided-for-in-section-57-54-15*~~ proportion which the number of motor vehicles registered in each county bears to the total number of motor vehicles registered in all of the counties of the state during the entire preceding calendar year as shown by the certificate of the registrar of motor vehicles; provided, however, that in no event, shall any county receive, under the provisions of this subsection, an amount in excess of the sum dispersed to it during the fiscal year ending June 30, 1960~~,-and~~.

2. All money in excess of the amount referred to in subsection 1 of this section shall be distributed as follows:

   a. Fifty percent of ~~such~~ the excess shall be credited by the state treasurer to the county highway aid fund and distributed to the counties on or before the first day

of August of each year in the manner set forth in subsection 1 of this section; and

b. The balance of ~~such~~ the excess is hereby appropriated and shall be distributed by the state treasurer on or before the first day of August of each year on a per capita basis to the incorporated cities of this state, to be used by ~~such~~ the incorporated cities solely for construction, reconstruction, repair and maintenance of public streets and highways, the allocation to be based upon the population of each incorporated city according to the last federal decennial census, or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to the last such federal census, and warrants shall be drawn payable to the ~~treasurers~~ auditors of such cities.

Moneys received by a county under this section shall be appropriated and applied solely by such counties in the construction, reconstruction, maintenance, and repair of the county highways, bridges, and culverts thereon, and city streets leading up to and connected with federal aid and state aid highways.

SECTION 61. AMENDMENT. Section 58-03-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-03-07. POWERS OF ELECTORS. The electors of each township have the power at the annual township meeting:

1. To establish one or more pounds within the township, to determine the location of the pounds, to determine the number of poundmasters and to choose the poundmasters, and to discontinue pounds which have been established.

2. To select the township officers required to be chosen.

3. To direct the institution or defense of actions in all controversies where the township is interested.

4. To direct the raising of such sums as they may deem necessary to prosecute or defend actions in which the township is interested.

5. To make all rules and regulations for the impounding of animals.

6. To make such bylaws, rules, and regulations as may be deemed necessary to carry into effect the powers granted to the township.

7. To impose penalties not exceeding ten dollars for each offense on persons offending against any rule or regulation established by the township.

8. To apply penalties when collected in such manner as they deem most conducive to the interests of the township.

9. To ratify or reject recommendations offered by the board of township supervisors for the expenditure of funds for the purpose of purchasing building sites and for the purchase, location, erection, or removal of any building or erection for township purposes. No recommendation shall be adopted except by a two-thirds vote of the electors present and voting at any annual township meeting.

10. To authorize and empower the board of township supervisors to purchase liquids, compounds, or other ingredients for the destruction of noxious weeds, and sprinklers to be used in spraying said liquids or compounds. No township shall purchase more than two such sprinklers in any one year.

11. ~~Repealed by S.L. 1949, ch. 343, § 1.~~

~~12.~~ To authorize aid to a district fair association within the limits provided in title 4.

~~13.~~ 12. To authorize the levy of township taxes for the repair and construction of roads and bridges and for other township charges and expenses within the limits prescribed in title 57.

~~14.~~ 13. To direct the expenditure of funds raised for the repair and construction of roads within the limits provided in title 24.

~~15.~~ 14. To authorize the dissolution of the township in the manner provided in this title.

~~16. To authorize the purchase and maintenance of dipping tanks as provided in title 36.*~~

~~17.~~ 15. ~~To authorize the purchase of township firefighting equipment in the manner provided in title 18,**~~ and to To authorize the entering into a contract for fire protection as provided for in section 18-06-10.

~~18.~~ 16. To establish a fund for the eradication of gophers, prairie dogs, crows, and magpies.

~~19.~~ 17. To authorize the expenditure of township funds for weather modification activities.

~~20.~~ 18. To authorize the expenditure of funds to pay membership fees in county, state, and national associations of township governments. ~~Such~~ The expenditures shall not exceed the equivalent of the proceeds of one-tenth of one mill of the net taxable valuation of the township, and may be any lesser amount. This subsection shall not be construed to authorize a mill levy.

~~21.~~ 19. To support an airport or to support or create an airport authority and to levy a tax for airport purposes within the limitations of section 57-15-37.1.

SECTION 62. AMENDMENT. Section 58-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-06-01. GENERAL POWERS AND DUTIES OF BOARD OF TOWNSHIP SUPERVISORS. The board of township supervisors shall have the following powers and duties:

1. To manage and control the affairs of the township not committed to other township officers;

2. To draw orders on the township treasury for the disbursement of township funds;

3. To recommend to the electors the expenditure of a stated amount for the purpose of purchasing building sites, and for purchasing, erecting, locating, or removing any building, township hall, or library building for the use and benefit of the township;

4. When a city which is laid out into streets is included within the limits of the township, to cause improvements to be made in any street that may be needed as a highway if the city neglects to make the improvements;

5. To prosecute all actions upon bonds given to it or previous boards;

6. To sue for and collect all penalties and forfeitures incurred by any officer or inhabitant of the township when no other provision is made;

7. To prosecute any action for trespass committed on any public enclosure, highway, or property belonging to the township;

8. To pay all money collected by it for the township to the township treasurer;

9. To levy the annual taxes for the ensuing year as voted at the annual township meeting;

10. To grant to any person the right of way for the erection of telephone lines, electric light systems, or gas or oil pipeline systems over or upon public grounds, streets, alleys, or highways;

11. To appoint the township overseer of highways;

~~12.--To-provide-funds-for-the-extermination-of-bots-as-provided in-title-36,*-livestock;~~

~~13.~~ 12. To purchase road machinery and tools;

~~14.~~ 13. To be and act as a board of health;

~~15.~~ 14. To perpetuate survey markings;

~~16.~~ 15. To erect and maintain guideposts on the highways and other ways within the township at such places as are necessary or convenient for the direction of travelers; and

~~17.~~ 16. To examine, compare, and balance the books of the township clerk and the treasurer at the annual meeting in March of each year;

~~18.~~ 17. To pay all, or a part of the cost of electricity used in electrically lighting the streets of cities located within the township.

SECTION 63. AMENDMENT. Section 59-05-58 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-05-58. APPLICATION OF OTHER LAWS. The provisions of ~~chapter~~ chapters 59-01 and ~~chapter~~ 59-04, saving the rights of other persons from prejudice by the misconduct of trustees and authorizing the court to remove and appoint trustees, the provisions of title ~~56,--Succession--and--Wills~~ 30.1, devolving express trusts upon the court on the death of trustees, and the provisions of section 59-03-17, apply equally to powers in trust and the trustees of such powers.

SECTION 64. AMENDMENT. Section 60-07-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-07-05. TITLE OF GOODS STORED. When a negotiable warehouse receipt has been issued, the title to goods and chattels stored with a public storage company or in a public warehouse shall pass to a purchaser or pledgee by the transfer of ~~such~~ the receipt in the manner prescribed by chapter ~~60-08~~ 41-07.

SECTION 65. AMENDMENT. Section 61-21-65 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-65. CONSOLIDATION OF DRAINAGE DISTRICT OR DISTRICTS INTO WATER MANAGEMENT DISTRICTS. Upon resolution of the board of county commissioners or the board of drainage commissioners, or upon the filing with the board of county commissioners of a petition containing the signatures of landowners possessing at least fifteen percent of the voting rights in one or more drainage districts, computed in accordance with section 61-21-16, the board of county commissioners shall set a date for hearing upon the establishment or expansion of a water management district to include the property contained within ~~such~~ the drainage district or districts. The board of county commissioners shall publish notice of the time, place, and purpose of ~~such~~ the hearing once each week for two consecutive weeks, in a newspaper of general circulation in the county, the second publication to be not less than ten nor more than twenty days before the date set for hearing. In the event special assessments remain outstanding upon any property within a drainage district to be affected by a hearing as provided in this section, the board of county commissioners shall notify by ordinary mail at least ten days before the date set for ~~such~~ the hearing, all landowners of record subject to ~~such~~ the special assessments in accordance with the provisions of section 61-21-66. If, at the time and place set for hearing, a majority of affected landowners computed in accordance with section 61-21-16 shall file written objections, further proceedings shall be discontinued. If such majority does not object, the board of county commissioners shall file with the state water commission ~~the~~ a petition ~~provided--for--in--section--61-16-02~~ signed by a majority of the board and all further proceedings shall thereafter be governed by chapter 61-16. Upon the establishment or expansion of a water management district to include one or more drainage districts the board of county commissioners shall, by resolution, dissolve the drainage districts and transfer all property of the dissolved districts to the water management district.

* SECTION 66. REPEAL. Sections 9-11-08, 29-22-16, 29-22-36, 30-26-26, and 57-24-11 of the North Dakota Century Code are hereby repealed.

Approved March 11, 1981

* NOTE: Chapter 30-26 was repealed by section 51 of House Bill No. 1060, chapter 319.

AGRICULTURE

CHAPTER 92

HOUSE BILL NO. 1203
(Committee on Agriculture)
(At the request of the Agriculture Department)

POTATO CERTIFICATION AND INSPECTION

AN ACT to create and enact two new sections to chapter 4-10 of the North Dakota Century Code, relating to the responsibilities of state seed department and liability of the state seed commission, state seed department, state seed commissioner and his employees, and certified seed potato producers; to amend and reenact sections 4-10-01, 4-10-02, 4-10-03, 4-10-04, 4-10-05, 4-10-07, 4-10-09, 4-10-10, 4-10-11, 4-10-15, 4-10-17, 4-10-18, 4-10-19, 4-10-20, and 4-10-22 of the North Dakota Century Code, relating to definitions, duties of seed commissioner, rules and regulations, grades for potatoes, labeling of potatoes in closed containers, designation of official inspection points, shipment of potatoes from undesignated points, labeling of potatoes shipped into state, issuance of certificate after inspection, seizure of potatoes, cooperation with departments and bureaus by commissioner, collection and disposition of fees, hearings to be held by commissioner, prosecution for violations, and penalty for violation; to repeal sections 4-10-08, 4-10-13, and 4-10-16 of the North Dakota Century Code, relating to the shipment of potatoes from undesignated inspection points, fees for making grade inspections, and refusal to accept shipment of potatoes; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 4-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

1. "Potatoes" shall mean what is commonly called and known as white or Irish potatoes;

2. "Other produce" shall mean natural products of the farm, garden, and orchard, exclusive of grain, true seeds, livestock, and livestock products;

3. "Closed container", or its plural form, shall mean any container which shall be sewed, tied, sealed, glued, nailed, or otherwise closed in a practical or secure manner for handling;

4. "Person" shall mean both the singular and plural, as the case requires, and shall include individuals, copartnerships, companies, societies, associations, firms, or corporations;

5. "Agent" or "agents", when used to indicate or refer to the commissioner's agent or agents, shall mean the commissioner's deputies, inspectors, representatives, agents, or other assistants as the case requires;

6. "Label", and its various grammatical forms, when used as a noun shall mean any tag, label, brand, or device attached to, or written, stamped, printed, or stenciled on, any container and carrying a term or terms setting forth the grade, condition, quality, weight, variety, or class of the potatoes or other produce therein contained, and when used as a verb shall mean the act or the fact of the use of the aforesaid labeling items and methods in connection with potatoes or other produce, and when used as an adjective, its descriptive meaning shall be interpreted from its use and meaning as a noun and verb as herein prescribed; ~~and~~

7. "Commissioner" shall mean the state seed commissioner~~.~~;

8. "Inspection" shall mean a random sample of potato plants or potato tubers were examined according to the rules and regulations of the state seed department or according to the instructions of the United States department of agriculture, food safety and quality service;

9. "Certified" shall mean the potatoes were randomly inspected and found to meet the rules and regulations of the state seed department; and

10. "State seed department" shall mean the seed department of the state of North Dakota.

SECTION 2. A new section to chapter 4-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

RESPONSIBILITIES OF STATE SEED DEPARTMENT. The certification of seed potatoes, establishing of grades for potatoes and other produce and the licensing of wholesale potato dealers shall be the responsibility of the state seed department of the state of North Dakota.

SECTION 3. AMENDMENT. Section 4-10-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-02. STATE SEED COMMISSIONER - DUTIES. The commissioner or his designee shall provide the means and direct the inspection, certification, promotion of quality and assist in the promotion and advertising of seed potatoes. The commissioner shall establish potato and other produce grades ~~and--inspection-service~~ for the purpose of making inspection and otherwise providing for the proper handling and marketing of the agricultural commodities defined in this chapter under the classifications of "potatoes" and "other produce", and shall promulgate rules and regulations prohibiting or otherwise regulating the importation or dissemination within the state of particular detrimental insects and diseases. The commissioner shall appoint ~~a-chief-inspector-and-such-other~~ agents, inspectors, assistants, and clerical aides as he finds necessary to assist, represent, and act for him in enforcing the provisions of this chapter and shall fix the salaries of said employees and provide for operating expenses with the approval of the seed commission within legislative appropriations therefor. Fees for the cost of performance of these duties shall be established by the seed commission with the approval of the directors of the North Dakota seed potato growers association.

SECTION 4. AMENDMENT. Section 4-10-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-03. RULES AND REGULATIONS, COMMISSIONER TO MAKE. The commissioner, from time to time, with the approval of the seed commission, shall adopt, publish, and amend uniform rules, regulations, and definitions not inconsistent with the provisions of this chapter, and shall alter or suspend such rules, regulations, and definitions whenever necessary. ~~--The-rules,-and-regulations,-and-definitions-shall-be-approved-by-the-attorney-general-as-to-form-and-legality,-and-shall-be-filed-in-the-office-of-the-commissioner.--The-rules--and--regulations--shall--be--published-once-in-a-newspaper-of-general-circulation-designated-by--the--commissioner,--in--the--city-where--the--commissioner's--main--office-is-located,-and-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-thereof-as-published-shall-be-made-by-the-publisher--of--such--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---such--rules,--regulations,-definitions,-or-amendments~~ in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32. Rules, regulations and definitions for seed potato certification shall be published in bulletin number 49.

SECTION 5. AMENDMENT. Section 4-10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-04. GRADES FOR POTATOES AND OTHER PRODUCE. The following grades for potatoes are designated as official and standard grades for North Dakota, namely: "U. S. ~~Fancy~~ Extra

No. 1", "U. S. No. 1", "U. S. Commercial", "U. S. No. 2", "North Dakota Certified Seed", and "Unclassified" or such grades as the state seed commissioner shall designate. The U. S. grades shall conform in all respects to the requirements and standards specified by the United States department of agriculture, but the grade names may be used with appropriate size designations when specified in regulations by the commissioner, who shall be guided by the regulations and recommendations of the United States department of agriculture. The U. S. grades and standards herein designated shall be subject to change only if the United States department of agriculture promulgates any new and definite changes, and such changes shall be adopted by the commissioner for use in North Dakota. The North Dakota certified seed grade shall conform in all respects to the provisions of the seed laws of this state and the regulations made thereunder, and shall be labeled in accordance therewith. Unclassified lots shall include all potatoes not meeting the requirements of any of the foregoing grades. It shall be optional, however, to use the unclassified labeling on any lot of potatoes. For other produce, the grades which heretofore may have been or hereafter shall be fixed by the department of agriculture of the United States for such produce are designated as the official standard grades for North Dakota. Inspections of incoming produce may be made and certificates issued on the basis of other applicable states' grades or in accordance with sales contracts.

SECTION 6. AMENDMENT. Section 4-10-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-05. LABELING, BRANDING, TAGGING POTATOES IN CLOSED CONTAINERS. Every closed container packed with potatoes grown in North Dakota, being transported, or offered for sale or consignment shall bear upon the outside thereof, either by brand, tag or label, in plain letters and figures, the net weight when packed and correct grade designation~~,-or,-in-lieu--thereof,--each--container--shall--be labeled-to-show-the-net-weight-when-packed-and-official-North-Dakota inspection-shall-be-obtained-and-the-lot--must--not--be--mislabeled~~. Potatoes being shipped for processing or repacking shall be exempt of this requirement.

When an individual shipment is made from such towns or stations at which regular inspection service is not maintained, and when such shipments cannot be so routed as to be stopped in transit for inspection at a town or station at which inspection service can be provided, or when due to unforeseen circumstances which make it physically impossible for an inspector to perform such inspection, ~~or--when--definite--or--sufficient--evidence--followed--by--proof-if demanded-is-presented-to-establish-the-fact-that-the--shipment--will be--reprocessed-and-when-inspection-service-is-available,-officially inspected-in-transit,~~ then the commissioner, or his agent, may ~~waive,--by--a--special--written--permit,~~ the inspection and labeling requirements provided in this section for such individual shipment.

The commissioner shall, by regulation, prescribe the general location of the labeling on the container and the minimum and

maximum size of the letters and figures used in the labeling of the potatoes as herein provided.

~~Provided, however, the commissioner may after receiving a request from at least fifty potato growers call a public hearing of potato growers at which hearing at least one hundred and fifty potato growers must be present and if two-thirds of the growers present at such meeting approve he may promulgate and establish rules and regulations governing the grades of potatoes which may be offered for sale, shipment, or consignment, or which may be transported by railway, truck, or otherwise within or from the state, and governing the use of labels, marks and brands that may be used upon closed containers packed with potatoes grown in North Dakota, being transported or offered for sale or consignment, and governing the establishment and use of state brands.~~

~~For the purpose of this chapter a potato grower shall be defined as any person who produces more than three acres of potatoes.~~

~~If any grower registers as such at the state seed department office, he shall be entitled, during that calendar year, to written notice of any public hearing for potato growers, called by the commission.~~

~~Any rules and regulations, promulgated and established as a result of such hearing may be rescinded by regulation if such regulation is approved by a majority of potato growers present at a subsequent public hearing called by the commission for that purpose.~~

SECTION 7. AMENDMENT. Section 4-10-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-07. OFFICIAL INSPECTION POINTS DESIGNATED BY COMMISSIONER. The commissioner may designate by regulation, as official potato shipment inspection points or areas, any or all points or stations within a county or specified subdivision ~~thereof recommended by a majority of the potato shippers at any public hearing. Upon written request by a bona fide shipper of potatoes for a hearing to consider the designation of inspection points, the commissioner shall cause public notice of the hearing to be published once during the week preceding the date of such hearing, in a newspaper of general circulation in the area affected, or in the official county newspaper if there shall be a countywide hearing. The commissioner or his authorized agent shall attend the hearing and verify procedure, attendance, and voting thereat. When any point or specified area is designated as an official potato shipment inspection point, notice thereof shall be filed with the railway companies or their agents at such point and all shipments of potatoes shall be inspected officially at such point or points from and after the date published by the commissioner~~. The commissioner may refuse to designate any point as an official potato shipment inspection point if the volume of shipments for inspection will not warrant the expense of maintaining inspection thereat.

SECTION 8. AMENDMENT. Section 4-10-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-09. SHIPMENT OF POTATOES FROM UNDESIGNATED POINTS. Inspection of potatoes may be made at points not designated by the commissioner as official potato shipment inspection points or areas on application of any person ~~as provided in section 4-10-13~~, or at the commissioner's option for regulatory purposes, but shipments of potatoes from such points may be made without an inspection.

SECTION 9. AMENDMENT. Section 4-10-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-10. POTATOES SHIPPED INTO STATE - LABELING REQUIRED - EXCEPTION. Whenever potatoes are shipped into the state from any point outside of the state, the purchaser, vendor, and the person receiving such potatoes shall have the same labeled in accordance with and conforming to the requirements of this chapter for potatoes grown or originating in North Dakota, except that the standardized grades and labeling of potatoes in use ~~elsewhere may be permitted by the commissioner in connection with shipments of potatoes into this state from any point outside thereof, in lieu of the labeling provided for in this chapter~~ at the point of shipment may be permitted by the commissioner.

SECTION 10. AMENDMENT. Section 4-10-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-11. INSPECTOR TO FURNISH ~~MEMORANDUM~~ CERTIFICATE AFTER INSPECTION. After the grade inspection of the potatoes has been completed, if the official inspector finds that they are labeled properly according to the provisions of this chapter, he shall furnish to the shipper or owner of the potatoes, ~~or file with the railway company's agent at the billing point,~~ a signed ~~memorandum~~ certificate indicating that the shipment of potatoes is labeled correctly.

SECTION 11. AMENDMENT. Section 4-10-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-15. SEIZURE OF POTATOES AND OTHER PRODUCE - LIABILITY. The commissioner and his agents may seize and hold any potatoes or other produce, which, according to this chapter, are labeled, branded, marked, or tagged wrongly as to grade, quality, condition, or in any other respect, ~~according to this chapter~~. The potatoes or produce so seized may be held until they are graded or reconditioned to meet the requirements of the grade, or the labeling with which they are marked, or until they are labeled or marked with the grade or essential details as indicated by the official report or certificate of the commissioner or his agent. The commissioner and his agents ~~are absolved from any guilt or charge for loss, damage~~ shall not be liable for any loss or damage, or any other costs due to seizure ~~or litigation in which they are involved as complainant, respondent, inspector, or investigator,~~ when acting in accordance

with the provisions of this chapter and the regulations duly made thereunder.

SECTION 12. AMENDMENT. Section 4-10-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-17. COOPERATION WITH DEPARTMENTS AND BUREAUS. The commissioner may cooperate with the United States department of agriculture or any bureau or division thereof, and with similar state inspection service departments of the several states, and with any person, with the intent and purpose that the seed certification and the grade inspection service in this state, and any or all of the grade certificates issued on North Dakota potatoes or other produce, ~~officially~~ shall be recognized officially and accepted elsewhere in the United States, and to protect and promote the interests of any and all persons having an interest in the potatoes or other produce grown or handled in this state, and to provide for any necessary joint arrangements therefor.

SECTION 13. AMENDMENT. Section 4-10-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-18. FEES AND COLLECTIONS - DISPOSITION. All moneys arising from the collection of fees and other charges under the provisions of this chapter shall be deposited by the seed commissioner with the state treasurer and credited to the seed department revolving fund, and shall be disbursed within the limits of legislative appropriations therefrom, upon order of the commissioner, with the approval of the ~~director of institutions~~ seed commission.

SECTION 14. AMENDMENT. Section 4-10-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-19. ENFORCEMENT - HEARING BY COMMISSIONER - ~~ADMINISTERING OATHS AND TAKING TESTIMONY~~ APPLICATION OF CHAPTER 28-32. The commissioner shall enforce ~~the provisions of~~ this chapter and the regulations made thereunder. ~~Whenever he shall be~~ Except as provided in section 4-10-14, whenever the commissioner is of the opinion that a violation of this chapter or of the regulations made thereunder exists, he shall ~~designate a time and place for a hearing and give notice thereof to the person involved. The hearing shall be private, and the person involved shall have the right to introduce evidence in person, or by agent or attorney~~ hold a hearing as provided in chapter 28-32. A person aggrieved by a seizure pursuant to section 4-10-14 may request a hearing pursuant to chapter 28-32. If after ~~said~~ the hearing, or without hearing if the person involved fails or refuses to appear, the commissioner decides that there has been a violation of this chapter or the rules and regulations derived therefrom, he may impose the civil penalty provided in section 4-10-20, or if he decides that the evidence warrants prosecution, he shall proceed as hereinafter provided. ~~The commissioner and his agents may administer oaths and take testimony~~

~~for any purpose required to carry out the provisions of this chapter.~~

SECTION 15. AMENDMENT. Section 4-10-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-20. PROSECUTION FOR VIOLATIONS - DUTY OF ATTORNEY GENERAL AND STATE'S ATTORNEY. Upon a complaint made by the commissioner, after a hearing as provided in section ~~4-10-19~~ 4-10-17, 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, immediately 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 4-10-19.

SECTION 16. AMENDMENT. Section 4-10-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-22. PENALTY FOR VIOLATION OF CHAPTER. ~~Any person who violates any of the provisions, or who fails or refuses to comply with any of the requirements of this chapter or of any regulation made thereunder, is guilty of an infraction.~~

1. Any person who violates any of the provisions of this chapter shall be guilty of a class A misdemeanor.

2. Any person who violates any of the provisions of this chapter shall be subject to a civil penalty not to exceed one thousand dollars for each violation. Such civil penalty may be adjudicated by the courts or by the seed department through an administrative hearing pursuant to chapter 28-32.

3. The department may, in accordance with the laws of this state governing injunctions and other process, maintain an action in the name of the state against any person violating any provision of this chapter.

SECTION 17. A new section to chapter 4-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

LIABILITY OF THE STATE SEED COMMISSION, STATE SEED DEPARTMENT, STATE SEED COMMISSIONER AND HIS EMPLOYEES, AND CERTIFIED SEED POTATO PRODUCERS. The state seed commission, state seed department, the state seed commissioner and his employees, and certified seed potato producers make no warranty of any kind, expressed or implied as to the quantity or quality of the crop produced from the seed potatoes or through other produce inspected and certified, including merchantability, fitness for a particular purpose, or absence of disease. The only representation is that the potatoes or other produce were produced, graded, packed, and inspected under the rules and regulations of the North Dakota state seed department or United

States department of agriculture. The state seed commissioner and his employees function and serve only in an official regulatory manner.

SECTION 18. REPEAL. Sections 4-10-08, 4-10-13, and 4-10-16 of the North Dakota Century Code are hereby repealed.

Approved March 11, 1981

CHAPTER 93

HOUSE BILL NO. 1607
(Representatives Gorder, Kingsbury, A. Olson)
(Senators Tallackson, Tweten, Vosper)

POTATO ASSESSMENT INCREASE AUTHORITY

AN ACT to amend and reenact section 4-10.1-09 of the North Dakota Century Code, relating to potato promotion tax levy and providing for a discretionary increase in the levy by the potato council.

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

SECTION 1. AMENDMENT. Section 4-10.1-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.1-09. TAX LEVIED. ~~Commencing--July--1,--1977,--an~~ An assessment at the rate of two cents per hundredweight [45.36 kilograms] shall be levied and imposed upon all potatoes grown in the state or sold to a designated handler. The council, in its discretion, may increase the assessment by not more than one-half cent per hundredweight per year until a maximum assessment of four cents per hundredweight is reached. This assessment shall not be imposed upon any potatoes retained by growers to be used for seed purposes or for consumption by the grower. This assessment shall be due upon any identifiable lot or quantity of potatoes.

A designated handler of potatoes shall file an application with the council on forms prescribed and furnished by the council which shall contain the name under which the handler is transacting business within the state, place or places of business, and location of loading and shipping places of agents of the first handler, the names and addresses of the several persons constituting the firm partnership, and, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the designated handler. A designated handler shall not sell, process, or ship any potatoes until it has furnished a certificate as required by this section.

Every designated handler of potatoes shall collect the assessment imposed ~~by~~ under this section by charging and collecting from the seller the assessment ~~at--the--rate--of--two-cents~~ per

hundredweight by deducting the assessment from the purchase price of all potatoes subject to the assessment and purchased by the designated handler.

Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw potatoes, which may be examined by the commissioner, or his designee, at all reasonable times. Every designated handler shall report to the council stating the quantity of potatoes received, sold, or shipped by it. The report shall be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section shall accompany the report. All moneys levied and collected under this chapter shall be paid to the council for deposit in the state treasury to the credit of a fund designated "spud fund" to be used exclusively to carry out the intent and the purposes of this chapter.

Approved March 16, 1981

CHAPTER 94

SENATE BILL NO. 2372
(Senators Nelson, Shablow, Tallackson)
(Representative Peltier)

NORTHERN CROPS INSTITUTE

AN ACT to establish a northern crops institute and northern crops council, to specify the purpose, powers, and duties of the council, and to permit gifts and grants to the institute; and to provide an appropriation.

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

SECTION 1. NORTHERN CROPS INSTITUTE - ESTABLISHMENT - DIRECTOR.

1. A northern crops institute is hereby established to be administered by and in conjunction with North Dakota state university.

2. A director shall be appointed by the university in consultation with the northern crops council. The director shall manage the institute, hire and compensate necessary personnel within the limits of legislative appropriations, prepare a biennial budget, and serve as executive secretary to the northern crops council. The university shall fix the salary of the director, within the limits of legislative appropriations, and may remove the director for cause in consultation with the council.

SECTION 2. NORTHERN CROPS COUNCIL - ESTABLISHMENT - CHAIRMAN - MEETINGS - COMPENSATION.

1. The northern crops council is hereby established. The council shall establish policies for the operation of the northern crops institute. The council shall consist of:

   a. The vice president for agricultural affairs of North Dakota state university of agriculture and applied science.

   b. A member of the North Dakota wheat commission selected by that commission.

c. A member of the North Dakota sunflower council selected by that council.

d. The commissioner of agriculture or the commissioner's designee.

e. Three to five producers of northern crops selected by the members designated in subdivisions a through d.

2. The chairman of the council shall be a member of the council elected annually by a majority vote of the council. Provided, the members designated in subsections a and d of subsection 1 are not eligible to serve as chairman.

3. The council shall meet at least three times annually at such times and places as shall be determined by the council and may meet in special meeting upon such call and notice as may be prescribed by rules adopted by the council. A council member unable to attend a meeting of the council may be represented by a person who has a written proxy from the member.

SECTION 3. PURPOSE - POWERS AND DUTIES. The purpose of the northern crops institute shall be to provide technical and marketing assistance through specialized training courses and technical services which facilitate domestic and market development and expanded sales of northern grown crops. The institute shall render services consistent with its purpose which shall include, but not be limited to:

1. In-plant consultations for the purpose of discussing grain quality problems, product manufacturing, and possible purchasing methods and standards.

2. Short courses in product milling and processing, plant management, county elevator management, grain grading, and marketing of crops.

3. Educational and vocational training programs in milling, processing, manufacturing, purchasing methods, marketing procedures, product sales techniques, and other related subjects to be conducted for users of northern crops.

4. Short-term investigations, consultation, evaluation, and research to solve technical problems involved in the maintenance of quality and utilization of northern crops.

5. Annual surveys and quality analyses of new northern crops and monitoring of the quality and condition of commodities in market channels.

6. Research on northern crop damage problems and solutions.

7. Identification of problem areas in marketing northern crops abroad.

8. Preparation of instructional, informational, and reference publications on the end use of northern crops, technical aspects of marketing northern crops, and utilization of northern crops for distribution domestically and abroad.

SECTION 4. GIFTS AND GRANTS. In order to carry out its duties under this Act, the northern crops institute may contract for and accept private contributions, gifts, and grants-in-aid from the federal government, private industry, and other sources. Additional income shall be spent for the purpose designated, if any, in the gift, grant, or donation.

SECTION 5. 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, private funds, or other income to the northern crops institute of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1981, and ending June 30, 1983, as follows:

Operating expenses	$ 100,000
Equipment	200,000
Total all funds	$ 300,000
Less other funds appropriated	$ 240,000
Total general fund transfer and appropriation	$ 60,000

SECTION 6. ADDITIONAL FUNDS. Any funds received by the northern crops institute during the biennium beginning July 1, 1981, and ending June 30, 1983, in addition to those appropriated under section 5 of this Act, are hereby appropriated to the northern crops institute.

Approved April 3, 1981

CHAPTER 95

HOUSE BILL NO. 1379
(Vander Vorst)

STATE SOIL CONSERVATION COMMITTEE MEMBERSHIP

AN ACT to amend and reenact sections 4-22-03 and 4-22-04 of the North Dakota Century Code, relating to term of office of members of the state soil conservation committee and length of term as chairman of the committee.

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

SECTION 1. AMENDMENT. Section 4-22-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-03. STATE SOIL CONSERVATION COMMITTEE - ELECTIVE AND APPOINTIVE MEMBERS - RECORDS AND SEAL. The state soil conservation committee shall be maintained as an agency of this state to perform the functions conferred upon it in this chapter. The committee shall consist of seven voting members, of whom five shall be elected and two shall be appointed by the governor as provided herein:

1. Elective members:

   For the purpose of electing the five elective members of the committee, the state of North Dakota is hereby divided into five areas, as follows:

   A. Area I shall include the counties of Benson, Cavalier, Eddy, Foster, Grand Forks, Nelson, Pembina, Ramsey, Towner, Walsh, and Wells.

   B. Area II shall include the counties of Barnes, Cass, Dickey, Griggs, LaMoure, Ransom, Richland, Sargent, Steele, and Traill.

   C. Area III shall include the counties of Bottineau, Burke, Divide, McHenry, Mountrail, Pierce, Renville, Rolette, and Ward.

D. Area IV shall include the counties of Burleigh, Emmons, Kidder, Logan, McIntosh, McLean, Morton, Oliver, Sheridan, Sioux, and Stutsman.

E. Area V shall include the counties of Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Stark, Slope, and Williams.

One member of the committee shall be elected from each of the ~~said~~ five areas by vote of the members of the boards of supervisors of the conservation districts in that area. Every voting member of a board of supervisors of a conservation district organized under this chapter shall be eligible to vote in the election for a member of the committee in the area in which the district is located.

Elections shall be held under regulations to be issued by the committee and in cooperation with and at the time of the North Dakota association of soil conservation districts area meetings. In those cases where the territory of a district does not lie wholly within the boundaries of one of the five areas established under this section, the regulations shall provide for the assignment of such district by the committee for the purposes of such elections, to the area within which most of its population resides.

The election of members of the committee shall be conducted by the committee and need not be held on the same dates or in the same places as the general elections for state or local officers.

2. Appointive members:

Two members of the committee shall be appointed by the governor, who shall select appointees who can represent those interests within the state not already represented, or less fully represented, by one or more of the five elected members of the committee. The governor shall attempt, so far as feasible, to make possible suitable representation for all interests in the state in the membership of the committee, including the interests of, but not limited to, farmers, livestock growers, rural areas, small towns, cities, and industry and business, recognizing that any single member of the committee may sometimes appropriately be regarded as representing more than one of these interests.

The committee shall invite representatives of the state association of soil conservation districts, North Dakota cooperative extension service, the soil conservation service, North Dakota state water commission, the commissioner of agriculture, and the game and fish department to serve as advisory, nonvoting members of the committee. The term of office of every member of the committee

shall be ~~two~~ three years and until ~~his~~ a successor is elected or appointed. The governor shall have the power to extend the terms of one or more members of the committee in office upon the effective date of this chapter, in order to provide for overlapping terms for the members of the committee. A member of the committee shall be eligible for reelection and reappointment, but no member may serve for more than two full, successive terms. Vacancies in either elective or appointive terms may be filled for the unexpired term by appointment by the governor. The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and ~~promulgate~~ adopt such rules ~~and regulations~~ as may be necessary for the execution of its functions under this chapter.

SECTION 2. AMENDMENT. Section 4-22-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-04. COMMITTEE - CHAIRMAN - QUORUM - COMPENSATION - PROVISION FOR SURETY BONDS AND ANNUAL AUDIT. The committee shall meet annually and select its chairman, who shall serve for one year from the date of his selection and who shall not be eligible for a second term as chairman. Additional meetings may be held by the committee as considered necessary by the chairman, at a time and place to be fixed by the chairman. Special meetings shall be called by the chairman upon written request of any four members. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within its duties shall be required for its determination. The members of the committee shall receive forty-five dollars per day as compensation for their services on the committee, and shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee, in the same manner and at the same rate as prescribed by law for state employees and officials. The committee shall provide for the execution of surety bonds, which may be issued by the state bonding fund, for all employees who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, ~~regulations~~ rules, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

Approved March 3, 1981

CHAPTER 96

HOUSE BILL NO. 1378
(Peltier, C. Anderson)

AGRICULTURAL PROMOTION GROUPS COLLOCATION

AN ACT to provide for the collocation of the offices of the North Dakota wheat commission, the North Dakota sunflower council, the North Dakota dairy products promotion commission, and the North Dakota beef commission.

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

SECTION 1. AGRICULTURAL PROMOTION GROUPS - COLLOCATION AND ASSISTANCE. The North Dakota wheat commission, established under section 4-28-03; the North Dakota sunflower council, established under section 4-10.2-03; the North Dakota dairy products promotion commission, established under section 4-27-04; and the North Dakota beef commission, established under section 4-34-03 shall not later than July 1, 1983, collocate their respective offices. Each of the collocated entities may share administrative and clerical services as well as equipment and supplies. The collocated offices may, by majority vote of the members of each council or commission, agree to furnish services to other statutory agricultural commodity promotion groups.

Approved March 9, 1981

CHAPTER 97

HOUSE BILL NO. 1392
(Berg)

WHEAT COMMISSION MEMBERS

AN ACT to amend and reenact section 4-28-03 of the North Dakota Century Code, relating to the election, appointment, term, and meetings of wheat commission members.

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

SECTION 1. AMENDMENT. Section 4-28-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-28-03. WHEAT COMMISSION - MEMBERS. There is hereby created the North Dakota state wheat commission which shall consist of seven members. One member shall be appointed or elected from each of the districts of the state established by the provisions of this chapter and one member shall be appointed or elected from the state at large. Each member, except the member from the state at large, shall be a bona fide resident of and a qualified elector in the district he represents, shall have farming operations in such district, and shall have been actually engaged in the production of wheat and have derived a substantial portion of his income therefrom for at least five years next preceding his appointment or election. The member from the state at large shall have similar qualifications except as limited by district lines.

~~Within--thirty--days--after-the-effective-date-of-this-chapter~~ Not more than sixty days prior to expiration of the term of the member from the state at large, a nominating committee consisting of the commissioner of agriculture, the president of the North Dakota crop improvement association, the director of the state experiment station, the director of the state extension service, the president of the North Dakota farm bureau, the president of the North Dakota farmers union, and the president of the North Dakota grain dealers association, or their duly authorized representatives, shall submit to the governor a list of three names ~~for--each--position--on--the commission~~ and within sixty days ~~from-the-effective-date-of-this chapter~~ after expiration of the term the governor shall appoint, from the nominees so named, the ~~first-members-of~~ member at large to the commission.

Each member of the commission shall hold office for a term of ~~six~~ four years and until his successor has been selected and has qualified except that the commissioners ~~originally appointed~~ elected and serving from the first and fourth districts shall hold office for terms ending on the thirtieth day of June ~~1961~~ 1984; the commissioners ~~originally appointed~~ elected and serving from the second and fifth districts shall hold office for terms ending on the thirtieth day of June, ~~1963~~ 1985; and the commissioners ~~originally appointed~~ elected and serving from the third and sixth districts ~~and from the state at large~~ shall hold office for terms ending on the thirtieth day of June, ~~1965~~ 1982; and the commissioner appointed and serving as the state at large member shall hold office for a term ending on the thirtieth of June, 1983. No producer shall be entitled to serve more than three terms.

At least sixty days prior to the expiration of the term of office of a commissioner representing any district, a meeting of producers shall be held in each county in the district for the purpose of electing a county representative. The county agent shall call such meeting by publishing notice in the official newspaper of the county for two successive weeks, the last publication to be not less than five nor more than ten days prior to the meeting. The meeting shall be held at ~~the county courthouse at two o'clock p.m.~~ a central location within the county and shall be called to order by the county agent. Each producer whose name appears as a wheat producer on the list of the county agricultural stabilization committee, if present in person, shall be entitled to vote. Votes shall be canvassed by the county agent and certified by him with the name and post-office address of the elected county representative to the director of the state extension service who shall thereupon, as expeditiously as possible, call a meeting of the county representatives of the district. Notice of such meeting shall be sent to each county representative by registered or certified mail not less than five days prior to the meeting which shall be held at ~~two o'clock p.m. in the courthouse of one of the counties of~~ a central location within the district. At such district meeting, the county representatives shall elect one of their number as the district member of the commission. The ballots at such meeting shall be canvassed by the state extension service and the result of election certified to the governor by the director. Additional meetings of county representatives may be called by the state wheat commission for the purpose of promoting its programs. All expenses of all such meetings and elections shall be paid from commission funds. County representatives shall be reimbursed for expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers. Any vacancy occurring on the commission other than by expiration of term of office shall be filled by the county representatives who shall elect one of their number as the district member of the commission for the remainder of the unexpired term. If the vacancy is from the state at large, ~~by~~ appointment shall be made from three nominations submitted by the nominating committee as in the case of the original appointment. ~~Vacancies occurring by expiration of the term of the member at large shall also be filled by appointment by the governor from three nominations submitted by the nominating committee as in the case of the original appointment.~~

Approved March 20, 1981

CHAPTER 98

HOUSE BILL NO. 1139
(Committee on Agriculture)
(At the request of the Agriculture Department)

GRADE A MILK AND MILK PRODUCTS STANDARDS

AN ACT to amend and reenact section 4-30-36 of the North Dakota Century Code, relating to the standards for grade A milk and milk products.

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

SECTION 1. AMENDMENT. Section 4-30-36 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-36. STANDARDS FOR GRADE A MILK AND MILK PRODUCTS - ADOPTION OF AMENDMENTS. Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A shall be the same as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, ~~1965~~ 1978 Recommendations of the United States Public Health Service" and all supplements added thereto. The dairy commissioner may adopt as dairy department regulations any amendments, supplements to, or new editions of said milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability and promotion of grade "A" milk and milk products.

Approved March 2, 1981

CHAPTER 99

SENATE BILL NO. 2371
(Senators Naaden, Dotzenrod, Iszler)
(Representatives O. Hanson, Matheny)

BEEF COMMISSION PROVISIONS

AN ACT to amend and reenact sections 4-34-01, 4-34-07, and 4-34-08 of the North Dakota Century Code, relating to purposes of the North Dakota Beef Promotion Act, compensation of North Dakota beef commission members, and assessment for the sale of cattle.

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

SECTION 1. AMENDMENT. Section 4-34-01 of 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 programs to increase the consumption of domestic beef through such means as advertising and local and national 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 ~~support--research--efforts--toward--solving--problems, primarily-health,-involved--in--the--production--of--North Dakota--beef--cattle-with-no-less-than-twenty-five-percent of-assessments-collected~~ initiate, encourage, and sponsor research designed to solve problems in beef production, primarily in, but not limited to, animal health and human nutrition.

4. To enhance the sale of North Dakota 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 4-34-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-34-07. COMPENSATION - EXPENSES. Commission members shall receive the sum of ~~twenty~~ forty dollars per day for each meeting attended and shall receive necessary expenses for meals, lodging, and travel in the same amount and in the same manner as permitted by law for state officials and employees. The members of the commission shall receive no other salary or compensation for their service on the commission.

SECTION 3. AMENDMENT. Section 4-34-08 of 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--North--Dakota~~ selling cattle within the state or from the state, an assessment of ~~ten~~ twenty-five cents per head for each animal sold. The moneys collected pursuant to ~~the-provisions-of~~ this chapter shall be paid to the ~~North--Dakota--beef--commission--as--provided--by~~ commission pursuant to this chapter and shall be expended by ~~such~~ the commission only as authorized by ~~the-provisions-of~~ this chapter.

Approved March 18, 1981

CHAPTER 100

HOUSE BILL NO. 1140
(Committee on Agriculture)
(At the request of the Agriculture Department)

PESTICIDE USE CERTIFICATION RECIPROCITY

AN ACT to amend and reenact section 4-35-18 of the North Dakota Century Code, relating to the reciprocal issuance of a pesticide use certification to a nonresident by the pesticide control board.

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

SECTION 1. AMENDMENT. Section 4-35-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-18. RECIPROCAL AGREEMENT. ~~Any county extension agent may issue a certification on a reciprocal basis~~ The board may establish a procedure to issue a certification, 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 2, 1981

CHAPTER 101

SENATE BILL NO. 2368
(Iszler, Dotzenrod, Sorum)

NORTH DAKOTA AGRICULTURAL DEVELOPMENT ACT

AN ACT to provide for the sale of bonds by the state of North Dakota to provide funds for the making of loans to be used in connection with agriculture and agricultural enterprises, and to authorize the industrial commission of North Dakota to administer such agricultural loan financing program.

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

SECTION 1. ACT - HOW CITED. Sections 1 to 28 shall be known and may be cited as the North Dakota Agricultural Development Act.

SECTION 2. DECLARATION OF INTENT. It is hereby found and declared that:

1. The high cost as well as the lack of availability of agricultural loans for farmers with the resultant decreases in crop, livestock, and business productivity and inability on the part of farmers to acquire agricultural equipment and machinery, livestock and real estate jeopardizes the continued existence of family-owned agricultural enterprises and lessens the supply of agricultural commodities available to fulfill the needs of the citizens of this state;

2. As a result of the continuing increase in the costs of maintaining operations, including costs of construction and rehabilitation, maintenance and repair expenses, and the cost of real estate, the state suffers from structural economic weaknesses which contribute to a decline in the operation and maintenance of agricultural enterprises and the capital investment therein; and

3. The reduction in family-owned agricultural enterprises results in an insufficiency of gainful employment in rural areas and adds additional pressure on the state's welfare, public health, and crime prevention programs and increases the cost of unemployment compensation to the existing enterprises of the state.

SECTION 3. LEGISLATIVE FINDINGS - NEED FOR AGRICULTURAL LOAN FINANCING - HOW ACCOMPLISHED. There exists in this state an inadequate supply of, and a pressing need for, farm credit and agricultural loan financing at interest rates which are consistent with the needs of farmers.

The problems set forth in sections 2 and 3 cannot alone be remedied through the operation of private enterprise or individual communities or both, but can be alleviated through governmental action designed to encourage the investment of private capital in the agricultural sector through the use of financing as provided in this Act for the purpose of making loans available at interest rates lower than those available in the conventional farm credit markets.

Alleviating the conditions and problems, set forth in sections 2 and 3 by the encouragement of private investment through a financing as provided in this Act, is a public purpose and use for which public money provided by the sale of revenue bonds may be borrowed, expended, advanced, and loaned. Such activities shall not be conducted for profit. Such activities are proper governmental functions and can best be accomplished by the industrial commission of North Dakota. The necessity for the provisions of this Act to protect the health, safety, morals, and general welfare of all the people of this state is hereby declared as a matter of legislative determination. The industrial commission of North Dakota under this Act shall make financing available for farmers to meet the credit needs which private industry is unable to serve.

SECTION 4. TERMS DEFINED. As used in this Act, unless the context otherwise requires:

1. "Agriculture or agricultural enterprise" shall mean and include, but not be limited to, the real and personal property constituting farms, ranches, and other agricultural commodity producers; agriculturally related sewage, liquid and solid waste collection, disposal, treatment and drainage services, and facilities; and agriculturally related antipollution and air, water, ground, and subsurface pollution abatement and control facilities and services;

2. "Commission" shall mean the industrial commission of North Dakota created pursuant to section 54-17-01 of the statutes of North Dakota, as amended;

3. "Contracting party" shall mean any party to a lease, sales contract or loan agreement except the commission;

4. "Bonds" shall mean any bonds, notes, debentures, interim certificates, bond, grant and revenue anticipation notes, or any other evidences of indebtedness;

5. "Loan insurer" and "loan guarantor" shall mean an agency, department, administration or instrumentality, corporate

or otherwise, of or in the department of housing and urban development, the farmers home administration of the department of agriculture or the veterans administration of the United States of America, any private mortgage insurance company, or any other public or private agency which insures or guarantees loans;

6. "Lender" shall mean any federal or state chartered bank, federal land bank, production credit association, bank for cooperatives, savings and loan association, building and loan association, small business investment company, or any other institution qualified within the state to originate and service loans, including, but not limited to, insurance companies, credit unions and mortgage loan companies; and

7. "State" shall mean the state of North Dakota.

SECTION 5. COMMISSION - POWERS ENUMERATED. The commission is hereby granted all powers necessary or appropriate to carry out and effectuate the purposes of this Act, including but not limited to the following:

1. Make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this Act;

2. Employ architects, engineers, attorneys, inspectors, accountants, agricultural and financial experts, and such other advisors, consultants, and agents as may be necessary in its judgment, and to fix their compensation;

3. Borrow money and issue bonds as provided by this Act;

4. Procure insurance or guarantees from any public or private entities, including any department, agency, or instrumentality of the United States of America, for payment of any bonds issued by the commission under this Act, including the power to pay premiums on any such insurance;

5. Receive and accept from any source, aid or contributions of money, property, labor, or other things of value to be held, used and applied to carry out the purposes of this Act subject to the conditions upon which the grants or contributions are made, including but not limited to gifts or grants from any department, agency, or instrumentality of the United States of America for any purpose consistent with the provisions of this Act;

6. Enter into agreements with any department, agency, or instrumentality of the United States of America or this state and with lenders and enter into loan agreements with contracting parties for the purpose of planning,

regulating, and providing for the financing and refinancing of any agricultural enterprise;

7. Enter into contracts or agreements with lenders for the servicing and processing of loans;

8. To the extent permitted under its contract with the holders of bonds of the commission, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease or agreement of any kind to which the commission is a party; and

9. To the extent permitted under its contract with the holders of bonds of the commission, enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States of America or of this state, the reduction can be made without jeopardizing the economic stability of the agricultural enterprise being financed.

SECTION 6. COMMISSION - DUTIES ENUMERATED. The commission shall have the following duties in the exercise of powers granted by this Act:

1. To invest proceeds from bonds issued under this Act and any funds obtained therefrom not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States of America, obligations issued by agencies of the United States of America, any obligations of the United States of America or agencies thereof, obligations of this state, or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state, including the unsecured promissory notes of national banking associations having the highest investment rating;

2. To collect fees and charges, as the commission determines to be reasonable, in connection with its loans, advances, insurance, commitments, and servicing;

3. To sell, at public or private sale, with or without public bidding, any loan or other obligation held by the commission; and

4. To do any act necessary or convenient to the exercise of the powers granted by this Act or reasonably implied from it.

SECTION 7. COMMISSION - LOANS TO LENDERS - CONDITIONS. The commission may make, and undertake commitments to make, loans to lenders under terms and conditions requiring the proceeds thereof to be used by such lenders to make loans for agricultural enterprises. Loan commitments or actual loans shall be originated through and serviced by any bank, trust company, savings and loan association, mortgage banker or other financial institution authorized to transact business in this state.

SECTION 8. COMMISSION - INVEST IN, PURCHASE, OR ASSIGN LOANS - CONDITIONS. The commission may invest in, purchase or make commitments to take assignments of, loans made by lenders for the construction, rehabilitation or purchase of agricultural enterprises. No loan shall be eligible for investment in, purchase, or assignment by the commission if the loan was made more than six months prior to the date of investment, purchase, or assignment by the commission.

SECTION 9. COMMISSION - LENDERS REQUIREMENTS. Prior to exercising any of the powers authorized in sections 7 and 8, the commission shall require the lender to certify and agree that:

1. The loan is, or if the same has not been made will, at the time of making, be in all respects a prudent investment; and

2. Such lender will use the proceeds of such loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase loans to provide agricultural enterprises, or, if such lender has made a commitment to make loans to provide agricultural enterprises on the basis of a commitment from the commission to purchase such loans, such lender will make such loans and sell the same to the commission within a reasonable period of time.

SECTION 10. COMMISSION - OPTIONAL REQUIREMENTS ENUMERATED. Prior to exercising any of the powers conferred by sections 7 and 8, the commission may, but is not obligated to:

1. Require that the loan involved be insured by a loan insurer or be guaranteed by a loan guarantor;

2. Require any type of security that it deems reasonable and necessary; or

3. Authorize the reservation of funds by lenders in such amount and subject to such conditions as the commission considers reasonable and necessary.

SECTION 11. COMMISSION - BORROW MONEY AND ISSUE BONDS - PURPOSES. The commission shall have the power to borrow money and to issue from time to time its bonds in such principal amounts as

the commission determines shall be necessary to provide sufficient funds to carry out its purposes under this Act to include:

1. Carrying out the additional powers of sections 7 and 10;

2. The payment of interest on bonds of the commission issued under this Act;

3. The establishment of reserves to secure the bonds issued under this Act; and

4. All other expenditures of the commission incident to, necessary and convenient, to carry out its purposes and powers under this Act.

SECTION 12. COMMISSION - ISSUE BONDS TO RENEW - PAY OR REFUND BONDS. The commission shall have the power to issue from time to time bonds to renew or to pay bonds issued under this Act, including the interest thereon, and whenever it deems refunding expedient, to refund any bonds issued under this Act by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund outstanding bonds and partly for any other purposes permitted under this Act. The refunding bonds may be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded, or exchanged for the bonds to be refunded.

SECTION 13. COMMISSION - BOND ISSUANCE - SPECIAL OBLIGATIONS - HOW PAID AND SECURED. Bonds issued under this Act shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the commission be subject to any liability thereon. Such bonds shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the commission, except those agricultural enterprises, or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purposes of this Act. The bonds may be additionally secured by a pledge of any grant, contribution or guarantee from the federal government or any corporation, association, institution, or person.

SECTION 14. COMMISSION - BOND ISSUANCE - STATE OR POLITICAL SUBDIVISION - NO OBLIGATION - STATEMENT. No bonds issued by the commission under this Act shall constitute a debt, liability, or general obligation of this state or any political subdivision thereof, or a pledge of the faith and credit of this state or any political subdivision thereof, but shall be payable solely as provided by section 13. Each bond issued under this Act shall contain on the face thereof a statement that neither the faith and credit nor the taxing power of this state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bond.

SECTION 15. BONDS AUTHORIZED BY RESOLUTION - CONTENTS - MANNER OF SALE. The bonds shall be authorized by a resolution of the commission, shall bear such date or dates, and shall mature at

such time or times as such resolution may provide, except that no bond shall mature more than thirty years from the date of its issue, as the resolution shall provide. The bonds shall bear interest at such rate or rates, including variations of such rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, including redemption prior to maturity, as such resolution may provide. The provisions of other state laws relating to the issuance of revenue bonds shall not apply to bonds issued by the commission under this Act. Bonds of the commission issued under this Act may be sold by the commission at public or private sale, and at such price or prices as the commission shall determine.

SECTION 16. BOND ISSUANCE - RESOLUTION PROVISIONS ENUMERATED. Any resolution authorizing the issuance of bonds under this Act may contain provisions, which shall be a part of the contract or contracts with the holders of such bonds, as to:

1. The setting aside of reserves or sinking funds and the regulation and disposition thereof;

2. Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds;

3. Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

4. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which the consent may be given;

5. Limitations on the amount of money to be expended by the commission for operating expenses of the commission;

6. Vesting in a trustee or trustees such property, rights, powers, and duties in trust as the commission may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustee;

7. Defining the acts or omissions to act which shall constitute a default and the obligations or duties of the commission to the holders of the bonds, and providing for the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver; but the rights and remedies shall not be inconsistent with the general laws of this state and other provisions of this Act; and

8. Any other matter, of like or different character, which in any way affects the security or protection of the holders of the bonds.

SECTION 17. COMMISSION - PLEDGE - EFFECT - LIEN - RECORDING NOT REQUIRED. Any pledge made by the commission shall be valid and binding from the time the pledge is made. The revenue, money, or properties so pledged and thereafter received by the commission shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the commission, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

SECTION 18. COMMISSION - PURCHASE BONDS OF COMMISSION CANCELED - PRICE. The commission, subject to such agreements with bondholders as may then exist, shall have the power to purchase bonds issued by it hereunder out of any funds available therefor, which shall thereupon be canceled, at any reasonable price which, if the bonds are then redeemable, shall not exceed the redemption price then applicable plus accrued interest to the next interest payment thereon.

SECTION 19. BONDS SECURED BY TRUST INDENTURE - CONTENTS - EXPENSES HOW TREATED. The bonds issued under this Act may be secured by a trust indenture by and between the commission and a corporate trustee which may be any bank having the power of a trust company or any trust company within or without the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the commission in relation to the exercise of its powers and the custody, safekeeping, and application of all money. The commission may provide by the trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the commission may determine.

SECTION 20. BONDS - NEGOTIABLE INSTRUMENTS. Whether or not the bonds issued under this Act are in the form and character of negotiable instruments, such bonds are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

SECTION 21. BONDS - SIGNATURES OF PRIOR MEMBERS OR OFFICERS - VALIDITY. In the event that any of the members or officers of the commission shall cease to be members or officers of the commission prior to the delivery of any bonds or coupons signed by them, their signatures or facsimiles thereof shall nevertheless be valid and sufficient for all purposes, the same as if such members or officers had remained in office until such delivery.

SECTION 22. COMMISSION - EXECUTE BONDS - MEMBERS NOT SUBJECT TO PERSONAL LIABILITY. Neither the members of the commission nor any other person executing the bonds issued under this Act shall be subject to personal liability or accountability by reason of the issuance thereof.

SECTION 23. FUNDS CREATED. The commission may create and establish such funds and accounts as may be necessary or desirable for carrying out the purposes of this Act.

SECTION 24. BONDHOLDERS - PLEDGE - AGREEMENT OF THE STATE. The state does hereby pledge to and agree with the holder of any bonds issued under this Act that the state will not limit or alter the rights vested in the commission to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights or remedies of the holders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The commission is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds.

SECTION 25. BANK OF NORTH DAKOTA - AUTHORIZATION TO EXERCISE ADMINISTRATIVE POWERS - PAYMENT OF COMMISSION EXPENSES - REIMBURSEMENT - LIABILITY OF STATE OR POLITICAL SUBDIVISION. The commission may delegate to the Bank of North Dakota, and the Bank of North Dakota is hereby authorized to exercise, all administrative powers granted to the commission under this Act. The Bank of North Dakota is further authorized to advance from its funds the amount necessary to permit the commission to issue its first series of bonds under this Act which shall be refunded to the Bank of North Dakota by the commission upon issuance of said bonds. Thereafter, all expenses incurred by the commission in carrying out the provisions of this Act shall be payable solely from funds provided under this Act, and nothing in this Act shall be construed to authorize the commission to incur indebtedness or liability on behalf of or payable by this state or any political subdivision of it.

SECTION 26. COMMISSION - BONDS EXEMPT FROM TAXATION - EXCEPTION. All bonds issued under this Act, interest payable thereon and income derived therefrom except inheritance, estate, and transfer taxes, shall at all times be exempt from all taxes imposed by this state, any county, any city, or any other political subdivision of this state.

SECTION 27. BONDS - LEGAL INVESTMENTS FOR WHOM - CONSIDERED SECURITIES. The bonds issued by and under the authority of this Act by the commission are declared to be legal investments in which all public officers or public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, banking associations, trust

companies, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are now or may later be authorized to invest in bonds or in other obligations of this state, may invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may be deposited with and received by all public officers and bodies of this state or any agency or political subdivision of this state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of this state is now or may be later authorized by law.

SECTION 28. ACT - HOW CONSTRUED. Neither sections 1 to 28 nor anything contained in sections 1 to 28 is or shall be construed as a restriction or limitation upon any powers which the commission might otherwise have under any other law of this state, and sections 1 to 28 are cumulative to such powers. Sections 1 to 28 do and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized and shall be regarded as supplemental and additional to powers conferred by any other laws. The issuance of bonds under the provisions of sections 1 to 28 need not comply with the requirements of any other state laws applicable to the issuance of bonds, notes, and other obligations. No proceedings, notice, or approval shall be required for the issuance of any bonds or any instrument or the security therefor, except as provided in sections 1 to 28. All agricultural enterprises for which funds are advanced, loaned or otherwise provided by the commission under sections 1 to 28 must be in compliance with any land use, zoning, subdivision and other laws of this state applicable to the land upon which such enterprise is located or is to be constructed.

Approved March 16, 1981

ALCOHOLIC BEVERAGES

CHAPTER 102

HOUSE BILL NO. 1332
(Hedstrom, Black, Martinson, Reiten, Swiontek)

MINOR'S ALCOHOL POSSESSION PENALTY

AN ACT to amend and reenact section 5-01-08 of the North Dakota Century Code, providing a minimum fine for persons under twenty-one years of age who purchase or possess alcoholic beverages or enter licensed premises where alcoholic beverages are sold or displayed.

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

SECTION 1. AMENDMENT. Section 5-01-08 of 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 26, 1981

CHAPTER 103

HOUSE BILL NO. 1383
(Representative Wentz)
(Senator Sorum)

SUNDAY CONVENTION ALCOHOL PERMIT ISSUANCE

AN ACT to amend and reenact section 5-02-05.1 of the North Dakota Century Code, relating to special Sunday convention alcoholic beverage permits; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 5-02-05.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-02-05.1. SPECIAL SUNDAY CONVENTION ALCOHOLIC BEVERAGE PERMIT.

1. Any city or county may issue a special Sunday convention alcoholic beverage permit to a private club, lodge, motel, or hotel, as defined under ~~municipal~~ city ordinances or county resolutions and licensed as a retail alcoholic beverage establishment pursuant to chapter 5-02, which serves as the headquarters for ~~the~~ a state, multistate, or national convention of a bona fide organization recognized by the governing body of the city or county in which the convention is held. A county may not issue a permit under this section to a private club, lodge, motel, or hotel located within the geographical boundaries of a city.

2. The authority for issuing such special permit shall rest solely with the governing body of the city or county. A special permit shall be granted only upon proper application to and approval by the governing body, and shall include payment of a fee determined by such governing body. A special permit granted by the city or county shall be effective for one Sunday only.

3. Under the special permit, alcoholic beverages may be distributed and dancing may be permitted in those rooms of the private club, lodge, motel, or hotel which have been specifically reserved for convention activities, but shall

not be permitted in bar and lounge areas containing the permanent bar fixtures and normally open to the public. A city or county may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on the specified Sunday and one a.m. on Monday. Under no circumstances shall the general public be permitted to participate in the consumption of alcoholic beverages distributed under the authority and conditions of the special permit. It shall be the duty of the private club, lodge, motel, or hotel granted the special permit to enforce the requirements of this section and the conditions established by the city or county under the permit.

4. The special Sunday convention alcoholic beverage permit shall not be granted to allow the distribution of alcoholic beverages at gatherings or meetings which, in the opinion of the governing body of the city or county, are primarily local in nature.

5. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a special permit, or who furnishes information required by this section which is false or misleading, shall be guilty of a class A misdemeanor.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 3, 1981

CHAPTER 104

HOUSE BILL NO. 1297
(R. Hausauer, Dotzenrod, Nicholas)

BEER WHOLESALER AND BREWER RELATIONSHIP

AN ACT to regulate the relationship between beer wholesalers and brewers; to prohibit inducement or coercion, dual distributorship, retaliatory action, discrimination, and waiver; and to provide for definitions, agreement cancellation, notice of intent to terminate, sale of business, reasonable compensation for wrongful cancellation, judicial remedies, product price, wholesaler management, sale of brewer, coverage of the Act, right of free association, and application of the Act when in conflict with title 51.

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. "Agreement" means one or more of the following:

   a. A commercial relationship between a licensed beer wholesaler and a licensed brewer of a definite or indefinite duration which is not required to be evidenced in writing.

   b. A relationship whereby the beer wholesaler is granted the right to offer and sell a brand or brands of beer offered by a brewer.

   c. A relationship whereby the beer wholesaler, as an independent business, constitutes a component of a brewer's distribution system.

   d. A relationship whereby the beer wholesaler's business is substantially associated with a brewer's brand or brands, designating the brewer.

   e. A relationship whereby the beer wholesaler's business is substantially reliant on a brewer for the continued supply of beer.

f. A written or oral arrangement for a definite or indefinite period whereby a brewer grants a license to a beer wholesaler to use a brand, trade name, trademark, or service mark, and in which there is a community of interest in the marketing of goods or services at wholesale or retail.

2. "Beer wholesaler" or "wholesaler" means any licensee, as outlined in section 5-03-01, importing or causing to be imported into this state or purchasing or causing to be purchased within this state, any beer for sale or resale to retailers or wholesalers licensed pursuant to chapter 5-02 or chapter 5-03, without regard to whether the business of the person is conducted under the terms of an agreement with a licensed brewer.

3. "Brewer" means every licensed brewer of beer located within or without this state who enters into an agreement with any beer wholesaler licensed to do business in this state.

4. "Person" means a natural person, corporation, partnership, trust, agency, or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives, conservators, and guardians.

5. "Territory" or "sales territory" means the area of primary sales responsibility designated by any agreement between any beer wholesaler and brewer for the brand or brands of any brewer.

SECTION 2. INDUCEMENT OR COERCION PROHIBITED. No brewer shall:

1. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to accept delivery of any alcoholic beverage or any other commodity which has not been ordered by the beer wholesaler.

2. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to do any illegal act by threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a brewer and a beer wholesaler.

3. Require a wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler's right to sell any other brewer's product anywhere in this state, provided the sale of another brewer's product does not materially impair the quality of service or quantity of sales of the existing brand or brands of the brewer seeking to impose the condition, stipulation, or provision.

4. Fail to provide each wholesaler of its brands with a written contract which conforms to this Act and embodies the brewer's agreement with each wholesaler.

SECTION 3. DUAL DISTRIBUTORSHIP PROHIBITED. No brewer who designates a sales territory for which a wholesaler shall be primarily responsible shall enter into an additional agreement with any other beer wholesaler for its brand or brands of beer in the same territory. No wholesaler shall deliver beer to a retail account outside a sales territory designated by the brewer of a particular brand or brands.

SECTION 4. AGREEMENT CANCELLATION. Notwithstanding the terms, provisions, or conditions of any agreement, no brewer shall amend, cancel, terminate, or refuse to renew any agreement, or cause a wholesaler to resign from an agreement, unless good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuation, or causing a resignation. "Good cause" shall not include the sale or purchase of a brewer. "Good cause" includes, but is not limited to, the following:

1. Revocation of the wholesaler's license to do business in this state.

2. The wholesaler's bankruptcy or insolvency.

3. Assignment for the benefit of creditors or similar disposition of the wholesaler's assets.

4. The wholesaler's failure to comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the brewer.

SECTION 5. NOTICE OF INTENT TO TERMINATE. Except as otherwise provided in this section, a brewer shall provide a wholesaler with at least ninety days prior written notice of any intent to amend, terminate, cancel, or not renew any agreement. The notice shall state all the reasons for the intended amendment, termination, cancellation, or nonrenewal. The wholesaler shall have ninety days after receiving notice in which to rectify any claimed deficiency. If the deficiency is rectified within ninety days of notice, the proposed amendment, termination, cancellation, or nonrenewal is void. The notice provisions of this section shall not apply if the reason for the termination, cancellation, or nonrenewal is:

1. The wholesaler's bankruptcy or insolvency.

2. An assignment for the benefit of creditors or similar disposition of the business assets.

3. Revocation of the wholesaler's license.

4. Conviction or a plea of guilty or no contest to a charge of violating a law relating to the business that materially affects the wholesaler's ability to remain in business.

SECTION 6. ASSIGNMENT, TRANSFER, OR SALE OF BUSINESS. No brewer shall unreasonably withhold consent to any assignment, transfer, or sale of the wholesaler's business whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of the brewer's wholesalers.

No brewer shall unreasonably refuse, withhold, or unduly delay its approval of the issuance, sale, or transfer by a corporate beer wholesaler of its capital stock or any other corporate equity or debt security.

SECTION 7. REASONABLE COMPENSATION FOR WRONGFUL CANCELLATION.

1. Any brewer which amends, cancels, terminates, or refuses to renew any beer agreement, or causes a wholesaler to resign from an agreement, unless for "good cause" as defined by section 4, or which unreasonably withholds consent to any assignment, transfer, or sale of a wholesaler's business, shall pay the wholesaler reasonable compensation for the value of the wholesaler's business with relationship to the terminated brand or brands. The value of the wholesaler's business shall include, but not be limited to, its goodwill, if any.

2. If the brewer and the beer wholesaler are unable to mutually agree on reasonable compensation for the value of the wholesaler's business, the matter shall be submitted to a neutral arbitrator to be selected by the parties or, if they cannot agree, by the presiding district judge of the district in which the wholesaler's main office is located. All arbitration costs shall be divided equally between the wholesaler and the brewer. The award of the neutral arbitrator shall be final and binding on the parties.

SECTION 8. JUDICIAL REMEDIES. If a brewer engages in conduct prohibited under this Act, a wholesaler, with whom the brewer has an agreement pursuant to this Act, may maintain a suit against the brewer. The court may grant equitable relief as is necessary to remedy the effects of conduct which it finds to exist and which is prohibited under this Act, including, but not limited to, declaratory judgment and injunctive relief. The court may award actual damages and costs. If the court finds the brewer has acted in bad faith in invoking amendment, termination, cancellation, or nonrenewal under this Act or has unreasonably withheld its consent to any assignment, transfer, or sale of the wholesaler's agreement, the court may also award reasonable attorney's fees.

SECTION 9. PRODUCT PRICE. No brewer, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the price at which the wholesaler shall sell any alcoholic beverage.

SECTION 10. RETALIATORY ACTION PROHIBITED. A brewer shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewer with the appropriate state or federal regulatory authority. "Retaliatory action" includes, but is not limited to, refusal without good cause to continue the agreement, or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement.

SECTION 11. WHOLESALER MANAGEMENT. No brewer shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet essential, reasonable, and nondiscriminatory requirements.

SECTION 12. DISCRIMINATION PROHIBITED. No brewer shall discriminate among its North Dakota wholesalers in the price of beer sold to the North Dakota wholesalers or in price promotions. No wholesaler shall refuse to sell to any licensed alcoholic beverage retailer in its sales territory. No wholesaler shall discriminate among the licensed alcoholic beverage retailers in its sales territory in the price of beer sold to the retailers or in price promotions.

SECTION 13. WAIVER PROHIBITED. No brewer shall require any wholesaler to waive compliance with any provision of this Act. Nothing in this Act shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

SECTION 14. SALE OF BREWER. Except for good cause, as defined by section 4, the purchase of a brewer, where the purchaser continues in business as a brewer, shall obligate the new brewer to all terms and conditions of the agreement in effect on the date of purchase. "Purchase", for the purposes of this Act, includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer, or consolidation.

SECTION 15. ACT COVERAGE. The provisions of this Act shall cover agreements in existence on the effective date of this Act, as well as agreements entered into after the effective date of this Act.

SECTION 16. RIGHT OF FREE ASSOCIATION. No brewer or wholesaler shall restrict or inhibit, directly or indirectly, the right of free association among brewers or wholesalers for any lawful purpose.

SECTION 17. ACT TO APPLY WHERE CONFLICT WITH TITLE 51. The provisions of this Act shall apply in any instances where the provisions of this Act conflict with the unfair practice provisions of title 51.

Approved March 26, 1981

BANKS AND BANKING

CHAPTER 105

SENATE BILL NO. 2236
(Reiten, Tallackson, Vosper, Walsh)

PAYING AND RECEIVING STATION LOAN AUTHORITY

AN ACT to amend and reenact subsection 9 of section 6-01-02, sections 6-03-13.1, 6-03-14, and 6-03-17 of the North Dakota Century Code, relating to services rendered by bank paying and receiving stations and separate drive-in facilities.

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

SECTION 1. AMENDMENT. Subsection 9 of section 6-01-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "~~Receiving--and-paying~~ Paying and receiving station" means a place of business maintained by a banking institution separate from its main banking house within the county of its domicile or in an adjoining county for the purpose of receiving and paying out deposits, issuing drafts, traveler's checks, and similar instruments, making loans, handling and making collections, and cashing checks and drafts.

* SECTION 2. AMENDMENT. Section 6-03-13.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-13.1. SEPARATE DRIVE-IN FACILITY AUTHORIZED. Every bank organized under chapter 6-02, and under the supervision of the state banking board, and any national bank doing business in this state, may, upon compliance with sections 6-03-13.1 through 6-03-13.4, maintain and operate separate and apart from its banking house one facility for drive-in and walkup service, in addition to such service at its main banking house, and at its paying and receiving stations, if any. ~~Such~~ The facility shall be within the corporate city limits of the main banking house or within three miles of such city but shall not be within the corporate limits of another city. The services rendered at the separate facility ~~shall be~~ are limited to receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, making loans, and receiving payments payable at the bank.

* NOTE: Section 6-03-13.1 was also amended by section 1 of House Bill No. 1422, chapter 109.

SECTION 3. AMENDMENT. Section 6-03-14 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-14. PAYING AND RECEIVING STATIONS AUTHORIZED. Any banking institution may establish and maintain within the county in which the home office of the applicant banking institution is located, or in any adjoining county, or in any other county provided the location of the community to be served is within a thirty-five mile [56.33 kilometer] radius of the home office, subject to the approval and supervision of the state banking board, a ~~receiving-and~~ paying and receiving station in any city organized under the laws of this state, or in any unincorporated townsite located within the limits of any Indian reservation, not having an established banking institution located therein. Provided, however, this limitation shall not apply to any banking institution which has already received a permit for the construction of such a ~~receiving-and~~ paying and receiving station. No additional capital shall be required for the operation of the station. This section shall not be construed as committing this state in any manner to a policy of permitting branch banking.

SECTION 4. AMENDMENT. Section 6-03-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-17. TRANSACTION OF BUSINESS AT AND REGULATION OF STATION. No banking business ~~shall~~ may be transacted in any ~~such~~ paying and receiving station other than receiving and paying out deposits, issuing drafts, travelers' checks, and similar instruments, making loans, handling and making collections, and cashing checks and drafts. The state banking board may prescribe rules ~~and regulations~~ for the operation of each station.

Not approved or disapproved by the Governor

Filed March 9, 1981

CHAPTER 106

HOUSE BILL NO. 1108
(Committee on Industry, Business, and Labor)
(At the request of the Department of Banking and Financial Institution:

BANK APPLICATIONS AND INTEREST RATE RULES

AN ACT to amend and reenact sections 6-02-06 and 6-03-63 of the North Dakota Century Code, relating to new bank applications and adoption of rules for interest on deposits.

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

SECTION 1. AMENDMENT. Section 6-02-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-02-06. HEARING BY BOARD - CONCLUSIONS - MANAGEMENT.

1. At the time and place stated, and through any sources of information at its command, the board diligently shall inquire whether the place where such banking association is proposed to be located is in need of further banking facilities, whether the proposed association is adapted to the filling of such need, and whether the proposed incorporators are possessed of such character, integrity, reputation, and financial standing as shown by a detailed financial statement to be furnished by them, and such statement to be held confidential by the board, that their connection with the banking association will be beneficial to the public welfare of the community in which such bank is proposed to be established. ~~The state banking board shall inquire into the qualifications of the management of the proposed bank. Qualifications of management shall include adequate experience, as determined by the board, with financial institutions or other approved related experience.~~ The board shall hear any reasons advanced by the applicants why they should be permitted to organize the proposed association, and any reasons advanced by any person why such association should not be permitted to be organized. At the termination of such hearing, the board shall make a ~~brief~~ statement in writing of its conclusions and conditions if any, and if it finds that the proposed association should not be permitted to organize, it shall

state ~~briefly~~ the reasons why. A If approval is granted, a copy of ~~such conclusions either~~ the board's order shall be ~~endorsed upon or~~ attached to the organization certificate, ~~together with the refusal or grant of permission to the proposed incorporators to present the said organization certificate~~ and, both presented to the secretary of state. A determination in favor of such organization must be joined in by a majority of all the members of the board.

2. If the proposed association is permitted to organize, the state banking board shall inquire into the qualifications of the management of the proposed bank, including experience with financial institutions and other related experience. The board's inquiry into the qualifications of management shall be confidential.

SECTION 2. AMENDMENT. Section 6-03-63 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-63. INTEREST ON DEPOSITS - RATES PAYABLE - PENALTY. No state banking association ~~shall~~ may pay interest on deposits, directly or indirectly, at rates greater than authorized by the state banking board~~, which in no case shall exceed the applicable maximum rates of interest per annum established by the board of governors of the federal reserve system as payable by member banks of the federal reserve system on time and savings deposits~~. The board may grant permission to pay a rate of interest exceeding four percent on deposits, but the rate so granted shall be uniform within any county. The board's authorization of interest rates is not subject to the public notice and public hearing requirements of chapter 28-32. Any officer, director, or employee of any association violating the provisions of this section, directly or indirectly, is guilty of a class B misdemeanor.

Approved March 26, 1981

CHAPTER 107

SENATE BILL NO. 2311
(Lodoen)

BANK DIRECTORS

AN ACT to amend and reenact subsection 5 of section 6-03-02 of the North Dakota Century Code, relating to the number of directors on a bank's board of directors.

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

SECTION 1. AMENDMENT. Subsection 5 of section 6-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. To elect or appoint directors, such board to consist of ~~an uneven~~ any number of members, not less than three nor more than ~~eleven~~ twenty-five, a majority of whom must be residents of the state of North Dakota, and, by such board of directors, to appoint a president, who shall be a member of said board, a cashier, and such other employees as may be required, to define their duties, to require bonds of them and fix the penalty thereof, and to dismiss such officers and employees, or any of them, and appoint others to fill their places;

Approved March 6, 1981

CHAPTER 108

HOUSE BILL NO. 1611
(Nicholas)

DIRECTOR'S QUALIFYING SHARES

AN ACT to amend and reenact section 6-03-03 of the North Dakota Century Code, relating to qualifying shares of directors of state banks.

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

SECTION 1. AMENDMENT. Section 6-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-03. DIRECTORS - QUALIFYING SHARES - ISSUE AND TRANSFER. Every director must own in ~~his~~ the director's own right~~, free from hypothecation or pledge for any debt,~~ either shares of the capital stock of the association of which the person is a director the aggregate par value of at least one thousand dollars ~~in the association of which he is a director~~, or an equivalent interest, as determined by the state banking board, in any company which has control over the association within the meaning of section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841]. Such shares shall be known as "director's qualifying shares". Such shares if issued by an association shall be issued in a separate certificate which shall have legibly marked in ink across the face thereof the words: "director's qualifying shares". ~~Such share shall be retained in the bank by the officers thereof during the whole time that such director shall continue in office, subject to inspection at all times by the state examiner or any other authorized examiner.~~ The oath of office shall be executed ~~at the time~~ after the shares are ~~issued~~ acquired and shall be at once forwarded to the ~~state examiner~~ commissioner and retained on file in ~~that office~~ the department of banking and financial institutions. Such shares shall not be subject to transfer, pledge, or hypothecation in any manner or to any extent whatsoever until a written resignation of the director shall have been filed with and accepted by the board of directors of the association, or until the director otherwise becomes disqualified, and any director who ceases to be the owner of the required number of qualifying shares of free and nonhypothecated stock of the association of the value as above set forth shall vacate his office. Upon the resignation or disqualification of any director, ~~his~~ the qualifying shares shall be returned to him or her, and, on demand, shall be reissued in the name of the owner~~, the~~ or an assignee, or legal or personal representative.

Approved March 26, 1981

CHAPTER 109

HOUSE BILL NO. 1422
(Koland, Martinson)

BANK DRIVE-IN FACILITIES

AN ACT to amend and reenact section 6-03-13.1 and subsection 1 of section 6-03-13.2 of the North Dakota Century Code, relating to bank drive-in facilities and limitations on bank drive-in facilities.

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

* SECTION 1. AMENDMENT. Section 6-03-13.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-13.1. SEPARATE DRIVE-IN FACILITY AUTHORIZED. Every bank organized under chapter 6-02, and under the supervision of the state banking board, and any national bank doing business in this state, may, upon compliance with sections 6-03-13.1 through 6-03-13.4, maintain and operate separate and apart from its banking house one facility for drive-in and walkup service, in addition to such service at its main banking house, and at its paying and receiving stations, if any. Such facility shall be within the corporate city limits of the main banking house or within three miles of such city but shall not be within the corporate limits of another city. One additional separate drive-in and walkup facility may be maintained and operated not more than one thousand five hundred feet from its main banking house by any bank that does not have a drive-in facility at its main banking house. The services rendered at the separate facility shall be limited to receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, and receiving payments payable at the bank.

SECTION 2. AMENDMENT. Subsection 1 of section 6-03-13.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. More than one such facility separate and apart from its banking house, except facilities required by the United States government to be maintained by it as financial agent of the government on government reservations solely for military and other government personnel, provided, however, that nothing in this section shall be construed

* NOTE: Section 6-03-13.1 was also amended by section 2 of Senate Bill No. 2236, chapter 105.

to authorize any bank to establish or maintain such facilities as financial agent of the government on government reservations; provided further that one additional separate drive-in and walkup facility may be maintained and operated not more than one thousand five hundred feet from its main banking house by any bank that does not have a drive-in facility at its main banking house; or

Approved March 20, 1981

CHAPTER 110

HOUSE BILL NO. 1101
(Committee on Industry, Business, and Labor)
(At the request of the Department of
Banking and Financial Institutions)

CONVERSION, SHARES, RESERVE, AND PROPERTY

AN ACT to create and enact section 47-30-02.1 of the North Dakota Century Code, relating to abandoned property of closed financial institutions; and to amend and reenact sections 6-03-13.5, 6-03-23, 6-03-37, 6-05-06, 6-07-38, and 6-07-46 of the North Dakota Century Code, relating to a bank's conversion, change in capital, reserves, and a trust company's directors' qualifying shares.

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

SECTION 1. AMENDMENT. Section 6-03-13.5 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-13.5. NATIONAL BANK CONVERSION TO STATE BANK. A national bank located in this state which follows the procedure prescribed by federal law to convert into a state bank, shall be granted a state charter if it meets the provisions of the North Dakota Century Code for the incorporation and chartering of a new state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified by the state banking board to the extent made necessary by the difference between an ordinary incorporation and a conversion and no public hearing need be held on a conversion application.

SECTION 2. AMENDMENT. Section 6-03-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-23. CAPITAL STOCK MAY BE INCREASED. Any association may provide, either by its articles of incorporation, by subsequent resolution, or by written agreement of the holders of a majority of its stock, for an increase in its capital stock from time to time subject to the limitations of this title ~~and the approval of the state banking board~~. No increase in capital stock shall be valid until the whole amount has been paid in, in cash, and such payment

certified under oath by the president or cashier of the association to the secretary of state, nor until the secretary of state executes a certificate specifying that this chapter has been complied with, the amount of the increase in capital stock, and that the increase has been paid in as part of the capital of the association, nor until a copy of such certificate has been filed with the state banking board.

SECTION 3. AMENDMENT. Section 6-03-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-37. RESERVE FUNDS. Every banking association shall have on hand at all times in available funds an amount which shall equal a percentage of its demand deposits and amounts due to other banks, plus a percentage of its time deposits. Such percentage shall be set by the state banking board. Such reserve funds may consist of cash on hand and balances due to the association from the Bank of North Dakota, a federal reserve bank, or good solvent state or national banks, approved by the ~~state examiner~~ commissioner for such purposes and located in such cities as will facilitate banking exchange. The ~~state examiner~~ commissioner, whenever he deems it necessary, may require such banking association, on fifteen days' notice in writing, to increase such reserve requirements to not more than twenty percent of its demand deposits nor more than ten percent of its time deposits. Cash items shall not be included in computing reserve, and no association shall carry as cash, or as cash items, any paper or other matter except legitimate bank exchange which will be cleared on the same or the next succeeding day. Whenever its reserve funds are below the required amount, no dividend may be paid.

If on any one day, reserves shall not meet the requirements, it shall not be a violation of this section provided that the average reserve for the period starting on Thursday of the same calendar week and ending on the second Wednesday following, shall equal or exceed the minimum requirements.

The ~~state examiner~~ commissioner must notify any association whose reserve is below the amount required to make good such reserve, and if such association shall fail to do so for a period of thirty days after such notice, the state banking board may impose a penalty of not less than one hundred dollars or an amount equal to seven percent per annum based on the average deficiency for the period of deficiency, whichever is greater, which shall be collected in the same manner as other penalties prescribed in this title.

SECTION 4. AMENDMENT. Section 6-05-06 of 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 ~~issued and placed in charge of the state examiner~~ 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, ~~together with the qualifying shares, unless such shares are already on file with the state examiner,~~ shall be transmitted at once to the ~~examiner~~ 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 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 5. AMENDMENT. Section 6-07-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-07-38. CLOSING OF RECEIVERSHIPS - SALE OF ASSETS - NOTICE. Every receivership must be terminated within five years of the date of the appointment of the first receiver for said bank. If ninety days prior to the expiration of said five-year period any assets remain in the hands of the receiver, he shall cause notice of sale thereof at public auction to be given by publishing notice thereof in a newspaper in the county wherein the bank was located once each week for three successive weeks prior to the date set for sale, and such assets may be sold to the highest bidder. Such sale may be had at any earlier time when ordered by the court having jurisdiction. When the receivership of a closed bank is terminated, all books, records, documents, and other property of such bank, and any dividends unclaimed, shall be delivered over by such receiver to the ~~state examiner~~ commissioner and his receipt taken therefor by the receiver. Such receipt must be filed in the district court having jurisdiction, and the discharge of the receiver, whether he be an administrative or judicial receiver, must be approved by such court before it becomes final. The ~~state examiner~~ commissioner shall be custodian of all books, records, documents, and other property of such bank and of the dividends unclaimed upon the winding up of the receivership proceedings, and shall be vested with title to any assets belonging to such bank and not distributed in such receivership, and he shall have full power and authority to convert such assets into cash. He also shall have authority to execute all

deeds, satisfactions, assignments, or other documents required for the purpose of transferring undistributed assets or for the purpose of correcting public records and quieting title to property in which the insolvent bank has or has had an apparent interest. Any moneys collected by the ~~examiner~~ commissioner, prior to July 1, 1975, after the termination of a receivership shall be paid into the general fund of the state. Any moneys collected by the commissioner after July 1, 1975, after the termination of a receivership shall be paid to the commissioner of university and school lands.

SECTION 6. AMENDMENT. Section 6-07-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-07-46. DISPOSITION OF UNCLAIMED DIVIDENDS OR OTHER MONEYS DELIVERED TO ~~STATE EXAMINER~~ COMMISSIONER. Any unclaimed dividend or other moneys delivered to the ~~state examiner~~ commissioner by the receiver of an insolvent bank pursuant to the provisions of section 6-07-38 prior to July 1, 1975, shall be paid to the state treasurer who shall credit such payments to the general fund of this state. Any unclaimed dividends or other moneys credited to such fund may thereafter be paid to the lawful owner thereof, his heirs, executors, administrators, or assigns when proven to the satisfaction of the ~~state examiner~~ commissioner that he is legally entitled thereto. Such payment shall be made by a warrant drawn by the department of accounts and purchases and issued in payment of a claim voucher certified to by the claimant and approved by the ~~state examiner~~ commissioner. The moneys required for the payment of such claims are hereby appropriated out of the general fund.

Any unclaimed dividend or other moneys delivered to the commissioner by the receiver of an insolvent bank pursuant to the provisions of section 6-07-38 after July 1, 1975, shall be transferred to the commissioner of university and school lands and voucher for the payment of such dividends to persons entitled thereto in accordance with chapter 47-30.

SECTION 7. Section 47-30-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

47-30-02.1. PROPERTY REMAINING AT TERMINATION OF RECEIVERSHIP. All unclaimed dividends or other moneys remaining at the termination of a receivership of a closed financial institution are presumed abandoned.

Approved February 20, 1981

CHAPTER 111

HOUSE BILL NO. 1548
(Hedstrom, Retzer)

LOANS TO EXECUTIVE BANK OFFICERS

AN ACT to amend and reenact section 6-03-60 of the North Dakota Century Code, relating to the making of loans to bank officers.

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

SECTION 1. AMENDMENT. Section 6-03-60 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-60. LOANS TO AND PURCHASES FROM DIRECTORS, OFFICERS, AND EMPLOYEES - RESTRICTIONS - CONDITIONS - PENALTY - CIVIL LIABILITY. No director or managing officer of any state banking association, nor the commissioner, assistant commissioner, nor deputy examiners, shall be permitted to borrow an amount in excess of twenty-five thousand dollars from any state banking association without first obtaining the approval of a majority of the board of directors of said banking association, excluding from such majority any director whose application is to be acted upon, and no action upon any loan herein provided for shall be taken by the board in the presence of the applicant. Every loan 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 association's rules and regulations. No executive officer of any state banking association shall borrow from or otherwise become indebted to any state banking association of which he is an executive officer in an aggregate amount exceeding ~~ten~~ twenty thousand dollars for any loan or extension of credit, other than a loan secured by a first mortgage on the officer's residence, which loan shall not exceed sixty thousand dollars, and a loan or extension of credit to finance the education of the officer's children, which loan or extension of credit shall not exceed the aggregate amount of twenty thousand dollars. At no time shall any combination of loans or extensions of credit or both made by a state banking association to an officer of that association exceed the limitation on loans to one person or concern specified in section 6-03-59. No state banking association

may pay an overdraft on an account at such bank of an officer or director. The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or bank are considered executive officers, unless (1) the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company, from participation, other than in the capacity of a director, in major policymaking functions of the bank or company, and (2) the officer does not actually participate therein.

No director, officer, or employee of a bank shall sell to such bank, directly or indirectly, any mortgage, bond, note, stock, or other property whatsoever without first obtaining the written approval of the board of directors. The action of the board of directors in connection with the loans and discounts required under this section shall be made a matter of permanent record in the minute books of the banking association. Any shareholder, officer, or director of any banking association who knowingly shall violate the provisions of this section shall be held liable in his personal and individual capacity for all loss or damage which the association or any person shall sustain in consequence thereof and shall be guilty of a class B misdemeanor. The commissioner may require, at any time, the payment or repurchase of loans, securities, or obligations herein referred to.

Approved March 5, 1981

CHAPTER 112

SENATE BILL NO. 2312
(Lodoen)

BANK EXAMINATION BY DIRECTORS

AN ACT to amend and reenact section 6-03-69 of the North Dakota Century Code, relating to the semiannual examination of a bank by its board of directors.

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

SECTION 1. AMENDMENT. Section 6-03-69 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-69. ~~DIRECTORS--MAKE--SEMIANNUAL-EXAMINATION--~~ REPORT OF EXAMINING COMMITTEE. ~~The-board-of-directors-in-January-and-July--of each--year--shall--make--a--careful--and-thorough-examination-of-the assets-of-the-bank,-examine-loans-and-discounts-of-every-nature-with the--securities--and--collaterals--belonging--thereto,--compare--the aggregate-with-the-records,-and--make--a--complete--report--of--such examination--in--such-form-as-may-be-designated-by-the-state-banking board,-with-suggestions-and-criticisms,-if-in-its-judgment-such--are necessary.---Such--report-shall-be-spread-on-the-records-of-the-bank the-same-as-the-minutes--of--a--regular--meeting--of--the--board--of directors,--and-a-duplicate-thereof-transmitted-to-the-state-banking board.~~ The board of directors shall be responsible for submitting to the state banking board a report of examining committee on forms provided by the commissioner. The report shall reflect the results of a careful and thorough examination of the assets of the bank including loans and discounts of every nature and the securities and collaterals belonging thereto. The valuation of the assets of the bank shall be compared with the records of the bank. The report shall be made a part of the minutes of a regular meeting of the board of directors. The commissioner may refuse to accept such report if found to be not in accordance with acceptable accounting principles.

Any of the following methods may be used to conduct the examination required by this section.

1. Examination by the board of directors or its examining committee. When this method is employed, the examination

shall be conducted and the report submitted in January and July of each year.

2. Examination on an annual basis by an independent certified public accountant or firms composed of such accountants, or auditors of the bank's holding company, if any.

3. Examination by an autonomous internal audit control system. The individual directing the internal audit control system shall submit to the board of directors each quarter an interim report as to the degree of compliance with the internal audit control system and shall express an opinion as to the adequacy of the internal controls. A complete report shall be submitted annually to the board of directors.

Approved March 11, 1981

CHAPTER 113

SENATE BILL NO. 2103
(Committee on Industry, Business, and Labor)
(At the request of the Department of Banking and Financial Institutions)

BANK, CREDIT UNION, AND FINANCE COMPANY REPORTS

AN ACT to amend and reenact section 6-03-70, subsection 1 of section 6-06-08, subsection 1 of section 13-03-09, subsection 2 of section 13-03-10, and subsection 2 of section 13-03.1-10 of the North Dakota Century Code, relating to call reports of banks and credit unions, examination of licensees, and annual reports of small loan and consumer finance companies.

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

SECTION 1. AMENDMENT. Section 6-03-70 of the 1979 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 ~~make three or more reports~~ respond to calls each year, the number to be determined by ~~the state banking board, to~~ the commissioner. The ~~board~~ commissioner shall prescribe the forms for such reports ~~as nearly as possible like those prescribed by the comptroller of currency~~ which shall be the same forms as those for similar reports called by ~~national banks~~ 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 ~~board~~ commissioner, which~~, if practicable,~~ shall be the same day on which similar reports are required ~~from national banking associations~~ by the ~~comptroller of currency~~ 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~~, and an abstract of not less than three of such reports,~~. Each report, in a form prescribed by the ~~board~~ 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 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 ~~board--also---shall~~ commissioner may call for a special report from any association whenever in ~~its~~ the commissioner's judgment the same is necessary ~~in order~~ to obtain ~~full-and~~ complete knowledge of ~~its~~ the condition of the association. Every association which fails to make and transmit any report required ~~in-pursuance-of~~ by this section shall forfeit and pay to the state a penalty of two hundred dollars for each delinquency.

SECTION 2. AMENDMENT. Subsection 1 of section 6-06-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Credit unions and the permanent loan funds thereof, if any, shall be under the supervision of the state credit union board. ~~The-credit~~ Credit unions shall report to the commissioner when called by the commissioner, and at least ~~once--annually,--upon--call-of-the-commissioner,-on-blanks supplied-by-the-commissioner-for-that-purpose.--Additional reports--may--be--required--by--the-board-or-commissioner. Annual-reports-must-be-transmitted-to-the-commissioner--by January-thirty-first-of-the-following-year.--Other-reports must-be-transmitted-to--the--commissioner--within--fifteen days--after-receipt-of-the-request-for-the-same~~ twice each year. The commissioner shall prescribe the forms for such reports. The reports must be received by the commissioner within thirty days of the call. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the national credit union administration, or a printout retrieved from computer facilities in the department of banking and financial institutions and connected to those of the national credit union administration. The commissioner may call for special reports from any credit union whenever in the commissioner's judgment the same is necessary to obtain complete knowledge of the condition of the credit union. Every credit union which fails to make and transmit any report required in pursuance of this section shall forfeit and pay to the state a penalty of ~~five~~ two hundred dollars for ~~each~~ delinquency.

SECTION 3. AMENDMENT. Subsection 1 of section 13-03-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. At least once each year the ~~state-examiner~~ commissioner or his duly authorized representatives shall make an examination of the place of business of each licensee and of the loans, transactions, books, papers, annual reports, and records of such licensee so far as they pertain to the

business licensed under this chapter. The actual cost of every examination shall be ~~paid to the state examiner by~~ charged by the commissioner for every licensee so examined. Such ~~sums~~ costs shall be paid ~~by the state examiner~~ to the state treasurer ~~to be credited to the general fund of this state~~.

SECTION 4. AMENDMENT. Subsection 2 of section 13-03-10 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. ~~Each~~ The parent company of each licensee shall annually on or before the thirty-first day of July file a report for the preceding fiscal year with the commissioner. Such report shall give composite information ~~with respect to~~ on the financial condition of ~~such licensee~~ its licensees and shall include~~:~~

~~a. The name and address of the licensee, balance sheets at the beginning and end of the accounting period.~~

~~b. A statement of income and expenses for said period, a reconciliation of surplus or net earnings with the balance sheets.~~

~~c. A schedule of assets used and useful in the small loan business.~~

~~d. An analysis of charges, size of loans and types of security on loans of one thousand dollars or less.~~

~~e. An analysis of delinquent accounts, an analysis of suits, repossessions and sales of chattels and such other relevant information as the commissioner may require concerning the business and operations during the preceding fiscal year~~ all information requested by the commissioner.

Such report shall be made under oath and shall be in the form prescribed by the commissioner who may make and publish annually an analysis and recapitulation of such reports.

SECTION 5. AMENDMENT. Subsection 2 of section 13-03.1-10 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. On or before July thirty-first each year ~~every~~ the parent company of each licensee shall file with the administrator a composite annual report in the form prescribed by the administrator relating to all loans made by ~~the licensee~~ its licensees. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. The administrator may make and publish annually an analysis and recapitulation of such reports.

Approved March 12, 1981

CHAPTER 114

HOUSE BILL NO. 1390
(Martinson)

BANK RECORDS SEARCH REIMBURSEMENT

AN ACT to create and enact a new section to chapter 6-03 of the North Dakota Century Code, relating to the authority of a bank to charge state and federal agencies for record searches.

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:

RECORDS SEARCH REIMBURSEMENT. Any bank authorized to do business in this state, shall be reimbursed as follows for all records searches done at the request of any state agency or any branch of the state government except the social service board of North Dakota. Further, any federal agency or any branch of the federal government shall also make such reimbursement if authorized to do so:

1. For search and processing time at the rate of ten dollars per hour per person, computed on the basis of two dollars and fifty cents per quarter hour, limited to the total amount of personnel time spent in locating, retrieving, reproducing, packaging and preparing for shipment documents or information requested;

2. For making copies of duplicates of required or requested documents at the rate of fifteen cents per page; and

3. For making copies of photographs, films, and other materials at the actual cost incurred by the bank.

The bank shall be reimbursed for all actual mailing or transportation expenses incurred in conveying the requested or required materials to the requesting agency. The reimbursement provisions of this section shall not apply to standard bank confirmations.

Approved March 11, 1981

CHAPTER 115

SENATE BILL NO. 2100
(Committee on Industry, Business, and Labor)
(At the request of the Department of Banking and Financial Institutions)

CREDIT UNION ORGANIZATION, AUTHORITY, AND INSURANCE

AN ACT to amend and reenact sections 6-06-02, 6-06-03, 6-06-14, 6-06-19, subsection 2 of section 6-06-35, and section 6-06-40 of the North Dakota Century Code, relating to a credit union's organization, authority to borrow, conversion and insurance.

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

SECTION 1. AMENDMENT. Section 6-06-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-02. MANNER OF ORGANIZATION OF CREDIT UNIONS. A credit union shall be organized in the following manner:

1. The applicants shall execute a certificate of organization, in ~~duplicate~~ triplicate, by the terms of which they agree to be bound, stating the name and the location of the proposed credit union, the names and addresses of the subscribers to the certificate and the number of shares subscribed by each, and the par value of the shares of the credit union, which shall not exceed fifty dollars each.

2. The applicants shall prepare and execute proposed bylaws, in ~~duplicate~~ triplicate, for the general governance of the credit union consistent with the provisions of this chapter.

3. The certificate and the proposed bylaws, both executed in ~~duplicate~~ triplicate, shall be forwarded to the commissioner.

4. The applicants shall apply for and secure national credit union administration insurance of accounts.

5. The commissioner, within thirty days after the receipt of certificate and bylaws shall determine whether they comply

and are consistent with the provisions and purposes of this chapter.

~~5.~~ 6. The commissioner shall notify the applicants and the state credit union board of his decision, and if it is favorable, the board shall instruct the secretary of state to issue a charter, which shall be ~~by him~~ attached to the certificate of organization and returned, together with the bylaws, to the applicants upon payment of a filing fee of five dollars to the secretary of state.

7. Evidence of securing national credit union administration insurance must be furnished to the commissioner before the charter may be released to the applicant credit union.

After the provisions of this section have been complied with, the association shall become a body corporate and shall be known as a credit union.

SECTION 2. AMENDMENT. Section 6-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-03. ~~SECRETARY--OF--STATE~~ COMMISSIONER TO FURNISH FORMS. The ~~secretary of state~~ commissioner, on written application of any seven residents of this state, shall furnish without charge to persons proposing to incorporate a credit union a form of certificate of organization and a set of suggested bylaws approved by him as consistent with this chapter.

* SECTION 3. AMENDMENT. Section 6-06-14 of the 1979 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. 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 that may be made 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 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 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.

* NOTE: Section 6-06-14 was also amended by section 2 of House Bill No. 1300, chapter 116.

Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by him 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 in his 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.

SECTION 4. AMENDMENT. Section 6-06-19 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-19. AUTHORITY TO BORROW - LIMITATION - EXCEPTION. A credit union may borrow money from any source, but the total borrowings shall not exceed twenty-five percent of its assets unless the commissioner shall authorize a larger amount. The state credit union board, in the exercise of its discretion, may suspend or restrict the borrowing powers of a credit union. The limitation on borrowing does not apply to a corporate central credit union which shall be limited to borrowing up to five times its capital, surplus and reserve fund.

SECTION 5. AMENDMENT. Subsection 2 of section 6-06-35 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. a. A federal credit union, organized under the laws of the United States may be converted into a state credit union by (1) complying with all federal requirements requisite to enabling it to convert to a state credit union or to cease being a federal credit union, (2) filing with the state credit union board proof of such compliance, satisfactory to the commissioner and (3) filing with the commissioner an organization ~~certificates~~ certificate and bylaws, both in triplicate, as required by ~~North--Dakota--law~~ section 6-06-02.

b. When the commissioner has been satisfied that all of such requirements, and all other requirements of the North Dakota law have been complied with, the ~~state credit union board shall approve the organization certificate~~ commissioner shall notify the applicants and the state credit union board of that fact, and the board shall instruct the secretary of state to issue a charter in accordance with section 6-06-02. Upon ~~such approval~~ issuance of the charter, the federal credit union shall become a state credit union ~~as of the date~~

~~it~~ and ceases to be a federal credit union. The state credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.

SECTION 6. AMENDMENT. Section 6-06-40 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-40. SHARE INSURANCE EXCEPTION. ~~Not later than July 1, 1978, each credit union shall apply for insurance on share and deposit accounts under the provisions of Title II of the National Credit Union Act. A credit union which has been denied a commitment for insurance of its share and deposit accounts shall either dissolve, merge with another credit union which is insured under Title II of the National Credit Union Act, or apply in writing within thirty days of denial to the state credit union board for additional time to obtain an insurance commitment.~~

~~The state credit union board shall grant additional time for the credit union to obtain the insurance commitment upon satisfactory evidence that the credit union has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment. Additional time or times shall not extend later than January 1, 1979.~~

A central credit union with corporate shareholdings equal to or in excess of seventy-five percent of its total assets may by vote of its board of directors elect exemption of insurance of share and deposit accounts under provisions of Title II of the National Credit Union Act.

Approved March 12, 1981

CHAPTER 116

HOUSE BILL NO. 1300
(Koski, Martinson, Vig)

CENTRAL CREDIT UNION PROVISIONS

AN ACT to amend and reenact sections 6-06-05 and 6-06-14 of the North Dakota Century Code, relating to use of the terms "corporate central credit union" and "central credit union" and meetings of the credit committee.

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

SECTION 1. AMENDMENT. Section 6-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-05. USE OF "CREDIT UNION" AND "CORPORATE CENTRAL CREDIT UNION" RESTRICTED - FORFEITURE. It shall be unlawful for any person, association, copartnership, or corporation, domestic or foreign, except corporations organized in accordance with the provisions of this chapter, to use the words "credit union", "corporate central credit union", or "central credit union" in their name or title, and any person, association, copartnership, or corporation violating this section shall forfeit to the state one hundred dollars for every day, or part thereof, during which such violation continues. The ~~state examiner~~ commissioner may recover such forfeited sums in a civil action, and shall deposit any sums recovered or collected with the state treasurer. Only one "corporate central credit union" or "central credit union" shall be organized under this Act, and no other credit union may use the term "corporate central" or "central" as part of its name.

* SECTION 2. AMENDMENT. Section 6-06-14 of the 1979 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. 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.

* NOTE: Section 6-06-14 was also amended by section 3 of Senate Bill No. 2100, chapter 115.

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 that may be made 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 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 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 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 in his capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer.

Approved March 5, 1981

CHAPTER 117

SENATE BILL NO. 2099
(Committee on Industry, Business, and Labor)
(At the request of the Department of Banking and Financial Institutions)

CREDIT UNION EXAMINATION FEES

AN ACT to amend and reenact subsection 4 of section 6-06-08 of the North Dakota Century Code, relating to examination fees for 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 1979 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 ~~equal to sixty-five dollars per examiner 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 examinations herein provided for, except that the~~ 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 ~~one~~ three hundred dollars and the maximum fee shall be ten thousand dollars. The examination fee for North Dakota central credit union shall be one hundred

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 ~~five~~ two hundred dollars ~~a day additional~~ for the delay.

Approved March 12, 1981

CHAPTER 118

HOUSE BILL NO. 1511
(Koski)

CREDIT UNION OFFICERS AND DIRECTORS

AN ACT to amend and reenact section 6-06-13 of the North Dakota Century Code, relating to compensation of officers and directors.

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

SECTION 1. AMENDMENT. Section 6-06-13 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-13. OFFICERS - ELECTIONS - DUTIES ~~--COMPENSATION~~. At their organization meeting and within thirty days following each annual meeting of the members, the directors shall elect from their own number an executive officer, who may be designated as chairman of the board or president; a vice chairman of the board or one or more vice presidents; a treasurer; and a secretary. The treasurer and the secretary may be the same individual. The persons so elected shall be the executive officers of the corporation. The terms of the officers shall be one year, or until their successors are chosen and have duly qualified. The duties of the officers shall be prescribed in the bylaws. The board of directors may employ an officer in charge of operations whose title shall be either president or general manager, or both; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union. ~~The--general--manager--of--the--credit union-may-receive-a-reasonable-compensation-to-be-fixed-by-the-board of-directors.--No-other-member--of--the--board,--or--of--the--credit committee--or-supervisory-committee,-shall-receive-any-compensation. Except-that-the-board-of-directors-may-provide-for--the--payment--of expenses--incurred--by--directors--or--committee--members--while--on official-business.~~

Approved March 5, 1981

CHAPTER 119

HOUSE BILL NO. 1315
(Martinson, Vig)

CREDIT UNION INTEREST RATES AND DIVIDENDS

AN ACT to amend and reenact sections 6-06-18 and 6-06-26 of the North Dakota Century Code, relating to interest rates for and payment of dividends by credit unions.

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

SECTION 1. AMENDMENT. Section 6-06-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-18. INTEREST RATES. Interest rates on loans made by a credit union shall not exceed one and ~~one-fourth~~ one-half percent a month on unpaid balances, unless a greater maximum is approved by the state credit union board.

Provided, that the foregoing provisions shall not apply to the North Dakota central credit union.

SECTION 2. AMENDMENT. Section 6-06-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-26. DIVIDENDS. A credit union, upon action by its board of directors, may declare a dividend to be paid from the remaining net earnings or, in the absence of sufficient net earnings, as authorized by the state credit union board. The board of directors shall establish the dividend and the dividend period~~;--however;--dividends-shall-not-be-paid-more--frequently--than--quarterly~~. The members may fix the maximum rate of dividends which shall be paid. ~~Dividends-may-be-computed-on-a-daily-basis.~~ Such ~~dividend;--not--to exceed--six-percent-in-any-case;~~ dividends must be paid from the net earnings of the credit union, after establishing a special reserve for delinquent loans ~~if~~ as required by the state credit union board. A credit union, upon action of its board of directors, may authorize an interest refund to members of record at the close of business the last day of any dividend period in proportion to the interest paid during that dividend period. Interest refunds may be made to borrowers only after provision has been made for a special reserve for delinquent loans if required by the state credit union board.

Approved March 5, 1981

CHAPTER 120

SENATE BILL NO. 2344
(H. Christensen)

NONSUFFICIENT FUND CHECK COLLECTION

AN ACT to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to issuing a check or draft without sufficient funds or credit and a fee for collection of such check or draft and prosecution for such check or draft.

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

SECTION 1. AMENDMENT. Section 6-08-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-16. ISSUING CHECK OR DRAFT WITHOUT SUFFICIENT FUNDS OR CREDIT - NOTICE - TIME LIMITATION - FINANCIAL LIABILITY - PENALTY.

1. Any person who for himself or as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation makes ~~or~~, draws ~~or~~, utters, or delivers any check, draft, or order for the payment of money upon a bank, banker, or depository, and at the time of such making, drawing, uttering, or delivery, or at the time of presentation for payment if made within one week after the original delivery thereof, has not sufficient funds in or credit with such bank, banker, or depository to meet such check, draft, or order in full upon its presentation, ~~shall be~~ is guilty of a class B misdemeanor. The person is also liable for collection fees or costs, not in excess of ten dollars, which are recoverable by civil action by the holder of the check, draft, or order. The word "credit" as used in this section ~~shall mean~~ means an arrangement or understanding with the bank, banker, or depository for the payment of ~~such~~ the check, draft, or order. The making of a postdated check knowingly received as such, or of a check issued under an agreement with the payee that the ~~same~~ check would not be presented for payment for a time specified, ~~shall~~ does not constitute a violation of this section.

2. A notice of dishonor may be sent by the holder of the check upon dishonor, ~~said~~ the notice to be in substantially the following form:

Notice of Dishonored Check

Date ----------
Name of Issuer ----------
Street Address ----------
City and State ----------
You are according to law hereby notified that a check dated --------, 19----, drawn on the ----------
Bank of ---------- in the amount of ----------
has been returned unpaid with the notation the payment has been refused because of nonsufficient funds.
Within ten days from the receipt of this notice, you must pay or tender to ----------
(Holder)
sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ten dollars.

Such notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution if the issuer does not pay to the holder sufficient moneys to pay the check within ten days from receipt of the notice. The criminal complaint for the offense of issuing a check, draft, or money order without sufficient funds under this section must be executed within not more than ninety days after the dishonor by the drawee of said instrument for nonsufficient funds. The failure to execute a complaint within said time shall bar the criminal charge under this section.

* SECTION 2. AMENDMENT. Section 6-08-16.2 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-16.2. ISSUING CHECK WITHOUT ACCOUNT OR WITH INSUFFICIENT FUNDS - FINANCIAL LIABILITY - PENALTY - EXCEPTIONS.

1. As used in this section:

   a. "Account" means any account at a bank or depository from which an instrument could legally be paid.

   b. "Dishonor" is synonymous with "nonpayment".

   c. "Instrument" means any check, draft, or order for the payment of money.

   d. "Issues" means draws, utters, or delivers.

* NOTE: Section 6-08-16.2 was also amended by section 1 of Senate Bill No. 2142, chapter 362.

2. Any person who, for himself or as agent or representative of another, issues any check, draft, or order for the payment of money is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account or without sufficient funds in a bank or depository pursuant to section 6-08-16 and:

   a. At the time of issuing the instrument with intent to defraud, the drawer does not have an account with the bank or depository on which the instrument is drawn; or

   b. At the time of issuing the instrument with intent to defraud, or at the time of presentation for payment if made within one week after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation~~;--and~~

   ~~c.--If-the-drawer-has-been-previously-convicted-of-issuing an-instrument-without-an-account-or-without-sufficient funds--in--a--bank--or--depository-pursuant-to-section 6-08-16.~~

   The person is also liable for collection fees or costs, not in excess of ten dollars, which are recoverable by civil action by the holder of the instrument.

3. The fact that payment has been refused by a drawee because of insufficient funds or because the drawer has no account with the drawee from which payment could legally be made ~~shall--constitute--prima--facie--evidence~~ constitutes an inference of intent to defraud. ~~However,-if-the-drawer pays-the-holder-of-the-instrument-within-thirty-days-after receiving--written--notice-of-nonpayment-by-certified-mail or-by-personal-service-in-accordance-with-rule-4(d)-of-the North--Dakota--Rules--of--Civil-Procedure,-that-fact-shall constitute--an---affirmative---defense---to---a---criminal prosecution-under-this-section.~~

4. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution if the issuer does not pay to the holder sufficient moneys to pay the check within ten days from receipt of the notice of dishonor. A criminal complaint for violation of subdivision b of subsection 2 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of nonpayment. Failure to execute a complaint within the time set forth in this subsection shall constitute a bar to any criminal charges under subdivision b of subsection 2.

5. A notice of dishonor shall be sent by the holder of the check upon dishonor. The notice shall be in substantially the following form:

Notice of Dishonored Check

Date ----------
Name of Issuer ----------
Street Address ----------
City and State ----------
You are according to law hereby notified that a check dated ----------, 19----, drawn on the ---------- Bank of ---------- in the amount of ---------- has been returned unpaid with the notation the payment has been refused because (of nonsufficient funds) (the drawer does not have an account). Within ten days from the receipt of this notice, you must pay or tender to ----------
(Holder)
sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ten dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

Approved March 19, 1981

CHAPTER 121

HOUSE BILL NO. 1301
(Vig, Koski, Martinson)

BANK OF NORTH DAKOTA LOAN AUTHORITY

AN ACT to amend and reenact subsection 1 of section 6-09-15 of the North Dakota Century Code, relating to Bank of North Dakota loans to credit unions.

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

* SECTION 1. AMENDMENT. Subsection 1 of section 6-09-15 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The Bank of North Dakota may:

   a. Make loans to and purchase securities issued by instrumentalities of this state. Such loans shall be repaid with interest to the Bank.

   b. Make loans to state or national banks and North Dakota central credit union.

   c. Participate with state or national banks, savings and loan associations, subsidiary corporations of state banking associations approved by the state banking board pursuant to section 6-03-38, and credit unions, in loans being made by them on such terms and under such rules and regulations as the industrial commission may determine.

   d. Buy and sell federal funds, excess reserves, bankers' acceptances, participation loans, and all securities issued by the United States government or its instrumentalities.

   e. Invest its funds in bonds, notes, or debentures of any corporation incorporated under the laws of any state of the United States rated at "A" or higher by a nationally recognized rating service approved by the industrial commission and short term commercial and

* NOTE: Subdivisions b and c of subsection 1 of section 6-09-15 were also amended by section 1 of House Bill No. 1194, chapter 122.

finance company paper rated A-1 or P-1. Such investments shall not be made to exceed for any one corporation ten percent of the combined capital and surplus of the Bank.

f. Make loans to holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.

g. Make loans to actual farmers who are residents of this state, if such loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed sixty-five percent of the value of the security.

h. Make United States insured and guaranteed loans as specifically authorized by law.

Approved March 15, 1981

CHAPTER 122

HOUSE BILL NO. 1194
(Committee on Industry, Business, and Labor)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA LOAN AUTHORITY

AN ACT to amend and reenact subdivisions b and c of subsection 1 and subsection 3 of section 6-09-15 of the North Dakota Century Code, relating to the authority of the Bank of North Dakota to make loans to and participate in loans made by bank holding companies and to make loans on real estate security.

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

* SECTION 1. AMENDMENT. Subdivisions b and c of subsection 1 and subsection 3 of section 6-09-15 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

b. Make loans to state or national banks and bank holding companies.

c. Participate with state or national banks, bank holding companies, savings and loan associations, subsidiary corporations of state banking associations approved by the state banking board pursuant to section 6-03-38, and credit unions, in loans being made by them on such terms and under such rules and regulations as the industrial commission may determine.

3. The Bank of North Dakota shall not loan more than thirty percent of its combined capital and surplus, nor in addition thereto, more than ~~twenty~~ forty percent of its deposits on real estate security, excluding those loans insured or guaranteed by the United States government or its agencies.

Approved March 2, 1981

* NOTE: Subsection 2 of section 6-09-15 was also amended by section 1 of House Bill No. 1301, chapter 121.

CHAPTER 123

SENATE BILL NO. 2342
(Reiten)

BANK OF NORTH DAKOTA BANK STOCK LOANS

AN ACT to amend and reenact section 6-09-15.3 of the North Dakota Century Code, relating to bank stock loans made by the Bank of North Dakota.

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

SECTION 1. AMENDMENT. Section 6-09-15.3 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-15.3. BANK STOCK LOANS - REQUIREMENTS. The Bank of North Dakota may make direct loans to ~~those who have resided in this state for at least one year~~ individuals or bank holding companies for the purchase or refinancing of bank stock of a bank located in the state, provided the individuals or the stockholders of the bank holding company are residents of this state. These loans shall be secured by bank stock or stock of a bank holding company located in the state. For this purpose, loans secured by stock in any one bank or bank holding company shall not exceed twenty-five percent of the total of capital and surplus of the Bank of North Dakota.

The industrial commission shall adopt rules and regulations to carry out the purpose of this section which shall include provisions for terms under which such loans shall be made, the types of security required in addition to the stock purchased under the loan, and the procedure for disposition of ~~stock acquired by the Bank~~ the stock of the bank or bank holding company and other types of security. The Bank of North Dakota may make direct loans to individuals or bank holding companies for the purchase or refinancing of bank stock as provided herein, if not more than thirty-five percent of the bank stock or bank holding company stock will be or is owned by nonresidents of this state, provided that such loan applications involving nonresidents are submitted to the Bank of North Dakota advisory board of directors for recommendation, and are approved by the industrial commission before such loans are made. In the event the Bank of North Dakota becomes the owner of stock in a bank pursuant to foreclosure proceedings on such loan, such stock shall be disposed of within three years after acquisition by the Bank.

Approved March 11, 1981

CHAPTER 124

HOUSE BILL NO. 1096
(Representatives A. Olson, Berg)

BANK OF NORTH DAKOTA BEGINNING BUSINESSMEN LOANS

AN ACT to create and enact section 6-09-15.4 of the North Dakota Century Code, relating to the Bank of North Dakota making loans to beginning businessmen.

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

SECTION 1. Section 6-09-15.4 of the North Dakota Century Code is hereby created and enacted 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; has had adequate training, by experience or education, in the type of revenue-producing enterprise which he wishes to begin.

Approved March 2, 1981

CHAPTER 125

HOUSE BILL NO. 1145
(Committee on Industry, Business, and Labor)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA RECORD CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 6-09 of the North Dakota Century Code, relating to confidentiality of records of the Bank of North Dakota.

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:

CONFIDENTIALITY - RECORDS. The following records of the Bank of North Dakota shall be confidential:

1. Commercial or financial information of a customer, whether obtained directly or indirectly, except for routine credit inquiries or unless required by due legal process.

2. Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the Bank.

3. Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a state or federal agency responsible for the regulation or supervision of any Bank activity.

4. Information obtained from the state department of banking and financial institutions which would not be available from that agency under section 6-01-07.1.

Approved March 26, 1981

CHAPTER 126

HOUSE BILL NO. 1188
(Committee on Industry, Business, and Labor)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA ADVISORY BOARD

AN ACT to amend and reenact section 6-09.1-02 of the North Dakota Century Code, relating to the Bank of North Dakota advisory board of directors.

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

SECTION 1. AMENDMENT. Section 6-09.1-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.1-02. BANK OF NORTH DAKOTA ADVISORY BOARD OF DIRECTORS. The governor of North Dakota shall appoint an advisory board of directors to the Bank of North Dakota consisting of seven persons, at least two of whom shall be officers of banks, the majority of the stock of which is owned by North Dakota residents, and at least one of ~~which~~ whom shall be an officer of a state or federally chartered financial institution. The governor shall appoint a chairman, vice chairman, and secretary from the advisory board of directors. The term of the directors shall be four years. ~~The five-member advisory board of directors existing prior to July 1, 1979, shall continue to serve until expiration of their terms or until their successors have been appointed.~~ The industrial commission shall define the duties and fix the compensation of the advisory board of directors.

Approved March 2, 1981

CHAPTER 127

HOUSE BILL NO. 1169
(Committee on Industry, Business, and Labor)
(At the request of the Bank of North Dakota)

INDUSTRIAL DEVELOPMENT LOAN STANDARDS

AN ACT to repeal section 6-09.1-04 of the North Dakota Century Code, relating to standards to be followed by the Bank of North Dakota in sponsoring first mortgage industrial development loans in cooperation with private lenders.

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

SECTION 1. REPEAL. Section 6-09.1-04 of the North Dakota Century Code is hereby repealed.

Approved February 4, 1981

CHAPTER 128

HOUSE BILL NO. 1397
(Rued)

INDUSTRIAL REVENUE BOND GUARANTEE PROGRAM

AN ACT to create and enact a new section to chapter 40-57 of the North Dakota Century Code, relating to a bond issuance fee to be assessed against all evidence of indebtedness issued pursuant to chapter 40-57; and to amend and reenact chapter 6-09.2 of the North Dakota Century Code, relating to the guarantee of municipal industrial development revenue bonds issued pursuant to chapter 40-57 instead of real estate mortgages.

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

SECTION 1. AMENDMENT. Chapter 6-09.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-01. INDUSTRIAL ~~BUILDING-AND-AGRICULTURAL~~ DEVELOPMENT ~~MORTGAGE~~ REVENUE BOND GUARANTEE PROGRAM - ADMINISTRATION. The ~~Bank of North Dakota~~ business and industrial development department shall administer an industrial ~~building--and--agricultural~~ development ~~mortgage~~ revenue bond guarantee program as provided in this chapter.

6-09.2-02. PURPOSE. It is declared that a statewide need exists for ~~agricultural~~ industrial development~~,--and--for--industrial buildings--and--expansion--of--existing-industrial-buildings~~. It is also declared that it is in the interest of the public welfare and purpose to promote the expansion and diversification of ~~agriculture and~~ industry, to increase employment, and to provide a larger taxable base for the economy of the state of North Dakota. Therefore, the industrial ~~building--and--agricultural~~ development ~~mortgage~~ revenue bond guarantee program is created to encourage the ~~making-of-mortgage-loans~~ purchase of industrial revenue bonds issued pursuant to chapter 40-57, for the purpose of furthering industrial expansion and ~~agricultural~~ development in the state, and thus improve the welfare of the public for the foregoing reasons and, by the stimulation of a larger flow of ~~private~~ investment funds ~~from banks,--building--and-loan-associations,--credit-unions,-savings-and loan--associations,--insurance--companies,---and---other---financial institutions,--including--pension,--retirement,--and--profit-sharing~~

~~funds,~~ to meet the needs of ~~agricultural~~ industrial development ~~and industrial plant expansions~~.

6-09.2-03. DEFINITIONS. As used in this chapter, the following words ~~and terms shall have the following meanings unless the context shall indicate another meaning or intent~~ include or mean:

1. ~~"Bank" shall mean~~ "Department" means the ~~Bank of North Dakota~~ business and industrial development department.

2. "Cost of project" ~~shall mean~~ includes the cost or fair market value of construction, excavation, lands, equipment, property rights, easements, financing charges, interest, engineering and legal services, plans, specifications, surveys, cost estimates, studies, and other expenses as may be necessary or incident to the development, construction, equipping, financing, and placing in operation of an industrial ~~or agricultural~~ development project.

3. "Federal agency" ~~shall mean~~ means and ~~include~~ includes the United States of America, the president of the United States of America, and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States of America.

4. ~~a. "Industrial project" shall mean any building, whether or not the Bank has already insured mortgage payments under a mortgage on any such building in accordance with this chapter, or other real estate improvement in North Dakota, and, if a part thereof, the land upon which such building or other real estate improvement may be located, provided that such building or other real estate improvement is to be used:~~

~~(1) By any industry for the manufacturing, processing, or assembling of raw materials or manufactured products, or~~

~~(2) For the providing of research or warehousing facilities for the benefit of any such industry,~~

~~and provided further, that the Bank has determined that such building or other real estate improvement will tend to provide gainful employment for the people of North Dakota, increase the tax base of the economy, and diversify and expand industry so that periods of large scale unemployment and distressed times may be avoided.~~

~~b. "Agricultural development project" shall mean any irrigation construction or irrigation equipment~~

~~purchase,-agricultural-building-construction,-purchase of-agricultural-equipment,--or--other--improvement--to agricultural--real-estate,-whether-or-not-the-Bank-has already-insured-mortgage-payments-under-a-mortgage--on any--land,--building,--or-equipment-referred-to-above, provided--that---the---construction,---purchases,---or improvements--referred-to-above-are-for-the-purpose-of growing,--raising,--processing,--or---furthering---the growth,--raising,-or-processing-of-livestock,-poultry, or-agricultural-crops.~~

"Industrial development project" or "project" includes 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:

a. 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.

b. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacturing, provided that "selling" shall not include the sale of any service except storing, warehousing, and distributing or as provided in subdivision a of subsection 4 nor shall it include the sale at retail of any product except as provided in subdivision a of subsection 4.

5. "Maturity date" ~~shall--mean~~ means the date on which the ~~mortgage~~ revenue bond indebtedness would be extinguished if paid in accordance with ~~periodic-payments-provided-for in-the-mortgage~~ the terms of issuance.

6. ~~"Mortgage"---shall--mean--a--first--mortgage--or--security agreement-on-an--industrial--or--agricultural--development project,---or--part--thereof,--together--with--the--credit instruments-thereby-secured-and-creating-and--constituting a--first--lien--of--record,--provided,--however,--a-"first mortgage"-shall-include-a-second-or-subsequent-mortgage-or security---agreement--on--an--industrial--or--agricultural development-project-if:~~

~~a.---The--holder--of--such-second-or-subsequent-mortgage-or security-agreement-is--also--the--holder--of--a--prior mortgage--or--security--agreement-on-the-industrial-or~~

~~agricultural-development--project--under--which--prior mortgage--or--security--agreement--the-Bank-is-already insuring-mortgage-payments.~~

~~b.--No--other--person-or-legal-entity-holds-an-intervening mortgage,--security--interest,---or---lien---on---such industrial--or--agricultural-development-project-prior to-such-second--or--subsequent--mortgage--or--security interest.~~

"Industrial development revenue bond" means an evidence of indebtedness issued pursuant to chapter 40-57 to fund the cost of an industrial development project, or part thereof, together with the securing instruments.

7. ~~"Mortgagee"-shall-mean-the-original-lender-approved-by-the Bank-under-a-mortgage,-and-its-successors-and-assigns,-and may--include--all--insurance--companies,--trust-companies, banks,-building--and--loan--associations,--credit--unions, savings---and--loan--associations,--investment--companies, savings--banks,--individuals,--executors,--administrators, guardians,--conservators,-trustees,-and-other-fiduciaries, including-pension,-retirement,-and--profit-sharing--funds.~~ "Bondholder" means the holder of the guaranteed industrial development revenue bond.

8. ~~"Mortgagor"--shall-mean-an-individual-or-corporation-which obtains-a-loan-under--the--provisions--of~~ "Issuer" means municipalities as defined in chapter 40-57 which issue evidences of indebtedness which are guaranteed by this chapter and which pledges property as security for such ~~loan~~ evidence of indebtedness as provided in this chapter.

9. ~~"Mortgage---payments"--shall--mean~~ "Debt service" means periodic payments of principal and interest by the ~~mortgagor~~ issuer's project lessee to the ~~mortgagee~~ bondholder required by the ~~mortgage,--and--may--include interest,----installments----of---principal,---taxes---and assessments,--land--lease--rentals,---mortgage---insurance premiums,-and-hazard-insurance-premiums,-or-any-of-them-as the-Bank--may--prescribe~~ covenants of issuance of the evidence of indebtedness and the project lease.

10. "Project lessee" includes the individual, corporation or partnership or combination thereof to whom the project will be leased.

11. "Project lease" means the lease agreement between the issuer and the project lessee the lease rentals from which shall be sufficient to pay all the project costs as required by chapter 40-57.

6-09.2-04. POWERS. In carrying out the provisions of this chapter, the ~~Bank~~ department is authorized and empowered:

1. To ~~insure~~ guarantee the payment of ~~mortgage loans~~ debt service on evidence of indebtedness secured by security interests in an industrial ~~buildings, or agricultural buildings, lands, equipment, or improvements~~ 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. ~~In connection with the insuring of payments of any industrial project mortgage, to request for its guidance a finding of the planning board of the municipality, or if there is no planning board, a finding of the municipal officers of the municipality in which the industrial project is proposed to be located, or of the regional planning board of which such municipality is a member, as to the expediency and advisability of such project.~~

~~4.~~ To enter into agreements with prospective ~~mortgagees~~ bondholders and ~~mortgagors~~ issuers for the purpose of ~~planning, designing, constructing, acquiring, altering, and~~ financing industrial ~~and agricultural~~ 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.

~~5.~~ 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.

~~6.~~ 5. When in the opinion of the ~~Bank~~ department it is necessary or advisable, in order to further the purposes of this chapter, or to safeguard the ~~mortgage insurance~~ bond guarantee fund, ~~to purchase, acquire, take assignments of notes, mortgages, and other forms of security and evidences of indebtedness,~~ to purchase, acquire, attach, seize, accept, or take title to any industrial ~~or agricultural~~ development project, ~~or mortgaged part thereof,~~ by conveyance or, when ~~an insured mortgage thereon is clearly in default, by~~ 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, ~~and to sell~~ 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.

6-09.2-05. DEFAULT BY ~~MORTGAGORS~~ ISSUER. When ~~a mortgagor~~ an issuer's project lessee does not ~~meet mortgage~~ make debt service payments ~~insured~~ guaranteed by the ~~Bank by reason of its industrial or agricultural development project~~ department's bond guarantee fund, the ~~Bank,~~ department for the purpose of maintaining income from industrial ~~or agricultural~~ development projects on which ~~mortgage loans~~ bonds have been ~~insured~~ guaranteed by the ~~Bank~~ department and for the purpose of safeguarding the ~~mortgage insurance~~ bond guarantee fund, may grant the ~~mortgagor~~ 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 ~~Bank~~ department 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.

6-09.2-06. ~~MORTGAGE INSURANCE~~ BOND GUARANTEE FUND.

1. There is hereby created an industrial ~~building and agricultural~~ development ~~mortgage insurance~~ revenue bond fund, hereinafter in this chapter referred to as the "fund" which shall be used by the ~~Bank~~ department as a nonlapsing, revolving fund for carrying out the provisions of this chapter. Within the fund are hereby created the following accounts, a debt service guarantee account, an administration account, a debt service reserve account and a debt service principal and interest account. The fund shall include the funds appropriated by section 13 of chapter 112 of the 1971 Session Laws which shall be deposited in the fund debt service guarantee account and all accumulated earnings from the investment of the fund since the appropriation in 1971 shall be deposited in the fund administration account. To ~~this~~ the fund administration account shall be charged any and all expenses of the ~~Bank~~ department necessary for ~~this purpose, including mortgage~~ administration of this chapter, except debt service payments required by ~~loan~~ defaults, and ~~to the fund shall be credited all mortgage insurance premiums and~~ all debt service guarantee account charges. Net proceeds from the sale, disposal, lease, or rental of real or personal property which the ~~Bank~~ department may receive under the provisions of this chapter shall be deposited in the debt service guarantee account. The department may issue evidence of indebtedness payable from anticipated revenues of the fund.

2. Moneys in the fund not currently needed to meet the expenses and obligations incurred in carrying out the provisions of this chapter may be invested by the ~~Bank~~ department through the Bank of North Dakota as provided by law.

6-09.2-07. ~~INSURANCE~~ GUARANTEE OF ~~MORTGAGES~~ BONDS. The ~~Bank~~ department, as the administrator of the fund created in this chapter, is authorized, upon application of the proposed ~~mortgagee~~ issuer, to ~~insure mortgage~~ guarantee debt service payments required by ~~a--mortgage~~ evidence of indebtedness on any industrial ~~or agricultural~~ development project, or ~~mortgaged~~ part thereof, upon such terms and conditions as the ~~Bank~~ department may prescribe, and subject to the limitations of this chapter, provided the aggregate amount of the unpaid principal balance of all obligations of all ~~mortgages~~ evidence of indebtedness so ~~insured~~ guaranteed outstanding at any one time shall not exceed ~~five million dollars~~ twenty times the unencumbered balance in the fund debt service guarantee account. To be eligible for ~~insurance~~ guarantee under the provisions of this chapter ~~a mortgage~~ bonds shall:

1. Be ~~one--which is made to and held by a mortgagee approved by the Bank~~ 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 ~~Bank, not to exceed ninety percent of the cost of any project~~ department.

3. Have a maturity date satisfactory to the ~~Bank~~ department, but in no case later than ~~twenty five~~ forty years from the date of ~~the mortgage~~ issuance for any project.

4. Contain complete amortization provisions satisfactory to the ~~Bank~~ department requiring periodic payments, costs of local property taxes and assessments, land lease rentals, if any, and hazard insurance on the property and such ~~mortgage--insurance--premiums~~ bond guarantee fees as are required under section 6-09.2-08, all as the ~~Bank~~ department 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 ~~Bank~~ department may prescribe.

6-09.2-08. ~~MORTGAGE---INSURANCE---PREMIUMS.---The--Bank--is authorized-to-fix-mortgage-insurance-premiums-for-the--insurance--of mortgage--payments--under--the--provisions--of--this--chapter,--such premiums-to-be-computed-as-a--percentage,--which--shall--not--exceed three-percent-per-annum,-of-the-principal-obligation-of-the-mortgage in-such-manner-in-each-case-as-the-Bank-shall-determine-on-the-basis of--all-pertinent-available-data.---Such-premiums-shall-be-payable-by the-mortgagors--or--the--mortgagees--in--such--manner--as--shall--be prescribed--by--the-Bank.---The-amount-of-premium-need-not-be-uniform among-the-various-loans-insured.~~

BOND GUARANTEE FEES. The department shall charge three percent of the principal obligation of the evidence of indebtedness as a fee for guaranty of debt service payments on evidence of indebtedness guaranteed by the fund debt service guarantee account which shall be deposited in the fund debt service guarantee account. The department 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. Such fees shall be payable by the issuer's project lessee in such manner as shall be prescribed by the department. Earnings on the investment of any accounts held by the fund shall be first deposited in the fund administration account. Any moneys declared by the department 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.

6-09.2-09. EXPENSES. The ~~Bank~~ department, subject to the approval of the business and industrial development commission, may expend out of the fund administration account such moneys as may be necessary for any expenses of the ~~Bank~~ department in carrying out the provisions of this chapter~~,-including-administrative,-legal,-actuarial,-and-other-services~~.

6-09.2-10. ~~MORTGAGES~~ BONDS ELIGIBLE FOR INVESTMENT. ~~Mortgages-insured~~ Evidence of indebtedness bonds guaranteed by the ~~Bank~~ department under this chapter ~~and-participations-therein~~ are hereby made legal investments for all insurance companies, trust companies, banks, investment companies, savings banks, building and loan associations, 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.

6-09.2-11. LIMITATION - CREDIT OF ~~BANK~~ DEPARTMENT AND STATE NOT PLEDGED. Nothing in this chapter shall be construed to authorize or permit the ~~Bank~~ department or any officer thereof to create any indebtedness of the ~~Bank~~ department or of ~~the--state--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 this chapter and the revenues appropriated and accumulated therein.

SECTION 2. A new section to chapter 40-57 of the North Dakota Century Code is hereby created and enacted to read as follows:

A bond issuance fee or excise in lieu of taxes of two percent of the principal amount of all evidence of indebtedness issued pursuant to this chapter and guaranteed by the industrial development revenue bond guarantee program is hereby imposed and shall be assessed by the issuing municipality and collected at or before the time of sale. The bond issuance fee or tax shall not exceed two hundred thousand dollars. The fee or tax shall be transmitted and is hereby appropriated to the business and industrial development department for deposit in the fund debt service guarantee account created by section 6-09.2-06. The bond issuance fee or tax shall not be charged on exchange or refunding of evidence of indebtedness. The fee or tax shall be assessed on all original issues sold after the effective date of this section.

Approved March 18, 1981

CHAPTER 129

HOUSE BILL NO. 1049
(Legislative Council)
(Interim Budget "B" Committee)

DEVELOPMENTALLY DISABLED FACILITY LOAN PROGRAM

AN ACT to establish a revolving loan fund at the Bank of North Dakota for construction, reconstruction, or acquisition of intermediate care facilities for developmentally disabled persons and residential facilities for physically disabled persons; to amend chapter 422 of the 1969 Session Laws of North Dakota, relating to termination of revolving loans by the Bank of North Dakota; to provide an appropriation; to provide effective dates; and to provide expiration dates.

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

SECTION 1. REVOLVING LOAN FUND. A revolving loan fund shall be maintained in the Bank of North Dakota, for the purpose of making loans to nonprofit corporations for the construction, reconstruction, or acquisition of intermediate care facilities for developmentally disabled persons and residential facilities for physically disabled persons. All moneys transferred into the fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund are hereby appropriated for the purpose of providing loans in accordance with the provisions of this Act.

SECTION 2. ADMINISTRATION OF REVOLVING FUND. The revolving fund and loans made therefrom shall be supervised and administered by the Bank of North Dakota. All applications for loans under the provisions of this Act shall be made to the state department of health. The department may promulgate rules, pursuant to chapter 28-32, to carry out the provisions of this Act. Applications approved by the department shall be forwarded to the Bank of North Dakota. Upon approval of such application by the Bank of North Dakota, loans shall be made from the revolving fund in accordance with the provisions of this Act.

SECTION 3. ADMINISTRATION OF REVOLVING FUND. The revolving fund and loans made therefrom shall be supervised and administered by the Bank of North Dakota. All applications for loans under the provisions of this Act shall be made to the state department of

human services. The department may promulgate rules, pursuant to chapter 28-32, to carry out the provisions of this Act. Applications approved by the department, in consultation with the state department of health, shall be forwarded to the Bank of North Dakota. Upon approval of such application by the Bank of North Dakota, loans shall be made from the revolving fund in accordance with the provisions of this Act.

SECTION 4. AMOUNT OF LOAN - TERMS AND CONDITIONS. Loans in an amount not exceeding three-fourths of the cost of construction, reconstruction, or acquisition, including the cost or value of real estate upon which the facility is located, and in no event exceeding three hundred thousand dollars to any one applicant, shall be made by the Bank of North Dakota to nonprofit corporations to be used in the construction, reconstruction, or acquisition of intermediate care facilities in this state for developmentally disabled persons and residential facilities for physically disabled persons. Such loans shall bear interest at a rate of five percent, and shall be repayable in the manner prescribed by the Bank of North Dakota within a period of not more than twenty-five years. In addition, in consideration of the granting of a loan under this Act, each nonprofit corporation shall execute a contract with the state to operate the facility in accordance with the standards prescribed for the licensing of the facility by the state department of health. The contract shall also provide that if the use of the facility is discontinued or diverted to other purposes, the full amount of the loan provided under this Act shall immediately become due and payable. The Bank of North Dakota may deduct one-half of one percent of the outstanding loans annually as a service fee for administering the revolving fund. Payments of interest and principal on loans made under this Act shall be made to the Bank of North Dakota and credited to the revolving fund.

SECTION 5. AMOUNT OF LOAN - TERMS AND CONDITIONS. Loans in an amount not exceeding three-fourths of the cost of construction, reconstruction, or acquisition, including the cost or value of real estate upon which the facility is located, and in no event exceeding three hundred thousand dollars to any one applicant, shall be made by the Bank of North Dakota to nonprofit corporations to be used in the construction, reconstruction, or acquisition of intermediate care facilities in this state for developmentally disabled persons and residential facilities for physically disabled persons. Such loans shall bear interest at a rate of five percent, and shall be repayable in the manner prescribed by the Bank of North Dakota within a period of not more than twenty-five years. In addition, in consideration of the granting of a loan under this Act, each nonprofit corporation shall execute a contract with the state to operate the facility in accordance with the standards prescribed for the licensing of the facility by the state department of human services. The contract shall also provide that if the use of the facility is discontinued or diverted to other purposes, the full amount of the loan provided under this Act shall immediately become due and payable. The Bank of North Dakota may deduct one-half of one percent of the outstanding loans annually as a service fee for

administering the revolving fund. Payments of interest and principal on loans made under this Act shall be made to the Bank of North Dakota and credited to the revolving fund.

SECTION 6. STANDARDS - ADMINISTRATION PROCEDURE. The state department of health, shall establish standards of construction which shall be followed by all applicants receiving loans of funds for the construction, reconstruction, or acquisition of intermediate care facilities for developmentally disabled persons and residential facilities for physically disabled persons.

SECTION 7. POWERS OF BANK OF NORTH DAKOTA. The Bank of North Dakota may do all acts or things necessary to negotiate loans under this Act, including the power to take such security as deemed necessary, and to bring suit against any nonprofit corporation in order to collect interest and principal due the revolving fund under mortgages, contracts, and notes executed to obtain loans under the provisions of this Act. If the applicant's plan for financing provides for a loan of funds from sources other than the state of North Dakota, then the Bank of North Dakota shall take a second mortgage upon the facilities constructed or reconstructed from the proceeds of the loan.

SECTION 8. APPROPRIATION. There is hereby appropriated out of any moneys in the land and minerals trust fund, not otherwise appropriated, the sum of $4,000,000, or so much thereof as may be necessary, to the Bank of North Dakota for deposit in the revolving fund created by this Act which fund is to provide loans for intermediate care facilities for developmentally disabled persons and residential facilities for physically disabled persons as provided in this Act. During the 1981-83 biennium the Bank of North Dakota shall approve loans only for the acquisition, construction, or reconstruction of intermediate care facilities in geographical areas included in the plan for such facilities approved by the legislative assembly. Six hundred thousand dollars, or so much thereof as may be necessary, of the amount appropriated by this section shall be available for loans to nonprofit corporations to construct residential facilities for physically disabled persons.

SECTION 9. AMENDMENT. Section 1 of chapter 422 of the 1969 Session Laws is hereby amended and reenacted to read as follows:

SECTION 1. TERMINATION OF THE MAKING OF LOANS BY THE BANK OF NORTH DAKOTA TO NURSING HOMES - TRANSFER OF FUNDS TO ~~GENERAL~~ REVOLVING FUND. Notwithstanding the provisions of sections 50-21-01, 50-21-02, 50-21-02.1, 50-21-03, 50-21-04, and 50-21-05, the Bank of North Dakota shall make no new loans from the revolving loan fund to nursing homes and homes for the aged and infirm. It is the intent of the legislative assembly that loans made pursuant to the provisions of this chapter be discontinued beginning with the effective date of this Act. The balance in the revolving loan fund on July 1, 1969, shall be transferred to the general fund and all payments made to the revolving loan fund after that date shall be transferred monthly by the manager of the Bank of North Dakota to

the ~~general-fund~~ revolving loan fund created by House Bill No. 1049 of the forty-seventh legislative assembly.

SECTION 10. EFFECTIVE DATES. Sections 3 and 5 of this Act shall become effective on January 1, 1982.

SECTION 11. EXPIRATION DATES. Sections 2 and 4 of this Act shall be effective through December 31, 1981, and after that date shall be ineffective.

Approved April 6, 1981

CHAPTER 130

SENATE BILL NO. 2374
(Vosper, Tallackson)

FUEL PRODUCTION FACILITY LOAN GUARANTEE PROGRAM

AN ACT to authorize the Bank of North Dakota to guarantee loans used for the construction of community-sized agriculturally derived fuel production facilities.

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

SECTION 1. GUARANTEE LOAN PROGRAM - ADMINISTRATION - ADVISORY BOARD. The Bank of North Dakota shall administer the state guarantee loan program as provided in this Act. The advisory board of directors to the Bank of North Dakota appointed pursuant to chapter 6-09.1 shall act in an advisory capacity concerning the program. The Bank, upon recommendation of the advisory board, and subject to approval of the industrial commission, may expend moneys from the interest earned from the principal balance in the reserve fund established pursuant to this Act as may be necessary to implement the program.

SECTION 2. POWERS AND DUTIES OF THE BANK OF NORTH DAKOTA. The Bank of North Dakota may:

1. Guarantee the loan of money by eligible banks, credit unions, and savings and loan associations, upon such terms, conditions, and procedures as it may establish in accordance with the provisions of this Act, to any qualified person to assist that person in constructing agriculturally derived fuel production facilities of a size to serve the community in or near which the facility is located. The facility must use grain-related and biomass farm products for agriculturally derived fuel production.

2. Take, hold, and administer, on behalf of the state from any source, any property, or any interest therein, and the income therefrom, either absolutely or in trust, for any purpose of the guarantee loan program, provided that no guarantee obligation of the Bank shall be payable out of

any moneys of the Bank except those made available to it under this Act.

3. Adopt standards governing the qualifications and financial needs of applicants, and establish a method of application for the guaranteeing of loans which may be made by banks, credit unions, and savings and loan associations, and any other standards as may be necessary to administer properly this Act.

SECTION 3. EXTENT OF LOAN GUARANTEE. The extent of the loan guarantee under this Act may not exceed twenty-five percent of the total loan. The maximum dollar amount of any guarantee on a single loan may not exceed two million five hundred thousand dollars. The extent of the value of all loan guarantees under this Act may not, at any one time, exceed ten million dollars.

SECTION 4. BANK TO PRESCRIBE THE RATE OF INTEREST ON GUARANTEED LOAN. Any loan guaranteed by the Bank of North Dakota shall bear interest at a rate not in excess of the interest charged by the lender to other persons for similar types of loans not guaranteed by the Bank unless the Bank determines that a higher rate of interest is justified by special circumstances and would be consistent with the general objectives of this Act.

SECTION 5. ESTABLISHMENT AND MAINTENANCE OF ADEQUATE GUARANTEE FUNDS - USE OF LANDS AND MINERALS TRUST. The Bank of North Dakota shall establish and at all times maintain an adequate guarantee reserve fund in a special account in the Bank. The guarantee reserve fund shall be maintained from the lands and minerals trust created by section 15-08.1-08 and any moneys transferred from the lands and minerals trust to maintain the guarantee reserve fund are available to reimburse lenders for guaranteed loans in default. The securities in which the moneys in the reserve fund may be invested shall meet the same requirements as those authorized for investment under the state investment board. The income from such investments shall be made available for the costs of administering the state guarantee loan program and income in excess of that required to pay the cost of administering the program shall be deposited in the reserve fund. The amount of reserves for all guaranteed loans shall be determined by a formula which will assure as determined by the Bank, an adequate amount of reserve.

SECTION 6. PROCEDURE ON DEFAULT OF GUARANTEED LOAN. Whenever it appears to the satisfaction of the Bank of North Dakota that a guaranteed loan is in default, and the eligible lender has certified this fact to the Bank, the Bank shall reimburse the eligible lender making the loan from the reserve fund to the extent the loan was guaranteed by the fund. Whenever payment of the guaranteed principal balance of any guaranteed loan is demanded of the Bank, the note and accompanying evidence of the loan shall be tendered to the Bank in manner and form to confer good title so that the loan may be collected by the Bank as it may determine according to law.

No statute of limitations may be used as a defense against collection, through court proceedings, of any loan guaranteed under this Act.

SECTION 7. FEES FOR REASONABLE COSTS. The Bank of North Dakota may charge reasonable fees for guaranteeing of loans under this Act, and the fees shall be available to defray costs of administering the state guarantee loan program. Fees in excess of the amount required to pay the cost of administering the program shall be deposited in the reserve fund.

SECTION 8. LIMITATION ON ADDITIONAL STATE AID. Any person whose application for a loan guarantee under this Act is approved shall not be eligible to receive additional aid in the form of a loan, grant, or guarantee from any state agency, department, or instrumentality.

Approved April 8, 1981

CARRIAGE

CHAPTER 131

SENATE BILL NO. 2251
(Olin, Lips)

RIDESHARING ARRANGEMENTS

AN ACT to define ridesharing arrangements; to create and enact a new subdivision to subsection 2 of section 26-41-10, new subsections to sections 32-12.1-03 and 49-18-02 of the North Dakota Century Code, relating to priority of applicable security for basic no-fault benefits, political subdivision liability, and motor carrier regulation; and to amend and reenact sections 3-03-09, 8-07-01, 32-12.1-15, subsection 2 of section 34-06-01, subsections 3 and 6 of section 39-01-01, subsection 3 of section 39-01-08, and subsection 27 of section 40-05-01 of the North Dakota Century Code, relating to agents' negligence, common carriers, state and political subdivision liability, minimum wages and hours, motor vehicle regulation, and powers of municipalities.

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

SECTION 1. RIDESHARING ARRANGEMENT - DEFINITION.

1. "Carpool" means a ridesharing arrangement in a private passenger automobile or station wagon by two or more persons, regardless of their relationship to each other, to and from common or nearby employment sites. The term includes:

   a. Shared-driving, in which the car of each person in the arrangement is used and alternated on an agreed upon schedule; and

   b. Shared-riding, in which the same car is used during the arrangement and each member contributes an agreed-upon amount to compensate for the cost of operating the pool.

2. "Ridesharing arrangement" means the transportation of persons in a motor vehicle where the transportation is incidental to another purpose of the driver or owner and is not provided for pecuniary gain. The term shall

include ridesharing arrangements known as carpools and vanpools.

3. "Vanpool" means a ridesharing arrangement by a prearranged membership group whose members are picked up at specified points to be taken to and from common or nearby employment sites. The vanpool members each contribute an agreed-upon amount to compensate for the cost of operating the pool, the motor vehicle used is other than a passenger automobile or station wagon, and is manufactured and equipped to carry not more than fifteen persons, including the driver. The vanpool may be owner-operated or employer-sponsored.

SECTION 2. AMENDMENT. Section 3-03-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3-03-09. NEGLIGENCE OF AGENT. Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of ~~his~~ the principal's agent in the transaction of the business of the agency, including wrongful acts committed by ~~such~~ the agent in and as a part of the transaction of ~~such~~ the business, and for ~~his~~ the agent's willful omission to fulfill the obligations of the principal. The principal is not responsible for ~~no other wrongs committed by his agent unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.~~:

1. Other wrongs committed by the principal's agent unless the principal has authorized or ratified them, even though they are committed while the agent is engaged in the principal's service.

2. Injuries or death to passengers and other persons or damage to properties resulting from:

   a. Operation or use of a motor vehicle, not owned, leased, or contracted for by the principal in a ridesharing arrangement, as defined in section 1 of this Act.

   b. Information, incentives, or other encouragement to agents to participate in a ridesharing arrangement, as defined in section 1 of this Act.

SECTION 3. AMENDMENT. Section 8-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8-07-01. COMMON CARRIER - DEFINITION. Everyone who offers to the public to carry persons, property, or messages is a common carrier of whatever ~~he thus~~ or whoever the person offers to carry. Provided, everyone who offers to carry persons under a ridesharing arrangement, as defined in section 1 of this Act, is not a common carrier of whoever the person offers to carry.

SECTION 4. A new subdivision to subsection 2 of section 26-41-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

As to any person injured while occupying a secured motor vehicle which is transporting persons under a ridesharing arrangement, as defined in section 1 of this Act, the benefit shall be payable by the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle; and, if there is no basic no-fault insurer affording benefits to the injured person, then the benefits shall be payable to the injured person by the basic no-fault insurer of the secured motor vehicle.

SECTION 5. A new subsection to section 32-12.1-03 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Notwithstanding the provisions of this chapter, a political subdivision or its insurance carrier is not liable for any claim arising out of the conduct of a ridesharing arrangement, as defined in section 1 of this Act.

SECTION 6. AMENDMENT. Section 32-12.1-15 of the 1979 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.

1. The state ~~of North Dakota~~ or any state agency, bureau, or department ~~is hereby authorized to~~ may insure against liabilities provided by this chapter for its own protection and for the protection of any state employee. If a premium savings will result therefrom, ~~such~~ the policies of insurance may be taken out for more than one year, but in no event beyond a period of five years.

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 ~~such~~ 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 1 of this Act.

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 ~~such~~ 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 ~~he~~ the attorney general shall represent, and the other employee may employ counsel to represent ~~him~~ 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.

SECTION 7. AMENDMENT. Subsection 2 of section 34-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Employee" includes any individual employed by an employer. Provided, an individual is not an "employee" while engaged in a ridesharing arrangement, as defined in section 1 of this Act.

SECTION 8. AMENDMENT. Subsections 3 and 6 of section 39-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. Provided, every motor vehicle designed for carrying not more than fifteen persons and used for a ridesharing arrangement, as defined in section 1 of this Act, is not a "bus".

6. "Commercial passenger transportation" means the carriage of passengers for hire, except that ~~such~~ the term shall not include:

   a. The carriage of passengers within the limits of a city~~,~~ ~~or~~.

   b. The carriage by local buslines of passengers to or from a railroad station from or to places within any city or within two miles [3.22 kilometers] of the limits ~~thereof~~ of the city.

   c. The carriage of passengers under a ridesharing arrangement, as defined in section 1 of this Act.

* SECTION 9. AMENDMENT. Subsection 3 of section 39-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. If insurance is purchased pursuant to subsection 1, then the purchaser waives its immunity against liability only to the types of its insurance coverage and only to the extent of the policy limits of ~~such~~ 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 1 of this Act.

SECTION 10. AMENDMENT. Subsection 27 of section 40-05-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27. Regulation and license of draymen, taxi drivers, porters, and others pursuing like occupations. To license, tax, regulate, and prescribe the rates charged by draymen, parcel delivery men, busdrivers, taxi drivers, porters, expressmen, watermen, and others pursuing like occupations, and the operation of taxicabs. Provided, all motor vehicles used in ridesharing arrangements, as defined in section 1 of this Act, are not taxicabs.

SECTION 11. A new subsection to section 49-18-02 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To the transportation of persons in a motor vehicle under a ridesharing agreement, as defined in section 1 of this Act.

Approved March 25, 1981

* NOTE: Section 39-01-08 was also amended by section 24 of House Bill No. 1069, chapter 91.

CORPORATIONS

CHAPTER 132

SENATE BILL NO. 2093
(Committee on Industry, Business, and Labor)
(At the request of the Securities Commissioner)

SECURITIES ACT EXEMPTIONS AND REGISTRATION

AN ACT to amend and reenact subsections 8 and 12 of section 10-04-02 of the North Dakota Century Code, relating to the definitions of "salesman" and "security"; to amend and reenact subsections 2, 7, and 9 of section 10-04-05 of the North Dakota Century Code, relating to exemptions for international banks, commercial paper, and cooperatives; to amend and reenact subsection 7 of section 10-04-06 of the North Dakota Century Code, relating to a transactional exemption for convertible securities; to amend and reenact subsections 2 and 5 of section 10-04-10 of the North Dakota Century Code, relating to salesman registration and record and renewal of registrations; to amend and reenact section 10-04-11 of the North Dakota Century Code, relating to suspension or revocation of dealer's, salesman's, or investment adviser's registration; to amend and reenact section 10-04-17 of the North Dakota Century Code, relating to civil remedies; and to amend and reenact section 10-04-18 of the North Dakota Century Code, relating to criminal penalties.

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

SECTION 1. AMENDMENT. Subsections 8 and 12 of section 10-04-02 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

8. "Salesman" shall mean ~~an~~ any individual, other than a dealer ~~or an officer or director or member of a partnership or firm of a licensed issuer, and may be an employee or appointee or authorized by a dealer or an issuer to sell securities in this state, or be self-employed, in the business of selling a specific security or securities, which have been registered by description or by qualification in this state~~, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. A partner, officer, or director of a dealer or an issuer or a person occupying a similar status or performing similar

functions is a "salesman" only if he otherwise comes within the definition.

12. "Security" shall mean any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, certificate of interest or participation in an oil, gas, or ~~other--mineral--rights~~ mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise, investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture, voting-trust certificate, certificate of deposit for a security, or beneficial interest in title to property, profits, or earnings, or, in general, any ~~other~~ interest or instrument commonly known as a ~~security~~ "security", ~~including~~ or any ~~guarantee of~~ certificate of interest or participation in, temporary or interim certificate ~~of interest or participation in~~ for, receipt for, guarantee of, or warrant or right to subscribe to~~, convert into,~~ or purchase, any of the foregoing.

SECTION 2. AMENDMENT. Subsections 2, 7, and 9 of section 10-04-05 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Securities issued by a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of the Congress of the United States ~~of--America~~ and supervised by the United States ~~of America~~, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by a state bank, trust company, savings bank, savings institution, or credit union incorporated under the laws of this state and subject to supervision by this state or by any agency thereof, and securities of any person subject to examination by the commissioner of banking and financial institutions of North Dakota.

7. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, is not the subject of a public offering, is prime quality negotiable commercial paper which is

eligible for discounting by federal reserve banks, has at the time of issuance a definite maturity (after all days of grace, if any) of not exceeding ~~one year~~ nine months, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.

9. Securities issued by any ~~association, corporation, or~~ cooperative formed under the statutes of the state of North Dakota~~, whose earnings are distributed to its members, stockholders, or patrons according to patronage~~.

SECTION 3. AMENDMENT. Subsection 7 of section 10-04-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered ~~in exchange~~ to make such conversion, provided that the securities surrendered were not offered for sale or sold in violation of section 10-04-04.

SECTION 4. AMENDMENT. Subsections 2 and 5 of section 10-04-10 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Salesmen. Application for registration as a salesman may be made by any individual eighteen years of age or older. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, shall be filed in the office of the commissioner and shall contain the following information:

   a. Name and residence and business address of the applicant.

   b. Name of the dealer or issuer employing or proposing to employ the applicant, unless the applicant is to be self-employed.

   c. Names and addresses of three persons of whom the commissioner may inquire as to the character and business reputation of the applicant.

   d. Applicant's age and education.

   e. The nature of employment and names and addresses of employers of the applicant for the period of ten years immediately preceding the date of application.

f. Other state or federal laws under which the applicant has ever been registered as a dealer or salesman of securities, and, if any such registration has ever been refused, canceled, suspended, or revoked, full details with respect thereto.

g. Whether applicant has ever been convicted of a felony or misdemeanor other than minor highway traffic offenses, and if so, all pertinent information with respect to any such conviction.

The commissioner shall require as a condition of registration that the applicant, and, in the case of a corporation or partnership, all officers, directors, or partners doing securities business in this state, pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers of an issuer may be registered as a salesman for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer may again register within five years as such salesman for this or any other issuer without passing the written examination. ~~All--salesmen--currently--registered-on-June-30,-1961,-who have-been-continuously-registered-as--securities--salesmen in--the-state-of-North-Dakota-since-July-1,-1958,-may-have their-registrations-renewed-without-being-required-to-pass such-written-examination.---Such-examination-shall-be-given once-each-month-in-the-capital-city-and-at-least-once-each quarter--in--other--locations--in--the-state,-the-time-and place--of--such--examination--to--be--designated--by---the securities-commissioner.~~

The commissioner may also require such additional information as to the applicant's previous business experience as he may deem necessary to determine whether or not the applicant should be registered as a salesman under the provisions of this law. If a salesman proposes to be self-employed, he shall specifically state the particular security or securities he proposes to sell in this state in his application, and if said security or securities are exempt under section 10-04-05, or have been registered by description under section 10-04-07, or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner shall require that said self-employed salesman file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed salesman with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond shall be in a form approved and in the amount required by the commissioner. There shall be filed with

such application payment of the prescribed registration fee, which shall be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a salesman unless he finds that such applicant is not of good business reputation, or that the dealer named on the application is not a registered dealer. When the commissioner has registered an applicant as a salesman, he shall immediately notify the applicant of such registration.

Every registered dealer or issuer shall promptly notify the commissioner of the termination of the employment by him of a registered salesman. The registration of such salesman shall automatically be suspended from the time of termination of such employment until such time as he shall notify the commissioner of his employment by another registered dealer or issuer.

5. Record and renewal of registrations. The names and addresses of all persons who have been registered as dealers, salesmen, or investment advisers, and all orders with respect thereto, shall be recorded in a register of dealers, salesmen, and investment advisers in the office of the commissioner. Every registration under this section shall expire ~~on the first day of May in each year. Registration of dealers, salesmen, and investment advisers may be renewed each year, at any time not less than fifteen and not more than sixty days before expiration thereof, by (1) the payment of the proper registration fee and (2) in the case of a dealer or investment adviser, the filing of a financial statement, prepared in accordance with standard accounting practice and certified to by an independent certified public accountant or by a responsible officer or member, showing the financial condition of such dealer or investment adviser as of the most recent practicable date~~ one year from its effective date unless renewed. The commissioner may by rule provide for expirations and renewals, including dates, forms, and procedures, adjust registration fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange. Upon any change in the proprietors, partners, officers, or directors of a registered dealer or investment adviser, such registered dealer or investment adviser shall promptly notify the commissioner in writing of such changes. The commissioner shall record such changes,

without fee, in the register of dealers, salesmen, and investment advisers.

SECTION 5. AMENDMENT. Section 10-04-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-11. SUSPENSION OR REVOCATION OF DEALER'S, SALESMAN'S, AND INVESTMENT ADVISER'S REGISTRATION.

1. The commissioner may revoke the registration of any dealer, salesman, or investment adviser if, after a hearing or opportunity for hearing as provided in section 10-04-12, he finds that such registered dealer, salesman, or investment adviser:

~~1.~~ a. Has violated or failed to comply with, any provisions of this chapter or any order or rule of the commissioner under this chapter; or

~~2.~~ b. Is, in the case of a dealer or investment adviser, insolvent; or

~~3.~~ c. Has ~~been--guilty-of-any-fraudulent-act-or-practice-in connection-with-the-purchase-or-sale-of-any-securities~~ engaged in dishonest, fraudulent, or unethical practices in the securities business; or

~~4.~~ d. Conducts business in purchasing or selling securities at such variations from current market prices as, in the light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner; or

~~5.~~ e. Has failed to file with the commissioner any financial statement required pursuant to subsection ~~(A)~~ 3 of this section, or has refused to permit an examination into his affairs as provided by subsection ~~(A)~~ 3 of this section; or

~~6.~~ f. Has filed an application for registration which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

~~7.~~ g. Has been convicted of an offense determined by the commissioner to have a direct bearing upon a person's ability to serve the public as a dealer, salesman, or investment adviser, or the commissioner finds that a

person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1; or

~~8.~~ h. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or

~~9.~~ i. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, salesman, or investment adviser; or

~~10.~~ j. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a dealer, salesman, or investment adviser, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the securities and exchange commission suspending or expelling him from a national securities exchange or national securities association; or is the subject of a United States post-office fraud order, but the commissioner may not enter an order under this subsection on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order of revocation or suspension under this section; or

~~11.~~ k. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase or sale of the security~~.~~; or

l. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business; or

m. Has failed reasonably to supervise his salesmen if he is a dealer or his employees if he is an investment adviser.

2. It shall be sufficient cause for revocation of registration of a dealer or investment adviser as provided in this section, in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be sufficient ground for revoking the registration of an individual dealer or investment adviser.

~~(A)~~ 3. The commissioner may require any registered dealer, salesman, or investment adviser to make and keep such accounts, correspondence, memoranda, papers, books, and other records as he deems necessary to efficiently administer this chapter. Such records shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records. The commissioner may at any time require a registered dealer or investment adviser to file with him a financial statement showing the financial condition of such dealer or investment adviser as of the most recent practicable date, and may require that such financial statement be verified by a certified public accountant; provided, however, that the commissioner shall not require any registered dealer or investment adviser to file such a financial statement more than twice in any one year. If the commissioner has reasonable grounds to believe that the registration of any registered dealer, salesman, or investment adviser should be revoked upon any grounds specified in this section, the commissioner or his agent may conduct an examination into the affairs of any such registered dealer, salesman, or investment adviser. In making any such examination, the commissioner or his agent shall have access to and may compel the production of all the books and papers of a registered dealer, salesman, or investment adviser, and may administer oaths to and examine the officers and employees of such dealer or investment adviser as to his business and affairs.

~~(B)~~ 4. If the commissioner has reasonable grounds to believe that a registered dealer, salesman, or investment adviser has been guilty of any act or omission which would be sufficient ground for revoking the registration of such dealer, salesman, or investment adviser, he may enter an order suspending the registration of such dealer, salesman, or investment adviser pending an examination into the affairs of such dealer, salesman, or investment adviser or pending a hearing or opportunity for hearing as provided in section 10-04-12; provided, that no such order shall be effective for more than thirty days, and such order, if not withdrawn by the commissioner within thirty days, shall automatically terminate thirty days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of such suspension order, or of an order withdrawing a suspension order previously entered, the commissioner shall send a copy of such order by registered or certified mail to the dealer, salesman, or investment adviser whose registration is affected thereby at his business address, and, if such order affects the registration of a salesman, to the registered dealer who employs such salesman.

~~(C)~~ 5. If the commissioner finds, after affording a registered dealer, a registered salesman, or a registered investment

adviser a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds to revoke the registration of such dealer, salesman, or investment adviser, he may enter an order in the register of dealers, salesmen, and investment advisers, revoking the registration of such dealer, salesman, or investment adviser. Such order shall state specifically the grounds for its issuance. A copy of such order shall be sent by registered mail to the dealer, salesman, or investment adviser whose registration is revoked thereby at his business address and, if the revocation is of the registration of a salesman, to the registered dealer who employs such salesman. Suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all of his salesmen. Suspension or revocation of the registration of a salesman solely because he was employed by a dealer whose registration was suspended or revoked shall not prejudice subsequent applications for registration by such salesman.

SECTION 6. AMENDMENT. Section 10-04-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-17. REMEDIES. Every sale or contract for sale made in violation of any of the provisions of this chapter, or of any rule or order issued by the commissioner under any provisions of this chapter, shall be voidable at the election of the purchaser. The person making such sale or contract for sale, and every director, officer, salesman, or agent of or for such seller who shall have participated or aided in any way in making such sale shall be jointly and severally liable to such purchaser ~~in-any-action~~ who may sue either at law ~~in-any-court-of-competent-jurisdiction-upon-tender-to-the-seller,-in-person-or-in-open-court,-of-the-securities-sold-or-of--the--contracts--made-for~~ or in equity to recover the full amount paid by such purchaser, together with all taxable court costs, interest as provided in subsection 2, and reasonable attorney's fees ~~in-any-action-or-tender-under-this-section~~, less the amount of any income received on the securities, upon tender to the seller, in person or in open court, of the securities sold or of the contracts made, or for damages if he no longer owns the securities. Damages are the amount that would be recoverable upon a tender less the value of the securities when the purchaser disposed of them and interest as provided in subsection 2 from the date of disposition. Provided:

1. That no action shall be brought under this section for the recovery of the purchase price after three years from the date of such sale or contract for sale nor more than one year after the purchaser has received information as to matter or matters upon which the proposed recovery is based; and

2. That no purchaser shall claim or have the benefit of this section if he shall have refused or failed to accept,

within thirty days from the date of such offer, an offer in writing of the seller to take back the securities in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment, such interest to be computed:

a. In case such securities consist of interest-bearing obligations, at the same rate as provided in such securities, less the amount of any income received on the securities.

b. In case such securities consist of other than interest-bearing obligations, at the legal rate ~~of five percent per annum~~, specified in section 47-14-05, less, ~~in every case, the amount of any income from such securities that may have been received by such purchaser~~ the amount of any income received on the securities.

3. Nothing in this chapter shall limit any statutory or common-law right of any person in any court for any act involved in the sale of securities.

SECTION 7. AMENDMENT. Section 10-04-18 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-18. PENALTIES.

1. Any person who willfully violates any provision of this chapter or any rule or order of the commissioner made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful shall be guilty of a class B felony.

2. As used in this section, the term "willfully", except as it applies to subdivisions a and b of subsection 1 of section 10-04-10.1 and subsections 2 and 4 of section 10-04-15, means that the person acted intentionally in the sense that he was aware of what he was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required.

3. Each violative act or omission constitutes a separate offense, and a prosecution or conviction for any one offense shall not bar a prosecution or conviction for any other offense.

4. An information must be filed or an indictment must be found under this chapter within five years after the alleged violation.

Approved March 18, 1981

CHAPTER 133

SENATE BILL NO. 2310
(Lodoen)

SALE OF GOVERNMENTALS

AN ACT to amend and reenact subsection 12 of section 10-04-06 of the North Dakota Century Code, relating to allowing bankers to place orders for governmentals as a convenience to their customers.

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

SECTION 1. AMENDMENT. Subsection 12 of section 10-04-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. The sale of a security issued by the United States ~~of America~~, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota, provided that the offer for sale and sale ~~is~~ are made by an official or employee of the ~~issuing body~~ issuer or ~~by an official~~ of the Bank of North Dakota acting in ~~his~~ an official capacity and not for ~~his~~ personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed fifty dollars in connection with the transaction.

Approved March 6, 1981

CHAPTER 134

SENATE BILL NO. 2233
(Vosper, Iszler, Nelson, Roen)

CORPORATE FARMING OR RANCHING

AN ACT to create and enact sections 10-06-01.1, 10-06-07, 10-06-08, 10-06-09, 10-06-10, 10-06-11, 10-06-12, 10-06-13, 10-06-14, and 10-06-15 of the North Dakota Century Code, defining farming or ranching, authorizing certain family-type corporations to engage in farming and ranching, and providing for reports and enforcement; to amend and reenact sections 10-06-01 and 10-06-04 of the North Dakota Century Code, prohibiting farming by corporations with an exception for certain cooperatives; to repeal sections 10-06-02, 10-06-03, 10-06-05, and 10-06-06 of the North Dakota Century Code, relating to disposal of lands acquired by corporations in violation of the law; and to provide a penalty.

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

SECTION 1. 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 ~~DOMESTIC--AND--FOREIGN~~ CORPORATIONS PROHIBITED. All corporations, ~~both--domestic---and foreign,~~ except as otherwise provided in this chapter, are ~~hereby~~ prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ~~agriculture~~ ranching. As used in this chapter, "corporation" includes any joint stock company or association.

SECTION 2. Section 10-06-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-01.1. FARMING OR RANCHING - DEFINITION. As used in this chapter, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It does not include production of timber or forest products, nor does it include a contract whereby a processor or

distributor of farm products or supplies provides grain, harvesting, or other farm services.

SECTION 3. AMENDMENT. Section 10-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-04. COOPERATIVE CORPORATIONS ~~EXEMPTED;-WHEN~~ ALLOWED TO ENGAGE IN THE BUSINESS OF FARMING OR RANCHING - REQUIREMENTS. ~~Nothing-in-this~~ This chapter ~~shall-be-construed-to~~ does not prohibit cooperative corporations, seventy-five percent of whose members or ~~stockholders~~ shareholders are actual farmers or ranchers residing on farms or ranches or depending principally on farming or ranching for their livelihood, from acquiring real estate and engaging in cooperative farming or ~~agriculture~~ ranching.

SECTION 4. Section 10-06-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-07. CORPORATION ALLOWED TO ENGAGE IN THE BUSINESS OF FARMING OR RANCHING - REQUIREMENTS. This chapter does not prohibit a domestic corporation from owning real estate and engaging in the business of farming or ranching, if all of the following requirements are met:

1. The corporation does not have more than fifteen shareholders or members.

2. Each shareholder or member is related to each of the other shareholders or members within one of the following degrees of kinship: parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or is the spouse of a person so related.

3. Each shareholder is an individual, except that any of the following may also be shareholders:

   a. A trust for the benefit of an individual or a class of individuals who are related to a shareholder or member of the corporation within the degrees of kinship specified in this section.

   b. An estate of a decedent who was related to a shareholder or member of the corporation within the degrees of kinship specified in this section.

   Neither a trust nor an estate may be a shareholder if the beneficiaries of the trust or the estate together with the other shareholders and members are more than fifteen in number.

4. Each individual who is a shareholder or member is a citizen of the United States or a permanent resident alien of the United States.

5. The officers and directors of the corporation must be shareholders or members who are actively engaged in operating the farm or ranch and at least one of its shareholders or members shall be an individual residing on or operating the farm or ranch.

6. An annual average of at least sixty-five percent of the corporation's gross income over the previous five years, or for each year of its existence, if less than five years, shall have been derived from farming or ranching operations.

7. The corporation's income from rent, royalties, dividends, interest, and annuities does not exceed twenty percent of the corporation's gross receipts.

SECTION 5. Section 10-06-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-08. REPORTS - CONTENTS - FILING REQUIREMENTS. Every corporation owning or leasing land used for farming or ranching or engaged in farming or ranching after June 30, 1981, shall keep a record of transfers of shares or transfers of interests in the corporation. The corporation's secretary shall therein cause to be recorded all transfers of shares or transfers of interests among and between the corporation and its respective shareholders or holders of interest. Such record shall contain at least the following: The names of the transferor and transferee, their relationship, the number of shares or the percentage of interests transferred and the date of the transfer. Every corporation engaged in farming or ranching after June 30, 1981, shall file with the secretary of state a report at the time of the filing of the corporation's articles of incorporation and, thereafter, annually, prior to April fifteenth of each year containing all of the following information with respect to the preceding calendar year:

1. The name of the corporation and its place of incorporation.

2. The address of the registered office of the corporation in this state and the name and address of its registered agent in this state.

3. The acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation and used for farming or ranching.

4. The names and addresses of the officers and the members of the board of directors of the corporation.

5. The number of shares of stock or the percentage of interest in the acreage [hectarage] the corporation used for farming or ranching owned or leased by persons

residing on the farm or ranch and actively engaged in farming or ranching and the number of shares of stock or the percentage of interest in the acreage [hectarage] the corporation used for farming or ranching owned or leased by relatives within the degree of kinship listed in subsection 2 of section 10-06-07.

6. The name, address, and number of shares of stock or the percentage of interest in the acreage [hectarage] the corporation used for farming or ranching owned or leased by each shareholder or member and the relationship of each shareholder or member to the other shareholders or members. The names and addresses and relationships of beneficiaries of trusts and estates must also be included in the report.

7. A statement as to the percentage of gross receipts of the corporation derived from rent, royalties, dividends, interest, and annuities. In addition, the corporation shall report the same information specified above as to any other shareholder or member since the last previous report.

No corporation may commence farming or ranching in this state until the secretary of state has inspected the initial report and certified that the corporation's proposed operations comply with section 10-06-07. Upon receiving the annual reports required by this section, the secretary of state shall cause to be printed in a newspaper of general circulation in each county or counties wherein any land is owned or leased by each corporation filing a report the following: The names of each corporation and its respective shareholders or members as listed in the annual report and a statement to the effect that each of the corporations listed has filed in its annual report that it owns or leases land used for farming or ranching within the county and that a description of such lands is available for inspection at the secretary of state's office.

SECTION 6. Section 10-06-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-09. FAILURE TO FILE REPORT - PENALTY. Every corporation which fails to file any report required under this chapter or willfully files false information on any report required under this chapter is guilty of a class A misdemeanor.

SECTION 7. Section 10-06-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-10. SECRETARY OF STATE TO TRANSMIT INFORMATION OF NONCOMPLIANCE. If the secretary of state shall find from the annual report that the corporation is not in compliance with the requirements of section 10-06-07, he shall transmit such information to the attorney general and the governor.

SECTION 8. Section 10-06-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-11. TAX COMMISSIONER TO COMPARE RETURNS AND REPORTS. Each year the tax commissioner shall select at random at least five percent of the income tax returns filed by corporations which report on income from farming or ranching operations and shall compare such returns with the annual report required to be filed with the secretary of state by section 10-06-08 and shall forward any apparent violations to the attorney general and the governor.

SECTION 9. Section 10-06-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-12. ATTORNEY GENERAL TO CONDUCT RANDOM COMPLIANCE PROGRAM. Each year the attorney general shall select at random at least five percent of the total number of corporations authorized by this chapter for requests for information to determine compliance with this chapter. For such purpose, the attorney general may request affidavits, stock transfer records, certified copies of marriage licenses, birth certificates, deeds, leases and such other records and documents as shall be necessary to determine compliance.

SECTION 10. Section 10-06-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-13. ENFORCEMENT. The attorney general shall commence an action in the district court of the county in which the substantial portion of farm or ranch land 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 be dissolved by the secretary of state. The divestment period is deemed to be a covenant running with the title to the land against any corporate grantee, corporate successor, or corporation assignee of the corporation not authorized to do business under this chapter. Any land not divested within the divestment period prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law including enjoining the corporation from completing performance

on the remainder of any leasehold which is in violation of this chapter. Any domestic or foreign corporation may acquire farm or ranch land as security for indebtedness, by process of law in the collection debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise. All farm or ranch land acquired as security for indebtedness, in the collection of debts, or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this chapter. In the interim such land shall be leased to persons actually engaged in farming or ranching and a disposal shall not be to a corporation other than a corporation authorized under the provisions of this chapter. Any corporation continuing to violate the provisions of this chapter shall be dissolved by the attorney general in accordance with the provisions of the laws of this state.

SECTION 11. Section 10-06-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-14. PRIVATE ENFORCEMENT. This chapter may be enforced in the same manner as provided in section 10-06-13 by any corporation authorized by this chapter or any resident of legal age of a county in which the land owned or leased by a corporation in violation of this chapter is located. If such action is successful, all costs of the action shall be assessed against the defendant and a reasonable attorney fee shall be allowed the plaintiff, and, should judgment be rendered for the defendant, such costs and a reasonable attorney fee for the defendant shall be paid by the plaintiff.

SECTION 12. Section 10-06-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-15. PROTECTION OF MINORITY SHAREHOLDERS. If a shareholder owns less than fifty percent of the stock of a farming or ranching corporation doing business under this chapter, and if the terms and conditions for the repurchase of that stock by the corporation or by the other shareholders are not set forth in the bylaws, the instrument which transferred the shares to the shareholder, or are not the subject of a shareholders' agreement or an agreement between that shareholder and the corporation, then the disposition of such stock shall be determined by this section upon the withdrawal of the shareholder. Any shareholder who desires to withdraw from the corporation shall first offer the shares of stock for sale to the remaining shareholders in proportion to the shares owned by them. In the event not all of the shareholders wish to purchase the stock, any one shareholder can purchase all of the withdrawing shareholder's stock. In the event no shareholder desires to purchase the stock of a withdrawing shareholder, then the corporation itself may purchase the stock. In the event the corporation chooses not to purchase the stock of the withdrawing shareholder, then the withdrawing shareholder may sell the stock to any other person eligible to be a shareholder. In the event the withdrawing shareholder is unable to sell the stock to any other

person eligible to become a shareholder, then the withdrawing shareholder may bring an action in district court to dissolve the corporation. The court, upon a finding that the withdrawing shareholder cannot sell the stock at a fair price, shall enter an order directing that the corporation itself or any or all of the remaining shareholders pro rata or otherwise shall have twelve months from the date of the court's order to purchase the withdrawing shareholder's stock at a fair price as determined by the court and that if the stock of the withdrawing shareholder is not completely purchased at said price, the corporation shall be dissolved and the assets of the corporation shall be first used to pay all the liabilities of the corporation with the remaining net assets to be distributed pro rata to the shareholders in proportion to their stock ownership. For the purpose of this section, a "fair" price for the withdrawing shareholder's stock shall be determined as though the stock were being valued for federal gift tax purposes under the Internal Revenue Code of 1954, as amended.

SECTION 13. REPEAL. Sections 10-06-02, 10-06-03, 10-06-05, and 10-06-06 of the North Dakota Century Code are hereby repealed.

Approved March 30, 1981

CHAPTER 135

HOUSE BILL NO. 1113
(Committee on State and Federal Government)
(At the request of the Secretary of State)

CORPORATE CERTIFICATES AND FILING FEES

AN ACT to amend and reenact sections 10-22-06, 10-22-11, 10-22-12, 10-22-16, 10-23-04, 10-23-05, and 10-23-06 of the North Dakota Century Code, relating to certificate of good standing, and filing and license fees for corporate documents and certificates.

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

SECTION 1. AMENDMENT. Section 10-22-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-06. 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 in chapters 10-19 through 10-23 prescribed:

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~~ certificate of good standing.

3. Issue a certificate of authority to transact business 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 2. AMENDMENT. Section 10-22-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-11. AMENDMENT TO ARTICLES OF INCORPORATION OF FOREIGN CORPORATION. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of ~~such~~ the certificate of amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated. The filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state, nor authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority.

SECTION 3. AMENDMENT. Section 10-22-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-12. MERGER OF FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE. Whenever a foreign corporation authorized to transact business 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 corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the secretary of state a copy of the ~~articles~~ certificate 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 corporation to procure either a new or amended certificate of authority to transact business 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 transact in this state.

SECTION 4. AMENDMENT. Section 10-22-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-16. REVOCATION OF CERTIFICATE OF AUTHORITY. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon any of the following conditions:

1. The corporation has failed to file its annual report within the time required, or has failed to pay any fees or penalties prescribed by chapters 10-19 through 10-23 when they have become due and payable.

2. The corporation has failed to appoint and maintain a registered agent in this state as required by section 10-22-08.

3. The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by section 10-22-09.

4. The corporation has failed to file in the office of the secretary of state any certificate of amendment to its articles of incorporation or any ~~articles~~ certificate of merger within the time prescribed by section 10-19-62.

5. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to chapters 10-19 through 10-23.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (1) he shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this state, and (2) the corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such ~~articles~~ certificate of amendment or ~~articles~~ certificate of merger, or correct such misrepresentation.

SECTION 5. AMENDMENT. Section 10-23-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-04. 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~~ twenty-five dollars.

2. Filing articles of amendment and issuing a certificate of amendment, ~~twenty~~ twenty-five dollars.

3. Filing restated articles of incorporation, ~~twenty~~ twenty-five dollars.

4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, ~~twenty~~ twenty-five dollars.

5. Filing an application to reserve a corporate name, ~~five~~ seven dollars and fifty cents.

6. Filing a notice of transfer of a reserved corporate name, ~~five~~ seven dollars and fifty cents.

7. Filing a statement of change of address of registered office or change of registered agent, or both, ~~five~~ seven dollars and fifty cents.

8. Filing a statement of the establishment of a series of shares, ~~ten~~ fifteen dollars.

9. Filing a statement of cancellation of shares, ~~ten~~ fifteen dollars.

10. Filing a statement of reduction of stated capital, ~~ten~~ fifteen dollars.

11. Filing a statement of intent to dissolve, ~~five~~ seven dollars and fifty cents.

12. Filing a statement of revocation of voluntary dissolution proceedings, ~~five~~ seven dollars and fifty cents.

13. Filing articles of dissolution, ~~five~~ seven dollars and fifty cents.

14. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, ~~twenty-five~~ thirty-seven dollars and fifty cents.

15. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, ~~twenty-five~~ thirty-seven dollars and fifty cents.

16. Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, ~~ten~~ fifteen dollars.

17. Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, ~~ten~~ fifteen dollars.

18. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, ~~ten~~ fifteen dollars.

19. Filing annual report of domestic corporation, ten dollars; of foreign corporation, twenty dollars; any other statement or report of either, ~~two~~ four dollars.

20. Filing statement of change of address of registered office by registered agent, ~~five~~ seven dollars and fifty cents for each corporation affected by such change.

SECTION 6. AMENDMENT. Section 10-23-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-05. 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~~ four 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 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 7. AMENDMENT. Section 10-23-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-06. LICENSE FEES PAYABLE BY DOMESTIC CORPORATIONS - EXEMPTING BUILDING AND LOAN AND SAVINGS AND LOAN ASSOCIATIONS. The secretary of state shall charge and collect from each domestic corporation license fees, based upon the value of its authorized shares, at the time of:

1. Filing articles of incorporation.

2. Filing articles of amendment increasing the number or value of authorized shares.

3. Filing articles of merger or consolidation increasing the number or value of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number or value of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

The license fees shall be the sum of ~~thirty~~ fifty dollars for the first ~~thirty~~ fifty thousand dollars of its authorized shares, or fraction thereof, and the further sum of ten dollars for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of ~~thirty~~ fifty thousand dollars.

The license fees payable on an increase in authorized shares shall be imposed only on the additional shares, but the amount of previously authorized shares shall be taken into account in determining the rate applicable to the additional authorized shares.

For the purposes of this section, shares without par value shall be considered worth one ~~hundred dollars~~ dollar per share.

The provisions of this section shall not apply to a building and loan or savings and loan association.

Approved March 12, 1981

COUNTIES

CHAPTER 136

HOUSE BILL NO. 1550
(Retzer, G. Larson)

COUNTY MANAGER RESOLUTION VOTE REQUIREMENT

AN ACT to amend and reenact section 11-09-03 of the North Dakota Century Code, relating to the adoption of the county manager form of government.

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

SECTION 1. AMENDMENT. Section 11-09-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-09-03. BOARD OF COUNTY COMMISSIONERS MAY SUBMIT PLAN. The question of the adoption of any county manager form of government may be submitted notwithstanding the provisions of chapter 11-05.1 by the board of county commissioners by a resolution adopted by the affirmative vote of not less than ~~two-thirds~~ sixty percent of the entire board. Such resolution shall clearly designate which form of government shall be submitted.

Approved March 11, 1981

CHAPTER 137

SENATE BILL NO. 2377
(Wright)

STATUTORY SALARY MINIMUM

AN ACT to amend and reenact subsection 1 of section 11-10-10 and section 27-08-08 of the North Dakota Century Code, relating to the salaries of county officers.

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

SECTION 1. AMENDMENT. Subsection 1 of section 11-10-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The salary of the county auditor, county treasurer, county superintendent of schools, register of deeds, county judge, state's attorney, clerk of district court, and sheriff shall be regulated by the population in the respective counties according to the last preceding official federal census from and after the date when the official report of such census shall have been published by the director of the census or such other official as may be charged with the duty of making such official publication. Notwithstanding any decreases in population, the salaries paid county officers as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to this section, shall be at least the minimum amount payable for that office when filled on a full-time basis in the future.

* SECTION 2. AMENDMENT. Section 27-08-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08-08. SALARIES OF JUDGES OF COUNTY COURTS OF INCREASED JURISDICTION - AMOUNT AND PAYMENT. A county judge of a county court of this state having increased jurisdiction shall receive the following salary: twenty-one thousand dollars in counties having a population not exceeding ten thousand inhabitants; twenty-one thousand five hundred dollars in counties having a population

* NOTE: Section 27-08-08 was also amended by section 1 of House Bill No. 1653, chapter 321, and chapter 27-08 was repealed by section 51 of House Bill No. 1060, chapter 319.

exceeding ten thousand inhabitants but not exceeding eighteen thousand inhabitants; twenty-two thousand eight hundred dollars in counties having a population exceeding eighteen thousand inhabitants but not exceeding forty thousand inhabitants; and twenty-seven thousand six hundred dollars in counties having a population exceeding forty thousand inhabitants. Such salary shall be payable by the county in equal monthly installments and shall be full remuneration for all official duties, including all fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies. All fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies, shall be deposited by the court into the county treasury of the county in which the court is located. On July 1, 1979, the salary of each judge of a county court of increased jurisdiction shall be increased six and one-half percent over the total base salary and discretionary increase actually being paid such judge as of June 30, 1979. On July 1, 1980, the salary of each judge of a county court of increased jurisdiction shall be increased six and one-half percent over the total base salary and discretionary increase actually being paid such judge as of June 30, 1980. Notwithstanding any decreases in population, the salary paid a county judge of a county court having increased jurisdiction as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to section 11-10-10, shall be at least the minimum amount payable for that office when filled on a full-time basis in the future.

Approved March 31, 1981

CHAPTER 138

HOUSE BILL NO. 1504
(Melby)

SALARIES OF COUNTY OFFICIALS

AN ACT to amend and reenact subsections 2, 4, and 5 of section 11-10-10 of the North Dakota Century Code, relating to the salaries of county officials.

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

* SECTION 1. AMENDMENT. Subsections 2, 4, and 5 of section 11-10-10 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. The county treasurer, county superintendent of schools, register of deeds, county judge, county auditor, clerk of district court, and state's attorney each shall receive the following annual salary, payable monthly, for official services rendered:

   a. ~~Eleven~~ Thirteen thousand ~~nine~~ one hundred dollars in counties having a population of less than eight thousand.

   b. ~~Twelve~~ Thirteen thousand ~~two~~ five hundred ~~ninety~~ twenty dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.

   c. State's attorneys in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by resolution that the state's attorney shall be full time and shall not be an attorney or counsel for any

* NOTE: Subsections 2 and 4 of section 11-10-10 were also amended by section 14 of House Bill No. 1061, chapter 320.

party except the state or county, shall receive a salary of ~~twenty~~ twenty-two thousand dollars to ~~twenty-seven~~ twenty-nine thousand ~~nine~~ seven hundred dollars, to be determined by resolution of the board of county commissioners.

4. In counties having a county court of increased jurisdiction, the salaries of the judges of county courts of increased jurisdiction shall be as set out in section 27-08-08. The county superintendent of schools shall receive for any trips necessarily made within his county in the performance of school district reorganization duties the same mileage as he receives under the provisions of section 11-10-15. The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official ~~by--an--amount not--to-exceed-thirty-percent-above-the-salary~~ provided in this section or section 27-08-08, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official shall not be reduced during his or her term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. In the event the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials.

5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, which salary or per diem shall not exceed the following limits: In counties having a population of eight thousand or less, four thousand ~~one~~ five hundred ~~thirty~~ forty-five dollars; in counties having a population of over eight thousand and less than fifteen thousand, ~~four~~ five thousand ~~eight~~ three hundred ~~forty-five~~ thirty dollars; and in counties having a population of over fifteen thousand, ~~five~~ six thousand ~~seven~~ three hundred ~~eighty~~ sixty dollars. For the purpose of fixing the maximums herein provided, population figures shall be those established by the most recent federal census. In addition, there shall be an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15, and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" shall include statewide meetings of the North Dakota county commissioners association.

If a board shall resolve to pay an annual salary pursuant to this subsection, it shall be paid in monthly installments.

Approved March 31, 1981

CHAPTER 139

SENATE BILL NO. 2265
(Stenehjem)

SHERIFF'S SALARY, EXPENSES, AND FEES

AN ACT to amend and reenact subsection 6 of section 11-10-10, subsections 21 and 22 of section 11-15-07, and section 11-15-29 of the North Dakota Century Code, relating to sheriffs' salaries and expenses and fees which may be collected by sheriffs and their deputies.

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

SECTION 1. AMENDMENT. Subsection 6 of section 11-10-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Sheriffs shall receive the following annual salary, payable monthly, for official services rendered:

   a. ~~Thirteen~~ Fifteen thousand five hundred dollars in counties having a population with less than eight thousand.

   b. ~~Fourteen~~ Sixteen thousand five hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.

SECTION 2. AMENDMENT. Subsections 21 and 22 of section 11-15-07 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

21. For boarding prisoners, a sum to be determined by the county commissioners, by resolution in advance, which sum shall be per meal for meals actually served, and not to

exceed ~~one--dollar--and--fifty--cents~~ two dollars for breakfast, two dollars and fifty cents for dinner, and three dollars and fifty cents for supper.

22. For issuing permit or license to carry pistol or revolver, four dollars; and for renewal of such permit or license, ~~one-dollar~~ two dollars.

SECTION 3. AMENDMENT. Section 11-15-29 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-29. UNIFORM ALLOWANCE FOR SHERIFFS AND FULL-TIME DEPUTY SHERIFFS. Sheriffs and full-time deputy sheriffs shall be allowed by the board of county commissioners in each county an amount not to exceed ~~four~~ five hundred dollars per person during that person's first year of service, and ~~two~~ three hundred fifty dollars per person each succeeding year.

Approved March 6, 1981

CHAPTER 140

HOUSE BILL NO. 1376
(Representatives Martin, Knudson)
(Senator Quail)

NEPOTISM BY COUNTY OFFICIALS

AN ACT to restrict acts of nepotism by county officials.

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

SECTION 1. NEPOTISM - COUNTY OFFICIALS RESTRICTED. No head of any executive or administrative department or agency, either elective or appointive, of any county in this state, may appoint his or her spouse, son, daughter, brother, or sister to any position under the control or direction of that official, unless the appointment has been previously approved by resolution of the board of county commissioners.

Approved March 3, 1981

CHAPTER 141

SENATE BILL NO. 2417
(Dotzenrod, Wright)

COUNTY DIRECTOR OF TAX EQUALIZATION

AN ACT to create and enact a new subsection to section 11-10.1-05 of the North Dakota Century Code, relating to the powers and duties of the county director of tax equalization.

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

SECTION 1. A new subsection to section 11-10.1-05 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Any city or township which does not employ its own assessor shall reimburse the county for the expenses incurred in assessing the property of that city or township.

Approved March 31, 1981

CHAPTER 142

HOUSE BILL NO. 1486
(Thompson, Whalen)

CASHIER'S CHECK MAY ACCOMPANY BID

AN ACT to amend and reenact sections 11-11-28, 39-22-05.2, 40-28-07, 40-29-07, 40-31-03, and 40-54-01 of the North Dakota Century Code, relating to the requirement of a bidder's bond or certified check for county projects, for selling any motor vehicle to the state or a political subdivision, for city service connections, for city sidewalk projects, for city curbing and gutter projects, and for gravel surfacing of city streets; and allowing a certified check or a cashier's check in those instances.

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

SECTION 1. AMENDMENT. Section 11-11-28 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-28. BID MUST BE ACCOMPANIED BY A BOND - WHEN CERTIFIED OR CASHIER'S CHECK ALLOWED. A bid shall be accompanied by a separate envelope containing a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety company authorized to do business in this state as a guaranty that the bidder will enter into the contract if it is awarded to him and that he will furnish the necessary bond. When the bid is ten thousand dollars or less, the bidder may in lieu of such bond accompany the bid with a separate envelope containing a certified or cashier's check equal to five percent of the full amount of the bid made payable to the board with authority and direction to the board that if the bidder is successful in obtaining the award and fails to enter into the contract, the board may endorse, deposit, and receive the face amount of the certified or cashier's check as liquidated damages.

SECTION 2. AMENDMENT. Section 39-22-05.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22-05.2. WHEN BID BONDS NOT REQUIRED IN BIDS TO STATE OR POLITICAL SUBDIVISIONS. Any person who submits a bid to the state

or any of its agencies or any of its political subdivisions to sell any type of motor vehicle shall not be required to submit a bidder's bond or a certified or cashier's check if that person is already bonded pursuant to section 39-22-05. The successful bidder shall submit a performance bond to the appropriate state agency or political subdivision in an amount equal to the contract price within ten days of the awarding of the contract.

SECTION 3. AMENDMENT. Section 40-28-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-28-07. BIDS FOR SERVICE CONNECTIONS - ADVERTISING - ACCOMPANIED BY CHECK - AWARDING - RETURNING CHECKS. The governing body shall direct the city auditor to advertise for bids for the laying and construction of service connections in accordance with the plans and specifications therefor. Each bid shall be accompanied by a separate envelope containing a certified or cashier's check in the amount of five hundred dollars to guarantee the entering into the contract if the contract is awarded to him. Bids shall be received by the governing body. The governing body may reject any or all bids for work on service connections and may readvertise for other bids. If all the bids are not rejected, the contract shall be awarded to the responsible bidder whose bid is the lowest upon the basis of cash payment for the work if such bidder has complied with all the requirements of this chapter and furnished the required bond. Upon the awarding of the contract, the checks of all unsuccessful bidders shall be returned to them.

SECTION 4. AMENDMENT. Section 40-29-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-29-07. ADVERTISING FOR BIDS FOR SIDEWALKS - MAKING OF BIDS. The city auditor shall advertise in the official municipal newspaper once each week for two consecutive weeks for bids for the construction of the various kinds of sidewalks in the municipality. The bids shall be made in accordance with the specifications of the ordinance required by section 40-29-01 and shall be accompanied by a separate envelope containing a certified or cashier's check in the amount of fifty dollars in accordance with section 40-22-20, and by a separate envelope containing a bond in the amount of five hundred dollars conditioned as provided in section 40-22-23.

SECTION 5. AMENDMENT. Section 40-31-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-31-03. REQUIREMENTS AS TO CERTIFIED OR CASHIER'S CHECK AND BIDDER'S BOND ACCOMPANYING BIDS. The provisions of chapter 40-29, insofar as the same apply to the letting of contracts for the construction or repair of sidewalks, may be made applicable to the letting of contracts for the construction or repair of curbing and gutters, by resolution of the governing body of a city. The

governing body, by resolution adopted prior to the advertising for bids for contracts for any such work, may provide that, in lieu of a certified or cashier's check in the amount of fifty dollars and a bidder's bond in the amount of five hundred dollars, a certified or cashier's check only shall be required to accompany such bid in a separate envelope.

SECTION 6. AMENDMENT. Section 40-54-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-54-01. BIDS - ADVERTISING - REQUIREMENTS. On or before the fifteenth day of March in each year, the city auditor of each city within the state may at the discretion of the governing board advertise in the official newspaper once each week for two consecutive weeks for bids for the furnishing of gravel in place for gravel surfacing of highways within the city, upon a cubic yard [0.76 cubic meter] basis. The bids shall be made in accordance with such specifications as to type, grade, and quality of material as shall be specified by the city engineer and approved by the governing board, and shall provide for the delivery of such gravel along such streets of the city as may thereafter be designated, in such manner as may be designated in the specifications. The notice shall specify that payment for such gravel in cash or by special assessment warrants issued against the graveling special assessment fund created by this chapter, and each bidder shall specify in his bid the lowest rate of interest which he will accept upon such warrants, and that payment for such gravel will be accepted by him in the manner herein provided. Each bid shall be accompanied by a separate envelope containing a certified or cashier's check in such amount as may be fixed by the governing board, and the award of the contract shall be made only to such person who shall furnish good and sufficient bond for the performance thereof, in such amount as shall be fixed by the governing board at the time of calling for bids.

Approved March 5, 1981

CHAPTER 143

SENATE BILL NO. 2257
(H. Christensen)

ADULT ESTABLISHMENT REGULATION

AN ACT defining adult establishments and providing for county and city regulation of adult establishments.

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. "Adult bookstore" means a bookstore having as a preponderance of its publications books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this section.

2. "Adult establishment" means either an adult bookstore, an adult motion picture theater, an adult mini-motion picture theater, or a massage business, all as defined in this section.

3. "Adult motion picture theater" means an enclosed building with a capacity of fifty or more persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons of the theater.

4. "Adult mini-motion picture theater" means an enclosed building with a capacity for less than fifty persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activites or specified anatomical areas as defined in this section, for observation by patrons of the theater.

5. "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

6. "Massage business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.

7. "Sexually oriented devices" means without limitation any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed in whole or in part for specified sexual activities.

8. "Specified anatomical areas" means:

   a. Less than completely and opaquely covered human genitals and pubic regions, buttocks, or female breasts below a point immediately above the top of the areola.

   b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

9. "Specified sexual activities" means:

   a. Human genitals in a state of sexual stimulation or arousal;

   b. Acts of human masturbation, sexual intercourse, or sodomy; or

   c. Fondling or other erotic touchings of human genitals and pubic regions, buttocks, or female breasts.

SECTION 2. COUNTY RESTRICTION OF ADULT ESTABLISHMENTS. The board of county commissioners of any county may, upon proper resolution, provide that:

1. No building, premises, structure, or other facility that contains any adult establishment, as defined in section 1 of this Act, shall contain any other kind of adult establishment.

2. No building, premises, structure, or other facility in which sexually oriented devices, as defined in section 1 of this Act, are sold, distributed, exhibited, or contained shall contain any adult establishment, as defined in section 1 of this Act.

SECTION 3. CITY RESTRICTION OF ADULT ESTABLISHMENTS. The governing body of any city may, by ordinance, provide that:

1. No building, premises, structure, or other facility that contains any adult establishment, as defined in section 1 of this Act, shall contain any other kind of adult establishment.

2. No building, premises, structure, or other facility in which sexually oriented devices, as defined in section 1 of this Act, are sold, distributed, exhibited, or contained shall contain any adult establishment, as defined in section 1 of this Act.

Approved March 18, 1981

CHAPTER 144

HOUSE BILL NO. 1584
(Moore)

SHERIFF'S FEE FOR SERVING CAPIAS

AN ACT to amend and reenact subsection 1 of section 11-15-07 of the North Dakota Century Code, relating to fees which may be charged and collected by sheriffs.

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

SECTION 1. AMENDMENT. Subsection 1 of section 11-15-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For serving a capias with commitment of bail and return, ~~five~~ twenty-five dollars.

Approved March 16, 1981

CHAPTER 145

SENATE BILL NO. 2250
(Senator Lee)
(Representative Freborg)

RECREATIONAL ACTIVITIES LEVY

AN ACT to amend and reenact sections 11-28-05 and 11-28-06 of the North Dakota Century Code, relating to the powers and duties of the board of county park commissioners and county tax levies for park purposes.

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

SECTION 1. AMENDMENT. Section 11-28-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28-05. POWERS AND DUTIES OF THE BOARD OF PARK COMMISSIONERS. The board of county park commissioners shall have the power and it shall be its duty to:

1. Sue and be sued in the name of the board.

2. Accept on behalf of the county any and all lands and waters and any and all interests, easements, or rights therein, and any gifts, grants, donations, or trusts in money or property, or other assistance, financial or otherwise, from federal, state, municipal, and other public or private sources for park and recreational purposes; and accept and assume the supervision, control, and management of any privately owned property or recreational area, when the conditions of the offer for its public use are such as in the judgment of the board will be conducive to the best interests of the people of the county and state.

3. Cooperate and contract with the state or federal government or any department or agency thereof in furnishing assurances and meeting local cooperation requirements in connection with any project involving the construction, improvement, operation, maintenance, conservation, or use of any park or recreational area under the jurisdiction, supervision, control, and management of the board.

4. Regulate, supervise, control, and manage all areas of land and water owned or held by the county or which may be, under written agreement, placed by an individual, a corporation, the federal, state, or a municipal government, or any department or agency thereof, under the jurisdiction, supervision, control, and management of the board of county park commissioners for park or recreational purposes.

5. Promulgate, publish, and impose rules and regulations concerning the uses to which such land and water areas may be put, including the regulation or prohibition of the construction, establishment, or maintenance therein or thereon or within one-half mile thereof of any concession, dance hall, dance parlor, dance pavilion, soft or hard drink parlor or bar, and of any and all establishments of every name, nature, or description which may, in the judgment of the board, be unsightly, noisome, improper, inappropriate, or detrimental to the social usages of the area or areas for park and recreational purposes.

6. Regulate, supervise, control, and manage all such land and water areas including all lakes, streams, and ponds and all artificial bodies of water created by any water development or water conservation or flood control project of the county, state, or federal government not under the jurisdiction, supervision, or control of any other board, department, or governing body.

7. Exercise full police power, supervision, control, and management over such areas and the adjoining and adjacent lands within one-half mile thereof, and by regulations duly promulgated, published, and imposed regulate or prohibit the construction, establishment, maintenance, or operation within one-half mile of any such land or water area of any dance hall, dance parlor, dance pavilion, soft or hard drink parlor or bar, and any and all establishments of every name, nature, and description which may, in the judgment of the board, be unsightly, noisome, improper, inappropriate, or detrimental to the social usages of any land area or body of water so developed or created. The authority provided by these subsections is intended to be exercised for the protection of the health, safety, good morals, and general welfare of the people of the county and state to the fullest extent permissible under the police power of the county and state.

8. Prevent the pollution, contamination, or other misuse of any water resource, stream, or body of water under its jurisdiction, supervision, control, or management.

9. Certify to the county auditor the amount of money necessary to meet the estimated expenses and costs of

properly conducting its business and activities, including the operation, maintenance, and improvement of the park and recreational areas under its ~~jurisdiction, supervision, control, or management~~ control and those recreational activities of benefit to the general populace of the county which are under the control of a city or a city park district within the county for the ensuing year, such certificate to be filed with the county auditor not later than the first day of July each year. Such certificate shall be accompanied by an itemized budget statement showing the detailed expenditure program, as nearly as possible, of the board for the ensuing year.

10. Do all the things reasonably necessary and proper to preserve the benefits accruing from the park and recreational areas under the jurisdiction, supervision, control, and management of the board of county park commissioners.

11. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the control of the shores of any lake and to protect the right of ingress and egress therefrom and to provide recreational areas or facilities.

SECTION 2. AMENDMENT. Section 11-28-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28-06. TAX LEVY BY BOARD OF COUNTY COMMISSIONERS. At the time of levying taxes for other county purposes, the board of county commissioners shall consider the certificate and budget statement of the board of county park commissioners and shall levy each year upon all taxable property in the county a tax sufficient in amount to pay the actual necessary expenses and activities program of the board of county park commissioners, including construction, improvement, repair, operation, and maintenance of the park and recreational areas and their facilities under ~~the jurisdiction, supervision, control, and management of the board of county park commissioners~~ its control and those recreational activities of benefit to the general populace of the county which are under the control of a city or a city park district within the county, not exceeding one mill on each dollar of the taxable valuation of the county, which tax may be levied in excess of the mill limit fixed by law for taxes for general purposes. No levy in excess of one mill shall be made without approval of the eligible voters in the county at a special or general election. The county auditor shall credit the proceeds of such tax to the separate fund of the board of county park commissioners. This levy shall not apply to cities that already have a park levy unless the governing body of such city by resolution consents to such levy.

Approved March 6, 1981

CHAPTER 146

HOUSE BILL NO. 1476
(Representative Houmann)
(Senator Adams)

RECREATION SERVICE DISTRICT WATER DREDGING BONDS

AN ACT to amend and reenact section 11-28.2-04.1 and subsection 8 of section 21-03-06 of the North Dakota Century Code, relating to improvements by recreation service districts, and to purposes for bond issues by recreation service districts.

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

SECTION 1. AMENDMENT. Section 11-28.2-04.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28.2-04.1. POWER OF RECREATION SERVICE DISTRICTS TO MAKE IMPROVEMENTS - CREATING DISTRICT - DETERMINING NECESSITY - CONTRACTING FOR IMPROVEMENT - LEVYING SPECIAL ASSESSMENTS AND TAXES AND IMPOSING SERVICE CHARGES - ISSUANCE OF WARRANTS. Each recreation service district established under the provisions of this chapter shall have the authority to make those improvements specified in subdivisions a ~~and~~, b, and f of subsection 8 of section 21-03-06. In making any such improvement, in addition to any other powers granted in chapter 21-03, a recreation service district shall, subject to the provisions of this section, be deemed to be a "municipality", as the term is used in chapters 40-22 through 40-27, for the purpose of creating an improvement district, determining the necessity of making an improvement, contracting for an improvement, levying special assessments and general taxes and imposing service charges to pay the cost of an improvement, issuing temporary, definitive, and refunding warrants to finance an improvement, and levying general taxes to pay any deficiency in moneys available to pay the principal and interest on any warrants so issued. The above language refers to all projects and services costing more than five thousand dollars. Provided, however, with respect to section 40-22-15 if the resolution declaring improvements necessary is required to be published, it shall also be sent by certified mail to the owners of all property within the improvement district not more than ten days after the first publication of the resolution.

SECTION 2. AMENDMENT. Subsection 8 of section 21-03-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. By any recreation service district:

   a. For the construction and extension of water plants or the purchase of existing plants; the construction and improvement of water mains, sewers, and drains; or for the joint construction and establishment of a water and sewer system; or for the erection, planning, construction, and establishment of a sewage disposal plant or system; or for the erection, construction, and enlargement of garbage disposal plants and to purchase sites and grounds, either within or without the limits of the recreation service district, for the disposal of sewage, garbage, and other refuse; and other like recreation service district purposes.

   b. To provide for acquiring, laying out, and improving parks, parkways, park buildings, public drives, boulevards, highways, streets, state highways, and to acquire land for these purposes.

   c. To provide money for the payment of any deficiency in the fund of any special improvement district whenever the special assessment or taxes levied and collected for the specific improvements are then insufficient to pay the principal or interest of any special improvement warrants issued for such improvement and then due and unpaid, but only to the extent of such deficiency.

   d. For the purchase of trucks, garbage collectors, and other vehicles, equipment, and materials for the collection, removal, and disposal of garbage, rubbish, ashes, refuse, and other wastes within the recreation service district.

   e. For the purpose of providing services described in section 11-28.2-04.

   f. For the purpose of dredging any waters or waterways within or contiguous to the recreation service district.

Approved March 11, 1981

CHAPTER 147

HOUSE BILL NO. 1532
(Marsden, Houmann)

RECREATION SERVICE DISTRICT LEVY

AN ACT to create and enact a new section to chapter 11-28.2 of the North Dakota Century Code, relating to the authority of county recreation service districts to levy a tax for general purposes.

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

SECTION 1. A new section to chapter 11-28.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

POWERS OF RECREATION SERVICE DISTRICTS - LEVYING GENERAL TAXES. The board of recreation service district commissioners of a recreation service district created under the provisions of this chapter may, upon proper resolution of the board, levy a tax for general purposes in addition to all other levies permitted by law, not to exceed one mill on the net taxable valuation of property in the district.

Approved March 31, 1981

CHAPTER 148

HOUSE BILL NO. 1468
(Boyum, Mertens)

COMPREHENSIVE PLAN REQUIREMENTS

AN ACT to amend and reenact sections 11-33-03, 40-47-03, and 58-03-12 of the North Dakota Century Code, relating to the purpose of zoning regulations and the definition of the term "comprehensive plan".

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

SECTION 1. AMENDMENT. Section 11-33-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-33-03. OBJECT OF REGULATIONS. These regulations shall be made in accordance with a comprehensive plan and designed for any or all of the following purposes:

1. To protect and guide the development of nonurban areas.
2. To secure safety from fire, flood, and other dangers.
3. To regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.
4. To lessen governmental expenditures.
5. To conserve and develop natural resources.

These regulations shall be made with a reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses. The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

SECTION 2. AMENDMENT. Section 40-47-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-47-03. REGULATION FOR ZONING MADE FOR WHAT PURPOSES. The regulations provided for in this chapter shall be made in accordance with a comprehensive plan and shall be designed to:

1. Lessen congestion in the streets;
2. Secure safety from fire, panic, and other dangers;
3. Promote health and the general welfare;
4. Provide adequate light and air;
5. Prevent the overcrowding of land;
6. Avoid undue concentration of population; and
7. Facilitate adequate provisions for transportation, water, sewage, schools, parks, and other public requirements.

The regulations shall be made with reasonable consideration as to the character of each district and its peculiar suitability for particular uses with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city. The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

SECTION 3. AMENDMENT. Section 58-03-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-03-12. BASIS FOR TOWNSHIP ZONING REGULATIONS AND RESTRICTIONS. The regulations and restrictions established in any township zoning district shall be made in accordance with a comprehensive plan with reasonable consideration as to the character of such district, its peculiar suitability for particular uses, the normal growth of the municipality, and the various types of occupations, industries, and land uses within the area, and shall be designed to facilitate traffic movement, encourage orderly growth and development of the municipality and adjacent areas, and promote health, safety, and general welfare. The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

Approved March 5, 1981

CHAPTER 149

HOUSE BILL NO. 1078
(Legislative Council)
(Interim Political Subdivisions Committee)

RURAL SUBDIVISION IMPROVEMENTS

AN ACT to create and enact two new sections to chapter 11-33.1 and a new subdivision to subsection 1 of section 21-03-06 of the North Dakota Century Code, relating to initiation of resolutions for improvements in rural subdivisions by county commissioners, and the purposes and specific limitations of a bond issue; and to amend and reenact section 11-33.1-01 of the North Dakota Century Code, relating to petitions for improvements by residents of rural subdivisions.

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

SECTION 1. AMENDMENT. Section 11-33.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-33.1-01. PETITION FOR IMPROVEMENTS - LEVY OF SPECIAL ASSESSMENTS. The county commissioners of any county in North Dakota, upon receipt of a petition bearing signatures of sixty percent of the affected and benefited property owners in a rural, platted, zoned, and recorded subdivision with restrictive covenants, and situated outside the corporate limits of any city in North Dakota, may install ~~such~~ improvements ~~as--road--or--street identification-markers,-road-or-street-lights,-and--asphalt--paving;~~ such improvements to be billed back to the individual benefited property owners ~~on-an-equal-per-lot-basis~~ in the manner provided for by law for the levying of special assessments in municipalities in the form of a special assessment on the individual annual general property tax statement. Payments for special assessments levied in accordance with this section shall not exceed a period of ~~five~~ twenty years and said special assessments shall constitute a lien on the affected and benefited property until paid. The special assessment provided in this section shall bear interest at the rate not to exceed ~~seven~~ ten percent per annum from the date of the entry by the county treasurer, and the collection thereof may be made and enforced as delinquent taxes are enforced against real property.

SECTION 2. A new section to chapter 11-33.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

RESOLUTIONS FOR IMPROVEMENTS - LEVY OF SPECIAL ASSESSMENTS. The board of county commissioners of any county may, by resolution, provide for the installation of improvements in a rural, platted, zoned, and recorded subdivision with restrictive covenants and situated outside the corporate limits of any city in North Dakota. The improvements shall be billed back to the affected and benefited property owners in the manner provided for by law for the levying of special assessments in municipalities in the form of a special assessment on the individual annual property tax statement. Payments for special assessments levied in accordance with this section shall not exceed a period of twenty years and the special assessments shall constitute a lien on the affected and benefited property until paid. The special assessment provided in the section shall bear interest at an annual rate not to exceed ten percent from the date of the entry by the county treasurer, and the collection of the special assessment plus interest may be enforced as delinquent taxes are enforced against real property.

SECTION 3. A new section to chapter 11-33.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

PROCEDURE FOR RESOLUTION - NOTICE AND HEARING. The county commissioners may provide for the installation of improvements in a rural subdivision and the levy of special assessments utilizing the following procedure:

1. The county commissioners shall adopt a resolution describing the property to be affected and benefited by the improvements.

2. The county commissioners shall publish the resolution once each week for three consecutive weeks, prior to adoption, in the official newspaper of the county.

3. In the absence of protests filed, as of the date of the adoption of the resolution, by forty percent or more of the owners of property to be affected and benefited by the improvements, the property described in the resolution shall be subject to improvement and the property owners shall be liable for the payment of special assessments.

4. If forty percent or more of the affected property owners protest the resolution, the county commissioners shall direct the county auditor to mail, to each of the property owners, notice of a hearing on the resolution to be held within thirty days of the notice. At the conclusion of the hearing, the county commissioners shall affirm, modify, or vacate the previous resolution.

SECTION 4. A new subdivision to subsection 1 of section 21-03-06 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To provide funds for improvements in rural platted, zoned, and recorded subdivisions with restrictive covenants, in accordance with chapter 11-33.1. Any bonds issued for this purpose shall not be considered against the general bonding authority of the county.

Approved March 2, 1981

CHAPTER 150

HOUSE BILL NO. 1082
(Legislative Council)
(Interim Political Subdivisions Committee)

SUBDIVISION REGULATION

AN ACT to empower counties to regulate and restrict the subdivision of land, to provide for the preparation of a subdivision resolution, to provide for a plat approval procedure, and to provide a penalty and civil remedies.

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

SECTION 1. DEFINITION. For the purposes of this Act, unless the context otherwise requires, "subdivision" means the division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from any such lot, tract, or parcel, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

SECTION 2. COUNTY POWER TO REGULATE SUBDIVISION. For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county is hereby empowered to regulate and restrict within the county the subdivision of land. This Act shall not serve to invalidate any ordinance, resolution, regulation, decision, plat approval, or other action taken or adopted, by a board of county commissioners or county planning commission, prior to or subsequent to July 1, 1981, which regulates or otherwise affects the subdivision of land, except that, subsequent to July 1, 1981, the provisions of section 12 of this Act shall apply to any county requiring plat approval as a prerequisite to the subdivision of land.

SECTION 3. SCOPE OF COUNTY AUTHORITY. County regulation of subdivision pursuant to the provisions of this Act shall in no way affect subdivision within the corporate limits, or within the area of application of extraterritorial zoning jurisdiction adopted pursuant to section 40-47-01.1, of any city. Additionally, no resolution, regulation, or restriction adopted pursuant to the

provisions of this Act shall prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.

SECTION 4. PREPARATION OF SUBDIVISION RESOLUTION - CONTENTS. The board of county commissioners of any county desiring to avail itself of the powers conferred by sections 1 through 11 and sections 13 through 15 of this Act shall direct the county planning commission, as established pursuant to sections 11-33-04 and 11-33-05, to prepare a proposed resolution regulating the subdivision of land. The county planning commission shall prepare the proposed resolution to be submitted to the board of county commissioners and shall file it in the office of the county auditor. The proposed subdivision resolution may include, but need not be limited to:

1. Provisions for the submittal and processing of plats, and specifications for such plats, including provisions for preliminary and final approval and for processing of final approval by stages or sections of development.

2. Provisions for ensuring that:

   a. The location, layout, or arrangement of a proposed subdivision shall conform to the comprehensive plan of the county.

   b. Streets in and bordering a subdivision shall be coordinated, and be of such width and grade and in such locations as deemed necessary to accommodate prospective traffic, and facilitate fire protection.

   c. Adequate easements or rights of way shall be provided for drainage and utilities.

   d. Reservations if any by the developer of any area designed for use as public grounds shall be of suitable size and location for the designated use.

   e. Land which is subject to extraordinary hazards, including but not limited to flooding and subsidence, either shall be made safe for the purpose for which such land is proposed to be used, or shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing hazard.

3. Provisions governing the standards which public improvements including but not limited to streets, walkways, curbs, gutters, streetlights, fire hydrants, and water and sewage facilities shall meet. As a condition of final approval of plats, the board of county commissioners may require that the subdivider make and install such public improvements at his own expense and that he execute a surety bond or other security to ensure that he will so

make those improvements within such time as the board of county commissioners shall set.

4. Provisions for release of a surety bond or other security upon completion of public improvements required to be made by the subdivider.

5. Provisions for encouraging and promoting flexibility, economy, and ingenuity in the location, layout, and design of subdivisions including, but not limited to, provisions authorizing the board of county commissioners to attach conditions to plat approvals requiring practices which are in accordance with modern and evolving principles of subdivision planning and development, as determined by the board of county commissioners.

SECTION 5. HEARINGS. After the filing of the proposed resolution, the county planning commission shall hold a public hearing thereon, at which the proposed resolution shall be submitted for discussion, and parties in interest and citizens shall have an opportunity to be heard. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county, and in such other newspapers published in the county as the county planning commission may deem necessary. Said notice shall describe the nature, scope, and purpose of the proposed resolution, and shall state the times at which it will be available to the public for inspection and copying at the office of the county auditor.

SECTION 6. PUBLICATION OF RESOLUTION - EFFECTIVE DATE. Following the public hearing, the board of county commissioners may adopt the proposed resolution, with such changes as it may deem advisable. Upon adoption of the resolution, the county auditor shall file a certified copy thereof with the register of deeds. Immediately after the adoption of any resolution, the county auditor shall have notice of that fact published for two successive weeks in the official newspaper of the county and in other newspapers published in the county as the board of county commissioners may deem appropriate. The notice shall describe the nature, scope, and purpose of the adopted resolution, and shall state the times at which it will be available for public inspection and copying at the office of the register of deeds. Proof of publication shall be filed in the office of the county auditor. If no petition for a separate hearing is filed pursuant to section 7 of this Act, the resolution or amendment thereto shall take effect upon the expiration of the time for filing said petition. If a petition for a separate hearing is filed pursuant to section 7 of this Act, the resolution or amendment shall not take effect until the board of county commissioners has affirmed the resolution or amendment in accordance with the procedures set out in section 7 of this Act. The resolution may be amended or repealed by the board of county commissioners by following the same procedures as in the case of adoption of a resolution.

SECTION 7. SEPARATE HEARINGS. Any person aggrieved by any provision of a resolution adopted hereunder, or any amendment thereto, may, within thirty days after the first publication of the notice of adoption of the resolution or amendment, petition for a separate hearing before the board of county commissioners. The petition shall be in writing and shall specify in detail the ground or grounds of objection. The petition shall be filed with the county auditor. A hearing on the petition shall be held by the board no sooner than seven days, nor later than thirty days after the filing of the petition with the county auditor, who shall notify the petitioner of the time and place of the hearing. At this hearing the board of county commissioners shall consider the matter complained of and shall notify the petitioner, by registered or certified mail, what action, if any, it proposes to take. The board of county commissioners, at its next regular meeting, shall either rescind or affirm the resolution or amendment. The provisions of this section shall not operate to curtail or exclude the exercise of any other rights or powers of the board of county commissioners or of any citizen.

SECTION 8. MAY ADJUST ENFORCEMENT. The board of county commissioners is authorized to adjust the application or enforcement of any provision of a resolution hereunder in any specific case where a literal enforcement of such provision would result in great practical difficulties, unnecessary hardship, or injustice, so as to avoid such consequences, provided such action shall not be contrary to the public interest or the general purposes of this Act.

SECTION 9. APPEALS TO DISTRICT COURT. Any person, or persons, jointly or severally, aggrieved by a decision of the board of county commissioners under this Act, or any resolution or amendments adopted hereunder, may appeal to the district court in the manner provided in chapter 11-11.

SECTION 10. ENFORCEMENT. The board of county commissioners shall provide for the enforcement of this Act and of any resolution and amendments adopted hereunder, and may impose enforcement duties on any officer, department, agency, or employee of the county.

SECTION 11. BOARD OF COUNTY COMMISSIONERS AUTHORIZED TO APPROVE PLATS - APPROPRIATE MONEY. The board of county commissioners is empowered to authorize and provide for the approval of plats as a prerequisite to the subdivision of land subject to the provisions of this Act, and may establish and collect reasonable fees therefor. The fees so collected shall be credited to the general fund of the county. The board of county commissioners is further empowered to appropriate, out of the general funds of the county, such moneys as may be necessary for the purposes of this Act.

SECTION 12. EFFECT OF APPROVAL OF PLATS. If a county requires approval of plats as a prerequisite to the subdivision of land, whether such requirement be adopted in compliance with this

Act, or be adopted, whether prior to or subsequent to July 1, 1981, pursuant to other authority, from and after July 1, 1981:

1. No subdivision of any lot, tract, or parcel of land shall be made, no street, sanitary sewer, water main, or other improvements in connection therewith shall be laid out, constructed, opened, or dedicated for public use or travel, or for the common use of occupants of buildings abutting thereon, except in accordance with a plat as finally approved by the board of county commissioners.

2. No plat shall be finally approved or disapproved by the board of county commissioners except upon receipt of recommendations by both the county planning commission and the board of township supervisors of the township in which the proposed subdivision is located. The board of county commissioners shall, by registered mail, notify the chairman of the board of township supervisors that an application for plat approval has been initiated, either before the county planning commission or before the board of county commissioners, and that the board of township supervisors is requested to make a recommendation on the application. If the board of county commissioners does not receive, by registered mail, a recommendation by the board of township supervisors within sixty days after notification, it may take final action on the application for plat approval. The recommendations by either the county planning commission or the board of township supervisors shall not be binding on the county commissioners.

3. In determining whether a plat shall be finally approved or disapproved, the board of county commissioners shall inquire into the public use and interest proposed to be served by the subdivision. It shall determine if appropriate provisions are made for the public health, safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, but its determination is not limited to the foregoing. The board shall consider all other relevant facts and determine whether the public interest will be served by the subdivision. If it finds that the proposed plat makes appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, and that the public use and interest will be served by the platting of such subdivision, and that the proposed plat complies with a county resolution, if any, regulating or restricting the subdivision of land, to the extent that such resolution does not conflict with the provisions of this section, such plat shall be finally approved with such conditions

as the board of county commissioners may deem necessary. If it finds that the proposed plat does not make appropriate provisions, or that the public use and interest will not be served, or that the proposed plat does not so comply with the aforementioned resolution, then the board of county commissioners shall disapprove the proposed plat. Dedication of land to any public body may be required as a condition of subdivision approval and shall be clearly shown on the final plat.

SECTION 13. REMEDIES TO EFFECT COMPLETION OF IMPROVEMENTS. In the event that any public improvements which may be required to be installed by the subdivider have not been installed as provided in the subdivision resolution or in accordance with the plat as finally approved, the board of county commissioners is hereby granted the power to enforce any surety bond, or other security, required of said subdivider by appropriate legal and equitable remedies. If the proceeds of the bond, or other security, are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by the security, the board of county commissioners may, at its option, install part of such improvements in all or part of the subdivision and may institute appropriate legal or equitable action to recover the moneys necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the subdivider, or both, shall be used solely for the installation of the improvements covered by such security, and not for any other purpose.

SECTION 14. RECORDING PLAT. Upon final approval of a plat as required under this Act, the subdivider shall record the plat in the office of the register of deeds of the county wherein the plat is located. Whenever plat approval is required by a county, the register of deeds shall not accept any plat for recording unless such plat officially notes the final approval of the board of county commissioners.

SECTION 15. PENALTY AND REMEDIES. Any person, partnership, or corporation who or which, being the owner or agent of the owner of any lot, tract, or parcel of land, shall lay out, construct, open, or dedicate any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or who or which sells, transfers, or agrees or enters into an agreement to sell or transfer any land in a subdivision or engages in the subdivision of land or erects any buildings thereon, unless and until a plat has been finally approved in full compliance with the provisions of this Act and of the resolution adopted hereunder and has been recorded as provided herein, shall be guilty of a class B misdemeanor. Each lot, tract, or parcel created or transferred, and each building erected in a subdivision in violation of the provisions of this Act or of the resolutions adopted hereunder shall constitute a separate offense.

If any lot, tract, or parcel of land is subdivided in violation of this Act or any resolution or amendments thereto adopted pursuant to this Act, the proper county authorities or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceedings:

1. To prevent such unlawful subdivision.

2. To restrain, correct, or abate such violations.

3. To prevent the occupancy or use of the land which has been unlawfully subdivided.

4. To vacate and nullify any recorded plat of such unlawful subdivision.

Approved March 2, 1981

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 151

SENATE BILL NO. 2199
(Senator Thane)
(Representative Dietz)

INMATE CONFINEMENT CONTRACTS

AN ACT to amend and reenact section 12-44.1-02 of the North Dakota Century Code, relating to establishing jails and entering into jail contracts and allowing counties and cities to contract with counties and cities in other states for the confinement of inmates.

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

SECTION 1. AMENDMENT. Section 12-44.1-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-02. ESTABLISHING JAILS - JAIL CONTRACTS - REGIONAL CORRECTIONS CENTERS. For the confinement of lawfully committed persons, the governing body of a county or city shall do or shall participate in the doing of, one of the following:

1. Establishing and maintaining a jail at county or city expense.

2. Contracting for jail services and use of jail facilities with another county or city maintaining a jail, with a regional corrections center, or with the state or federal government.

3. Establishing and maintaining, pursuant to chapter 54-40 and this chapter, a regional corrections center in conjunction with other counties and cities.

A county or city may additionally contract with a county or city of another state for the confinement of lawfully committed county or city inmates from that state in a North Dakota jail or juvenile detention center, or for the confinement of lawfully committed North Dakota inmates in a county or city facility of such other state.

Approved March 9, 1981

CHAPTER 152

HOUSE BILL NO. 1085
(Legislative Council)
(Interim State and Federal Government "B" Committee)

STATE FARM ELIGIBILITY AND SENTENCING ALTERNATIVES

AN ACT to amend and reenact sections 12-51-07 and 12.1-32-02 of the North Dakota Century Code, relating to prisoners eligible for commitment to the state farm and to sentencing alternatives.

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

* SECTION 1. AMENDMENT. Section 12-51-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-07. PRISONERS ELIGIBLE FOR COMMITMENT TO STATE FARM - COMMITMENT THERETO DEEMED A CONVICTION OF MISDEMEANOR. The judges of the district courts, and of the county courts with increased jurisdiction, may commit to the state farm, so far as the capacity of the farm shall permit, all male persons who otherwise would be committed to the county jail or to the penitentiary for violation of any criminal law of this state, where the sentence is ~~not less~~ more than thirty days ~~nor~~ but not more than one year provided that no person shall be committed to the state farm who:

1. Has at any time been convicted of a sexual offense;

2. Has served a sentence or portion thereof in a ~~penitentiary~~ correctional facility upon conviction of a felony; or

3. Has a history of moral or sexual degeneration or of violent assaultive behavior which has resulted in physical injury or serious psychological harm to others.

~~A person committed to the state farm shall not be deemed to have been convicted of a felony, but shall be deemed to have been convicted of a misdemeanor.~~

SECTION 2. AMENDMENT. Section 12.1-32-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 12-51-07 was also amended by section 27 of House Bill No. 1061, chapter 320.

12.1-32-02. SENTENCING ALTERNATIVES - CREDIT FOR TIME IN CUSTODY - DIAGNOSTIC TESTING.

1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense:

   a. Payment of the reasonable costs of his prosecution.

   b. Probation.

   c. A term of imprisonment, including intermittent imprisonment:

      (1) In ~~the penitentiary or a regional detention facility approved by the director of institutions~~ a state correctional facility, a regional corrections center, a county jail, or in the state farm in accordance with section 12-51-07, if convicted of a felony or a class A misdemeanor.

      (2) In a county jail~~, in the state farm, or in a regional detention facility approved by the director of institutions~~ or in a regional corrections center, if convicted of a class B misdemeanor.

   d. A fine.

   e. Restitution for damages resulting from the commission of the offense.

   f. Restoration of damaged property, or other appropriate work detail.

   g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

   h. Commitment to any other facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.

   Sentences imposed under this subsection shall not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under subdivisions e or f shall be

imposed in the manner provided in section 12.1-32-08. This subsection shall not be construed to prohibit utilization of sections 12-53-13 through 12-53-19, relating to suspension of imposition of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under section 12-53-14.

2. Credit against any sentence to a term of imprisonment shall be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct on which such charge was based. "Time spent in custody" shall include time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.

3. Superseded by N.D.R.Crim.P., Rule 35.

4. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence shall not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.

5. All sentences imposed shall be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement shall become part of the record of the case.

6. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.

7. Unless otherwise specifically authorized in the statute defining the offense, no court shall include a minimum term of imprisonment as part of its sentence.

8. A court may commit a female offender to the state penitentiary or other suitable facility under the same minimum security restrictions and with the same privileges as state farm inmates when the sentence imposed is more than thirty days but not more than one year.

9. A person convicted of a felony who is sentenced to imprisonment for not more than one year shall be deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment.

Approved January 30, 1981

CHAPTER 153

HOUSE BILL NO. 1137
(Committee on Judiciary)
(At the request of the Parole Board)

PROBATION AND PAROLE RELEASE, APPLICATION, AND BREACH

AN ACT to amend and reenact sections 12-53-12, 12-59-05, 12-59-08, and 12-59-15 of the North Dakota Century Code, relating to parole and probation.

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

SECTION 1. AMENDMENT. Section 12-53-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-12. RELEASE FROM PROBATION - PERIOD OF PROBATION. Whenever it is the judgment of the court that a person on probation has satisfactorily met the conditions of his probation, it shall cause to be issued to said person a final discharge from further supervision and may terminate the suspended sentence. The length of the period of probation shall not be more than the maximum term for which he might have been imprisoned, except that in cases where the defendant has been found guilty of abandonment or nonsupport of spouse or children, the period may be continued for as long as responsibility for support continues.

SECTION 2. AMENDMENT. Section 12-59-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-05. CONSIDERATION BY BOARD - GUARANTEE. ~~Within~~ At a meeting to be determined by the parole board, within one year after ~~his~~ a prisoner's admission to the penitentiary, or within six months after ~~his~~ the prisoner's admission to the state farm, ~~and~~ at such intervals thereafter as it may determine~~,--the~~ and by application pursuant to section 12-59-08, the board may deny or grant parole or continue consideration to another meeting. The board shall consider all pertinent information regarding each prisoner, including the circumstances of ~~his~~ the offense, ~~his~~ the presentence report, ~~his~~ the previous social history and criminal record, ~~his~~ the conduct, employment, and attitude in prison, and the reports of such physical and mental examinations as have been made.

SECTION 3. AMENDMENT. Section 12-59-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-08. APPLICATION FOR PAROLE - HEARING - EMERGENCY PAROLES. All applications for parole shall be filed with the clerk of the board. Applications may be heard at ~~any~~ a meeting ~~of the parole board~~ to be determined by the parole board, after the initial consideration guaranteed by section 12-59-05. In the event of an emergency application, the ex officio members of the board of pardons, acting as authorized by section 12-55-04, may, in accordance with section 12-55-19, grant such emergency parole. Thereafter the parolee shall be under the supervision and jurisdiction of the parole board.

SECTION 4. AMENDMENT. Section 12-59-15 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-15. BREACH OF PAROLE - HEARINGS - ORDER OF RECOMMITMENT. ~~Any person shall be deemed to be in the custody and under the control of the board while on parole, and shall be subject, at any time until the expiration of the term for which he or she was sentenced, if he or she violates the rules established by the parole board, to be taken into actual custody. The parolee shall be entitled to a preliminary hearing to determine if there is reasonable cause to believe the parolee has violated the parole conditions. If a hearing officer determines there is reasonable cause, the parolee shall be returned to the penitentiary for a hearing before the parole board within sixty days. When it shall appear to the board after a full hearing that a person out on parole has violated any of such rules or regulations, it may order that such person be taken into actual custody and recommitted to and confined in the penitentiary or state farm as provided in his sentence. The board shall enter any such order in the record of its proceedings. The warden shall receive and reimprison such person in accordance with the terms of his original sentence.~~

~~Any preliminary hearing pursuant to this chapter may be before the chief parole officer, a deputy, or any other person authorized by the chief parole officer to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.~~

~~With respect to any hearing pursuant to this chapter, the parolee:~~

~~1. Shall have written notice of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole.~~

~~2. Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing.~~

~~3.--Shall--have--the-right-to-confront-and-examine-any-persons who-have-made-allegations-against-him,-unless-the--hearing officer-determines-that-such-confrontation-would-present-a substantial-present-or-subsequent-danger-of-harm--to--such person-or-persons.~~

~~4.--May--admit,-deny,-or-explain-the-violation-alleged-and-may present-proof,-including-affidavits-and-other-evidence,-in support--of--his-contentions.---A-record-of-the-proceedings shall-be-made-and-preserved.~~

1. When it is alleged that a parolee has violated the conditions of the parole agreement, the chief parole officer may issue a warrant for the arrest of the parolee.

2. The parolee shall be entitled to a preliminary hearing, as promptly as is convenient after the arrest and reasonably near the place of the alleged violation or arrest, to determine whether there is probable cause or reasonable grounds to believe that the parolee violated the conditions of the parole agreement.

3. The preliminary hearing shall be conducted before the chief parole officer or any other independent hearing officer authorized by the chief parole officer, but in no case shall it be conducted before anyone directly involved in the case.

4. 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 sentence.

5. At any hearing pursuant to this section a record shall be made, and the parolee shall have:

   a. Written notice of the purpose of the hearing and the alleged violations.

   b. The opportunity to be heard in person and present witnesses and documentary evidence.

   c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that such confrontation would create a risk of harm to the witness.

   d. A written statement as to the reasons for the decision.

Approved February 20, 1981

CHAPTER 154

HOUSE BILL NO. 1509
(Conmy)

CRIMINAL JUSTICE TRAINING AND STATISTICS DIVISION

AN ACT to create a criminal justice training and statistics division within the office of attorney general; to provide for powers and duties of the division; to create a peace officer training and standards board within the division; to require training and certification of peace officers, local correctional officers, and sheriffs; to require training for state's attorneys and defense attorneys; to provide for rulemaking power and an appeals procedure; to create a new section to chapter 39-03, relating to the provision of training at the law enforcement training center; to amend and reenact subsection 4 of section 12-44.1-04 of the North Dakota Century Code, relating to jail management training; and to repeal chapter 12-61 of the North Dakota Century Code, relating to the combined law enforcement council.

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

SECTION 1. CRIMINAL JUSTICE TRAINING AND STATISTICS DIVISION - PERSONNEL - PURPOSE. A criminal justice training and statistics division is created under the attorney general. The division shall consist of a director and such other personnel as may be designated by the attorney general. The attorney general shall supervise the criminal justice training and statistics division. It shall be the purpose of the criminal justice training and statistics division to certify and conduct the training of peace officers, local correctional officers, and sheriffs, to conduct training for state's attorneys and defense attorneys, and to gather, analyze, and disseminate information regarding the state's criminal justice system.

SECTION 2. POWERS AND DUTIES. The powers and duties of the criminal justice training and statistics division shall be:

1. To determine the specialized training needs of peace officers.

2. To conduct training for peace officers which will meet their specialized needs.

3. To prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools.

4. To certify curriculum, instructors, schools, and officers that have met the training certification criteria.

5. To establish the curriculum for basic and advanced peace officer training.

6. To prescribe minimum standards of sidearm training for peace officers prior to carrying a sidearm, and to certify officers who have met the established standards.

7. To conduct and certify training for local correctional officers.

8. To conduct training which meets the approved course work requirements for continuing legal education credit for state's attorneys and their assistants, and for defense attorneys.

9. To develop and maintain a manpower, training, and certification information system.

10. To develop and maintain a jail information system.

11. To analyze data available from the division's information system and other criminal justice related information systems and to compile appropriate periodic reports based on that data.

12. To assist state and local criminal justice agencies in the development of record systems and information systems.

13. To coordinate the utilization of data which is generated by state and local record information systems.

14. To conduct research projects designed to respond to criminal justice system needs and executive, judicial, or legislative branch requests.

15. To accept and administer gifts, or grants, or contracts with persons or organizations, including the federal government, on such terms as may be beneficial to the state.

SECTION 3. PEACE OFFICER STANDARDS AND TRAINING BOARD - MEMBERSHIP - DUTIES. A peace officer standards and training board is created under the law enforcement training and statistics division. The board shall consist of seven members. The director

of the law enforcement training center shall be a member of the board. The other six members shall be four peace officers, one county government representative, and one city government representative. These six persons shall be appointed by the attorney general and shall serve staggered two-year terms as he directs. The attorney general shall also appoint the chairman. The director of the criminal justice training and statistics division shall be an ex officio nonvoting member of the board. The board shall exercise, through the division director, the powers and duties of the division in establishing training and setting standards for peace officers and local correctional officers.

SECTION 4. QUALIFIED OFFICERS TO BE CERTIFIED. The division shall issue certificates to each officer who meets training and sidearm certification requirements established by the division. Such certificates may be different grades, depending upon the qualifications of the officers. Such certification may be revoked by the division. Any officer whose certification is to be revoked shall be entitled to a hearing before the peace officer standards and training board. When it is deemed to be necessary by the division director the officer's certification may be temporarily revoked pending the hearing.

SECTION 5. STATE'S ATTORNEYS - TRAINING. Every newly elected or appointed state's attorney or assistant state's attorney within the first year of employment shall attend a course of training conducted by the division. The division shall also provide an annual training session for state's attorneys and their assistants. The curriculum, location, and dates of such training sessions shall be determined by the division in cooperation with the state's attorney association.

SECTION 6. CORRECTIONAL OFFICERS - TRAINING. Every newly appointed local correctional officer shall within the first year of employment attend a course of training conducted by the division. The curriculum, location, and dates of such sessions shall be determined by the peace officer standards and training board and in cooperation with the sheriff's association.

SECTION 7. SHERIFFS - TRAINING. Every newly elected or appointed sheriff shall attend within the first year of employment a course of training on civil duties conducted by the division. The curriculum, location, and dates shall be determined by the division in cooperation with the sheriff's association. Such course shall be open to all sheriffs and deputies.

SECTION 8. PEACE OFFICERS - TRAINING. Every newly elected or appointed peace officer, except prosecutors, shall within the first year of employment attend a course of training which is certified by the division as meeting the basic law enforcement training requirements. A peace officer who has met the basic training requirements shall be exempt from the provisions of this section.

SECTION 9. DEFENSE ATTORNEYS - TRAINING. The division shall conduct or contract for the administration of an annual training session for defense attorneys. The curriculum, location, and dates of the session shall be determined by the division in cooperation with the state bar association and the North Dakota trial lawyers association or shall be governed by a contract with an appropriate person, agency, or association. Such course shall be open to all members of the state bar association. A fee to cover costs may be set for the course. It shall be conducted so as to meet the requirements for approved course work for continuing legal education credit.

SECTION 10. RULEMAKING POWER. The attorney general may adopt rules to carry out the powers and duties assigned to the criminal justice training and statistics division. All rules adopted by the attorney general and appeals therefrom, shall be in accordance with chapter 28-32.

SECTION 11. A new section to chapter 39-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

LAW ENFORCEMENT TRAINING CENTER - TRAINING CONDUCTED. The superintendent of the highway patrol shall be responsible for the operation, maintenance, and administration of the law enforcement training center. The superintendent shall appoint a director of the training center who shall be responsible for coordinating basic and advanced peace officer training and such other duties as may be prescribed by the superintendent. All peace officer training which is conducted at the law enforcement training center shall meet the certification criteria established by the peace officer standards and training board and shall be in accordance with the basic and advanced peace officer curriculum established by the peace officer standards and training board.

SECTION 12. AMENDMENT. Subsection 4 of section 12-44.1-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Ensure that all full-time jail staff who work in direct and continuing contact with inmates receive jail management training as determined and funded by the ~~combined law enforcement council~~ criminal justice training and statistics division of the attorney general's office or such other training as approved by the ~~combined law enforcement council~~ criminal justice training and statistics division.

SECTION 13. REPEAL. Chapter 12-61 of the North Dakota Century Code is hereby repealed.

Approved April 6, 1981

CRIMINAL CODE

CHAPTER 155

HOUSE BILL NO. 1142
(Mattson)

RED OR BLACK FLAG DISPLAY

AN ACT to amend and reenact section 12.1-07-05 of the North Dakota Century Code, relating to penalty for display of certain flags; and to repeal section 12.1-07-04 of the North Dakota Century Code, relating to display or exhibit of red or black flags.

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

SECTION 1. AMENDMENT. Section 12.1-07-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-07-05. PENALTY. Any person who violates any of the provisions of ~~sections~~ section 12.1-07-03 ~~or 12.1-07-04~~ is guilty of a class B misdemeanor.

SECTION 2. REPEAL. Section 12.1-07-04 of the North Dakota Century Code is hereby repealed.

Approved February 20, 1981

CHAPTER 156

HOUSE BILL NO. 1280
(Conmy)

THEFT OFFENSE GRADES

AN ACT to amend and reenact section 12.1-23-05 of the North Dakota Century Code, relating to the gradation of theft offenses.

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

SECTION 1. AMENDMENT. Section 12.1-23-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-23-05. GRADING OF THEFT OFFENSES.

1. Theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value or are acquired or retained by a threat to commit a class A or class B felony or to inflict serious bodily injury on the person threatened or on any other person.

2. Theft under this chapter is a class C felony if:

   a. The property or services stolen exceed ~~one~~ five hundred dollars in value;

   b. The property or services stolen are acquired or retained by threat and (1) are acquired or retained by a public servant by a threat to take or withhold official action, or (2) exceed fifty dollars in value;

   c. The property or services stolen exceed fifty dollars in value and are acquired or retained by a public servant in the course of his official duties;

   d. The property stolen is a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;

   e. The property consists of any government file, record, document, or other government paper stolen from any government office or from any public servant;

f. The defendant is in the business of buying or selling stolen property and he receives, retains, or disposes of the property in the course of that business;

g. The property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of this state;

h. The property stolen consists of livestock taken from the premises of the owner; or

i. The property stolen consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access.

3. All other theft under this chapter is a class A misdemeanor, unless the requirements of subsection 4 are met.

4. Theft under this chapter of property or services of a value not exceeding two hundred fifty dollars shall be a class B misdemeanor if:

a. The theft was not committed by threat;

b. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and

c. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of his official duties.

The special classification provided in this subsection shall apply if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.

5. Notwithstanding the provisions of subsection 3 of section 12.1-06-01, an attempt to commit a theft under this chapter is punishable equally with the completed offense when the actor has completed all of the conduct which he believes necessary on his part to complete the theft except receipt of the property.

6. For purposes of grading, the amount involved in a theft under this chapter shall be the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have

anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

Approved February 20, 1981

CHAPTER 157

SENATE BILL NO. 2238
(Reiten)

OBSCENITY DETERMINATION CIVIL PROCEEDING

AN ACT to repeal sections 12.1-27.1-04, 12.1-27.1-05, 12.1-27.1-06, 12.1-27.1-07, 12.1-27.1-08, 12.1-27.1-09, and 12.1-27.1-10 of the North Dakota Century Code, relating to the prior determination of obscenity in a separate civil proceeding before a criminal prosecution may be brought, and to related definitions.

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

SECTION 1. REPEAL. Sections 12.1-27.1-04, 12.1-27.1-05, 12.1-27.1-06, 12.1-27.1-07, 12.1-27.1-08, 12.1-27.1-09, and 12.1-27.1-10 of the North Dakota Century Code are hereby repealed.

Approved March 12, 1981

CHAPTER 158

SENATE BILL NO. 2237
(Reiten)

LOCAL CONTROL OF OBSCENITY

AN ACT to amend and reenact section 12.1-27.1-12 of the North Dakota Century Code, relating to state preemption of local laws regulating obscenity, and providing an exception relating to city zoning authority; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 12.1-27.1-12 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.1-12. STATE PREEMPTION OF LOCAL LAWS REGULATING OBSCENITY. This chapter shall be applicable and uniform throughout the state, and no political subdivision shall enact new, or enforce existing, ordinances or resolutions regulating or prohibiting the dissemination of obscene materials, or controlling obscene performances, except ordinances authorized by section 5-02-09, section 58-03-11, chapter 11-33, or chapter 40-47.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 1, 1981

CHAPTER 159

HOUSE BILL NO. 1207
(Black)

ANTIQUE SLOT MACHINE POSSESSION

AN ACT to amend and reenact section 12.1-28-02 of the North Dakota Century Code, relating to gambling offenses and allowing antique slot machines to be collected and possessed as a hobby.

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

SECTION 1. AMENDMENT. Section 12.1-28-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-28-02. GAMBLING - RELATED OFFENSES - CLASSIFICATION OF OFFENSES. Except as permitted by law:

1. It shall be an infraction to engage in gambling.

2. It shall be a class A misdemeanor to:

   a. Sell, purchase, receive, or transfer a chance to participate in a lottery; or

   b. Disseminate information about a lottery with intent to encourage participation in it.

3. Subsection 2 shall apply to a lottery drawn or to be drawn outside of this state, whether or not such lottery is lawful in such other state or country.

4. A person is guilty of a class C felony if he engages or participates in the business of gambling. Without limitation, a person shall be deemed to be engaged in the business of gambling if he:

   a. Conducts a wagering pool or lottery;

   b. Receives wagers for or on behalf of another person;

c. Alone or with others, owns, controls, manages, or finances a gambling business;

d. Knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business or maintain a gambling house;

e. Maintains for use on any place or premises occupied by him a coin-operated gaming device; or

f. Is a public servant who shares in the proceeds of a gambling business whether by way of a bribe or otherwise.

5. a. As used in subsection 4 but with the exceptions provided by subdivision b of this section, the term "coin-operated gaming device" means any machine which is:

(1) A so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens; or

(2) A machine which is similar to machines described in paragraph (1) and is operated without the insertion of a coin, token, or similar object.

b. The term "coin-operated gaming device" does not include a bona fide vending or amusement machine in which gambling features are not incorporated as defined in section 53-04-01, or an antique "slot" machine twenty-five years old or older which is collected and possessed by a person as a hobby and is not maintained for the business of gambling.

Approved March 2, 1981

CHAPTER 160

HOUSE BILL NO. 1510
(Dietz)

DRUG PARAPHERNALIA

AN ACT to provide for the definition of drug paraphernalia, the prohibition of the manufacture, sale, or delivery of drug paraphernalia, the possession and the advertisement of drug paraphernalia, and to provide a penalty; to amend and reenact subsection 1 of section 19-03.1-36 of the North Dakota Century Code, relating to the forfeiture of drug paraphernalia; and to repeal section 12.1-31-04 of the North Dakota Century Code, relating to the manufacture, sale, or delivery of paraphernalia.

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

SECTION 1. DEFINITION - DRUG PARAPHERNALIA. In this chapter, unless the context or subject matter otherwise requires, "drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of chapter 19-03.1. Drug paraphernalia includes, but is not limited to:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.

4. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.

5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances.

7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

8. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances.

9. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.

11. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.

12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

    a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

    b. Water pipes;

    c. Carburetion tubes and devices;

    d. Smoking and carburetion masks;

    e. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

    f. Miniature cocaine spoons, and cocaine vials;

    g. Chamber pipes;

h. Carburetor pipes;

i. Electric pipes;

j. Air-driven pipes;

k. Chillums;

l. Bongs;

m. Ice pipes or chillers.

SECTION 2. DRUG PARAPHERNALIA - GUIDELINES. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use.

2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.

3. The proximity of the object, in time and space, to a direct violation of chapter 19-03.1.

4. The proximity of the object to controlled substances.

5. The existence of any residue of controlled substances on the object.

6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of chapter 19-03.1; the innocence of an owner, or of anyone in control of the object, as to a direct violation of chapter 19-03.1 shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.

7. Instructions, oral or written, provided with the object concerning its use.

8. Descriptive materials accompanying the object which explain or depict its use.

9. National and local advertising concerning its use.

10. The manner in which the object is displayed for sale.

11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the

community, such as a licensed distributor or dealer of tobacco products.

12. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.

13. The existence and scope of legitimate uses for the object in the community.

14. Expert testimony concerning its use.

SECTION 3. UNLAWFUL POSSESSION OF DRUG PARAPHERNALIA. It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class A misdemeanor.

SECTION 4. UNLAWFUL MANUFACTURE OR DELIVERY OF DRUG PARAPHERNALIA. It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class A misdemeanor.

SECTION 5. UNLAWFUL DELIVERY OF DRUG PARAPHERNALIA TO A MINOR. It shall be unlawful for any person eighteen years of age or over to deliver drug paraphernalia, in violation of this chapter, to a person under eighteen years of age who is at least three years his junior. Any person violating this section is guilty of a class C felony.

SECTION 6. UNLAWFUL ADVERTISEMENT OF DRUG PARAPHERNALIA. It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person violating this section is guilty of a class A misdemeanor.

SECTION 7. AMENDMENT. Subsection 1 of section 19-03.1-36 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The following are subject to forfeiture:

a. All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter.

b. All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.

c. All property which is used, or intended for use, as a container for property described in subdivision a or b.

d. All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision a or b, but:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter.

(2) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent.

(3) A conveyance is not subject to forfeiture for a violation of subsection 3 of section 19-03.1-23.

(4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

e. All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

f. All drug paraphernalia as defined in title 12.1.

SECTION 8. REPEAL. Section 12.1-31-04 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 9, 1981

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 161

HOUSE BILL NO. 1210
(Representatives Wald, Peltier)
(Senators Lodoen, Quail)

LATE PAYMENT CHARGE ON ACCOUNTS RECEIVABLE

AN ACT to create and enact two new sections to the North Dakota Century Code, relating to late payment charges of one and one-half percent on overdue accounts and the furnishing of periodic statements.

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

SECTION 1. LATE PAYMENT CHARGE ON ACCOUNTS RECEIVABLE. A creditor may charge, receive, and collect a late payment charge in an amount not to exceed one and one-half percent per month on all money due on account from thirty days after the obligation of the debtor to pay shall have been incurred. The late payment charge provided in this section may be charged only if at the time the obligation was incurred the creditor did not intend to extend any credit beyond thirty days and any late payment of the obligation was unanticipated. The provisions of this section shall not apply to money due on retail installment contracts, as defined in chapter 51-13; money due on revolving charge accounts, as defined in chapter 51-14; and money due on medical, hospital, and residential utility bills.

SECTION 2. PERIODIC STATEMENT TO BE FURNISHED TO DEBTOR. A creditor may charge the late payment charge provided for in section 1 only if he promptly supplies the debtor with a statement as of the end of each monthly period, or other regular period agreed upon by the creditor and the debtor, in which there is any unpaid balance. Such statement shall recite the following:

1. The percentage amount of the late payment charge which will be charged beginning thirty days after the obligation is incurred.

2. The unpaid balance at the end of the period.

3. An identification of any amount debited to the debtor's account during the period.

4. The payments made by the debtor to the creditor during the period.

5. The amount of the late payment charge.

6. A legend to the effect that the debtor may at any time pay the total unpaid balance.

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computations made in determining the amount to be paid by the debtor.

Approved February 20, 1981

CHAPTER 162

HOUSE BILL NO. 1430
(Representatives Rued, Hedstrom, B. Larson)
(Senators Quail, Reiten)

CONSUMER FINANCE ACT LOAN MAXIMUM

AN ACT to amend and reenact section 13-03.1-03 and subsection 1 of section 13-03.1-15 of the North Dakota Century Code, relating to the maximum loan ceiling.

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

SECTION 1. AMENDMENT. Section 13-03.1-03 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-03.1-03. SCOPE. Persons licensed under the provisions of this chapter may engage in the business of lending in amounts of more than one thousand dollars and not more than ~~seven-thousand-five hundred~~ fifteen thousand dollars and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, which in the aggregate are greater than that permitted by section 47-14-09. This chapter shall not apply to loans made under chapter 13-03, but persons licensed under that chapter may obtain licenses to make loans under this chapter.

* SECTION 2. AMENDMENT. Subsection 1 of section 13-03.1-15 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Every licensee may make loans, including revolving loans, in any principal amount not less than one thousand dollars and not more than ~~seven--thousand-five-hundred~~ fifteen thousand dollars, and may contract for, receive, or collect on such loans, charges not in excess of one and one-half percent per month on the unpaid balance of principal. For the purpose of computing charges for a fraction of a month, whether at the maximum rate or less, every month shall be deemed to have thirty days and a day shall be considered one-thirtieth of a month.

Approved March 26, 1981

* NOTE: Subsection 1 of section 13-03.1-15 was repealed by section 3 of Senate Bill No. 2230, chapter 198.

DOMESTIC RELATIONS AND PERSONS

CHAPTER 163

HOUSE BILL NO. 1399
(Representatives Black, Martinson)
(Senators Stenehjem, Wenstrom)

STATE POLICY AGAINST DISCRIMINATION

AN ACT to declare a state policy against discrimination on the basis of race, color, religion, national origin, or sex.

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

SECTION 1. STATE POLICY AGAINST DISCRIMINATION. It is the policy of this state to prohibit discrimination on the basis of race, color, religion, national origin, or sex; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination, or coerce others to discriminate.

Approved March 31, 1981

CHAPTER 164

HOUSE BILL NO. 1554
(Representatives Brokaw, Kuchera, Riehl)
(Senator Lee)

ABORTION CONSENT REQUIREMENTS FOR MINORS

AN ACT to create and enact a new section to chapter 14-02.1 of the North Dakota Century Code to meet the special interest of the state in encouraging unmarried pregnant minors to seek the advice and counsel of their parents when faced with the decision whether or not to bear a child; 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 14-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

PARENTAL CONSENT OR JUDICIAL AUTHORIZATION FOR ABORTION OF UNMARRIED MINOR - STATEMENT OF INTENT. The legislative assembly intends to encourage unmarried pregnant minors to seek the advice and counsel of their parents when faced with the difficult decision of whether or not to bear a child, to foster parental involvement in the making of that decision when parental involvement is in the best interests of the minor and to do so in a manner that does not unduly burden the right to seek an abortion.

1. No person shall knowingly perform an abortion upon a pregnant woman under the age of eighteen years unless:

   a. The attending physician has secured the written consent of the minor woman and both parents, if living, or the surviving parent if one parent is deceased, or the custodial parent if the parents are separated or divorced, or the legal guardian or guardians if the minor is subject to guardianship;

   b. The minor woman is married and the attending physician has secured her informed written consent; or

   c. The abortion has been authorized by the juvenile court in accordance with the provisions of this Act.

2. Any pregnant woman under the age of eighteen or next friend shall be entitled to apply to the juvenile court for authorization to obtain an abortion without parental consent. Proceedings on such application shall be conducted in the juvenile court of the county of the minor's residence before a juvenile judge or referee, if authorized by the juvenile court judge in accordance with the provisions of chapter 27-20, except that the parental notification requirements of chapter 27-20 shall not be applicable to proceedings under this Act. All applications in accordance with this Act shall be heard by a juvenile judge or referee within forty-eight hours, excluding Saturdays and Sundays, of receipt of the application. The purpose of the hearing before the juvenile judge or referee shall be to determine:

   a. Whether or not the minor is sufficiently mature and well informed with regard to the nature, effects and possible consequences of both having an abortion and bearing her child to be able to choose intelligently among the alternatives.

   b. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives without the advice and counsel of her parents or guardian, whether or not it would be in the best interests of the minor to notify her parents or guardian of the proceedings and call in the parents or guardian to advise and counsel the minor and aid the court in making its determination and to assist the minor in making her decision.

   c. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives and it is found not to be in the best interests of the minor to notify and call in her parents or guardian for advice and counsel, whether an abortion or some other alternative would be in the best interests of the minor.

3. All proceedings in connection with this Act shall be kept confidential and the identity of the minor shall be protected in accordance with provisions relating to all juvenile court proceedings.

4. The court shall keep a stenographic or mechanically recorded record of the proceedings which shall be maintained on record for forty-eight hours following the proceedings. If no appeal is taken from an order of the court pursuant to the proceedings, the record of the proceedings shall be sealed as soon as practicable following such forty-eight-hour period.

5. Following the hearing and the court's inquiry of the minor, the court shall issue one of the following orders:

   a. If the minor is sufficiently mature and well informed concerning the alternatives and without the need for further information, advice or counseling, the court shall issue an order authorizing a competent physician to perform the abortion procedure on the minor.

   b. If the minor is not sufficiently mature and well informed, the court may:

      (1) Issue an order to provide the minor with any necessary information to assist her in her decision if the minor is mature enough to make the decision but not well informed enough to do so.

      (2) Issue an order to notify the minor's parents or guardian of the pendency of the proceedings and calling for their attendance at a reconvening of the hearing in order to advise and counsel the minor and assist the court in making its determination if the court finds that to do so would be in the best interests of the minor.

      (3) Issue an order authorizing an abortion by a competent physician if the court has determined that it would not be in the best interests of the minor to call in her parents or guardian but has found that it would be in the minor's best interests to authorize the abortion.

6. The minor or next friend may appeal the determination of the juvenile court directly to the state supreme court. In the event of such an appeal, any and all orders of the juvenile court shall be automatically stayed pending determination of the issues on appeal. Any appeal taken pursuant to this section by anyone other than the minor or next friend shall be taken within forty-eight hours of the determination of the juvenile court by the filing of written notice with the juvenile court and a written application in the supreme court. Failure to file notice and application within the prescribed time shall result in a forfeiture of the right to appeal and render the juvenile court order or orders effective for all intents and purposes.

7. Upon receipt of written notice of appeal, the juvenile court shall immediately cause to be transmitted to the supreme court the record of proceedings had in the juvenile court.

8. An application for appeal pursuant to this section shall be treated as an expedited appeal by the supreme court and shall be set down for hearing within four days of receipt of the application, excluding Saturdays and Sundays.

9. The hearing, inquiry, and determination of the supreme court shall be limited to a determination of the sufficiency of the inquiry and information considered by the juvenile court and whether or not the order or orders of the juvenile court accord with the information considered with respect to the maturity and information available to the minor and the best interests of the minor as determined by the juvenile court. The determination of the juvenile court shall not be overturned unless found to be clearly erroneous.

10. After hearing the matter the supreme court shall issue its decision within twenty-four hours.

11. Within forty-eight hours of the hearing by the supreme court, the record of the juvenile court shall be returned to the juvenile court and the juvenile court shall seal it at the earliest practicable time.

12. Nothing in this Act shall be construed to prevent the immediate performance of an abortion on an unmarried minor woman in an emergency where such action is necessary to preserve her life and no physician shall be prevented from acting in good faith in such circumstances or made to suffer any sanction thereby other than those applicable in the normal course of events to the general review of emergency and nonemergency medical procedures.

13. Nothing in this Act shall be construed to alter the effects of any other section of this chapter or to expand the rights of any minor to obtain an abortion beyond the limits to such rights recognized under the Constitution of the United States or under other provisions of the North Dakota Century Code.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 31, 1981

CHAPTER 165

HOUSE BILL NO. 1423
(Representatives G. Pomeroy, Heigaard)

DIVORCE AND SEPARATION RESIDENCE REQUIREMENTS

AN ACT to amend and reenact sections 14-05-17 and 14-06-06 of the North Dakota Century Code, relating to residency requirements for divorce and separation.

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

SECTION 1. AMENDMENT. Section 14-05-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-05-17. RESIDENCE REQUIREMENTS. A divorce must not be granted unless the plaintiff in good faith has been a resident of the state for twelve months next preceding the commencement of the action~~,--and-is:~~

~~1.--A-citizen-of-the-United-States;~~

~~2.--Has-declared-his-intention-to-become-a-citizen;-or~~

~~3.--Is--a-citizen-of-the-Philippine-Islands-or-Puerto-Rico-and under-present-law-is-ineligible-to-become-a-citizen-of-the United-States~~.

SECTION 2. AMENDMENT. Section 14-06-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06-06. RESIDENCE REQUIREMENTS. No action shall be brought or maintained under the provisions of this chapter unless the plaintiff in good faith has been a resident of this state for twelve months next preceding the commencement of the action ~~and-is-either-a citizen-of-the-United-States-or-has-declared-his-intention-to-become such~~.

Approved March 2, 1981

CHAPTER 166

HOUSE BILL NO. 1635
(Representatives A. Olson, R. Hausauer, Mushik)
(Senators H. Christensen, Redlin)

DISPLACED HOMEMAKER PROGRAM

AN ACT to provide counseling, guidance, job readiness training, and services for displaced homemakers; and to provide an appropriation.

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

SECTION 1. LEGISLATIVE FINDING AND DECLARATION. The legislative assembly finds that there is an ever-increasing number of persons in this state, who, having fulfilled a role as homemaker, find themselves "displaced" in their middle years through separation, divorce, death or disability of spouse, or other loss of support. As a consequence, displaced homemakers are very often without any source of income; they are usually ineligible for categorical welfare assistance; they are subject to one of the highest unemployment rates of any sector of the work force; they often face continuing discrimination in employment because they are older and have no recent paid work experience; they are often ineligible for unemployment insurance because they have been engaged in unpaid labor in the home; they are often ineligible for social security because they are too young, and many will never qualify for social security because they have been divorced from the family wage earner; they have often lost their rights as beneficiaries under employers' pension and health plans through divorce or death of spouse, despite many years of contribution to the family well-being; and they are most often ineligible for medical assistance and are generally unacceptable to private health insurance plans because of their age.

It is the intention of the legislative assembly in enacting this chapter to provide the necessary counseling and guidance, job readiness training, and services for displaced homemakers so that they may enjoy the independence and economic security vital to a productive life and to improve the health and welfare of this ever-growing group of citizens.

SECTION 2. DEFINITIONS.

1. "Bureau" means job service North Dakota.

2. "Displaced homemaker" means an individual who:

   a. Has worked in the home, providing unpaid services for household members.

   b. Has not been gainfully employed for a minimum of two years or has been underemployed.

   c. Has had, or would have difficulty finding employment.

   d. (1) Has depended on the income of another person and has lost that income; or

      (2) Has depended on government assistance as the parent of dependent children, but who is not eligible for such assistance or is supported by government assistance which is nearing an end.

3. "Executive director" means the executive director of job service North Dakota.

SECTION 3. GRANTS - DESIGN AND STAFF. The executive director is authorized to enter into contracts with and make grants to nonprofit agencies or organizations to carry out the programs, as enumerated in sections 6, 7, 8, 9, and 10 of this Act. Service centers shall be designed and staffed as follows:

1. The service centers shall provide personal and employment counseling; interpersonal skill building; job readiness, job search, and employability training; information and community referral services; and appropriate public information and community education.

2. Each center shall be organized to include an outreach component capable of delivering the full range of services to groups of displaced homemakers in rural communities.

3. Counseling services shall be delivered via individual, task oriented group, and peer support methods. Counseling and guidance shall be provided by qualified staff.

4. To the greatest extent possible, the staffing of the service centers, including supervisory, technical, and administrative positions, shall be by qualified displaced homemakers and others trained to meet the unique needs of displaced homemakers.

SECTION 4. SOURCES OF FUNDING AND IN-KIND CONTRIBUTIONS. The executive director shall explore all possible sources of funding and in-kind contributions from federal, state, local, and private sources in establishing displaced homemaker services.

SECTION 5. JOB COUNSELING PROGRAM - DESIGN - EMPHASIS. The service centers shall have a job counseling program for displaced homemakers. Job counseling shall be specifically designed for the person reentering the job market after a number of years as a homemaker. The counseling shall take into account and build upon the skills and experiences of a homemaker. Peer counseling and job readiness, as well as skill updating and development, shall be emphasized.

SECTION 6. JOB TRAINING PROGRAM - DEVELOPMENT - STIPEND FOR TRAINEES. The service centers shall have job readiness training programs for displaced homemakers. The service centers may contract or enter into cooperative agreements, or both, with the state board for vocational education, other government agencies, and private employers to develop training programs, or to utilize existing training programs, for available jobs in the public and private sectors for the purpose of promoting self-sufficiency. The job training program may provide a stipend for trainees.

SECTION 7. PROGRAM GOALS. Each of the service centers shall develop a goal to serve a stated number of urban and rural displaced homemakers. In addition, the service centers shall develop plans for including displaced homemakers in existing job training and placement programs offered by job service, colleges, vocational education, or other suitable agencies.

SECTION 8. ASSISTANCE IN FINDING PERMANENT EMPLOYMENT FOR TRAINEE. Service centers shall be responsible for assisting in preparing the trainee for permanent employment. The service centers shall work in cooperation with the executive director, other agencies, or the prime sponsors under the Comprehensive Employment and Training Act of 1973 in the area of the centers to secure employment for displaced homemakers.

SECTION 9. SERVICE PROGRAMS. The service centers shall, in cooperation with other existing service programs, ensure that displaced homemakers receive information and referral services which include:

1. A health counseling and referral clinic based on principles of preventive health care and consumer health education.

2. Money management courses, including information and assistance in dealing with insurance programs (life, health, home, and automobile), taxes, mortgages, loans, and probate problems.

3. Information about other assistance programs, including concrete information and assistance with supplemental security income, social security, veterans administration benefits, welfare, food stamps, housing, unemployment insurance, medical assistance, and educational financial assistance.

4. Educational programs, including courses offered for credit through universities, colleges, or vocational training programs, or leading toward a high school equivalency degree. These courses shall be designed to supplement the usual academic course offerings with classes geared toward older persons to improve their self-image and abilities.

SECTION 10. REGULATIONS - ELIGIBILITY FOR PROGRAMS - LEVEL OF STIPENDS - SLIDING FEE SCALE FOR SERVICE PROGRAMS. The executive director is authorized to adopt rules to implement this Act, to interpret the eligibility of persons for the job readiness training and other programs of the service centers, to establish the level of stipends for the job training programs described in section 6 of this Act, to establish a sliding fee scale for the service programs described in sections 3 and 9 of this Act, and to handle other matters as the executive director deems necessary. Any interpretation of eligibility for services should have as first priority the service of displaced homemakers, as identified in section 2 of this Act.

SECTION 11. DELEGATION OF AUTHORITY. The executive director may delegate any or all of the authority granted by this Act to whatever division within the bureau the director deems appropriate.

SECTION 12. CITIZEN ADVISORY STRUCTURE. The executive director shall establish an advisory body to the department which shall consist of citizen members representing each planning region of the state. Membership may represent displaced homemakers, local service providers, appropriate agencies, employers, educators, and the general public. The advisory body shall provide public information and community education regarding the program and appropriate recommendations to the executive director regarding the planning, operation, and evaluation of the activities mandated by this Act. This body shall annually provide written evaluation of the program to the executive director who will provide this evaluation to the legislative assembly each biennium in addition to the evaluation required in accordance with section 13 of this Act.

SECTION 13. PROGRAM EVALUATION. The executive director, in cooperation with the advisory body, the administrator of each center, and with appropriate heads of nonprofit agencies or organizations carrying out the programs, shall by January 15, 1983, prepare and furnish to the legislative assembly an evaluation report of all activities conducted pursuant to this mandate. Subsequent evaluations shall be provided in like fashion each biennium.

SECTION 14. DISPLACED HOMEMAKER ACCOUNT - CREATION. There is hereby created in the bureau, a displaced homemaker's account. The executive director may apply for and accept any funds, grants, gifts, or services made available for displaced homemakers by any agency or department of the federal government or any private agency or individual. Such funds, grants, gifts, dissolution of marriage-fee assessments, or moneys received from services received pursuant to this section shall be placed in the displaced homemaker

account and may be spent within the limits of legislative appropriations.

SECTION 15. PETITION FOR DISSOLUTION OF MARRIAGE - FEE ASSESSMENT. There should be assessed against the petitioner a fee of twenty dollars upon filing of a petition for dissolution of marriage. All such fees collected shall be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by this Act.

SECTION 16. APPROPRIATION. There is hereby appropriated out of any moneys in the displaced homemaker account in the state treasury, not otherwise appropriated, the sum of $100,000, or so much thereof as may be necessary, to job service North Dakota for the purpose of providing services for displaced homemakers under this Act for the biennium beginning July 1, 1981, and ending June 30, 1983.

SECTION 17. APPROPRIATION. There is hereby appropriated such additional funds as may become available through grants, gifts, or other sources during the biennium beginning July 1, 1981, and ending June 30, 1983. Such funds may be spent only upon approval of the emergency commission.

Approved March 31, 1981

CHAPTER 167

SENATE BILL NO. 2339
(Senator Stenehjem)
(Representatives Black, Mushik, Swiontek)

ADULT ABUSE PROTECTION ORDERS

AN ACT to amend and reenact sections 14-07.1-02 and 14-07.1-03 of the North Dakota Century Code, relating to protection orders.

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

SECTION 1. AMENDMENT. Section 14-07.1-02 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-02. ADULT ABUSE - PROTECTION ORDER.

1. An action for a protection order commenced by a verified application alleging the existence of adult abuse may be brought by any spouse or family member or former spouse in the district court, regardless of whether or not a petition for legal separation, annulment, or divorce has been filed.

2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.

3. Service shall be made upon the respondent not less than five days prior to the hearing. If service cannot be made, the court may set a new date.

4. Upon a showing of actual or imminent adult abuse, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:

   a. Restraining any party from threatening, molesting, or injuring any other party or minor children of the parties.

   b. Excluding either party~~,--for--a-period-not-to-exceed thirty-days,~~ from the ~~marital--home~~ dwelling they

share, from the residence of the other, or from an adult abuse care facility, where this exclusion is necessary to the physical or mental well-being of the applicant or others.

c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.

d. Recommending or requiring that either or both parties undergo counseling with an adult abuse program or other agency which provides professional services which the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports shall be borne by the parties or, if indigent, by the respondent's county of residence.

e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorneys fees and costs.

5. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

6. No order or agreement under this section shall affect title to any real property in any matter.

SECTION 2. AMENDMENT. Section 14-07.1-03 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-03. TEMPORARY PROTECTION ORDER - COPY TO LAW ENFORCEMENT AGENCY.

1. Where an application under section 14-07.1-02 alleges an immediate and present danger of abuse to the applicant, based upon an allegation of a recent incident of actual abuse or threat of abuse, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.

2. An ex parte temporary protection order may include:

a. Restraining any party from committing acts of abuse on the other.

b. Excluding any party from the dwelling they share, from the residence of the other, or from an adult abuse shelter care facility.

c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.

3. An ex parte temporary protection order shall remain in effect, in the court's discretion, for not more than thirty days, unless otherwise terminated by the court.

4. A full hearing as provided by section 14-07.1-02 shall be set for not later than fourteen days from the issuance of the temporary order. The respondent shall be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.

5. The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual abuse which is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.

6. If the filing fee for filing the application has been waived by order of the court, the court may waive the fee for service of process by the sheriff or other appropriate law enforcement agency or may order the respondent to pay these costs.

Approved March 19, 1981

CHAPTER 168

HOUSE BILL NO. 1313
(Representatives Swiontek, Matchie, Unhjem)
(Senator Stenehjem)

DOMESTIC VIOLENCE VICTIM ASSISTANCE

AN ACT authorizing the state department of health to provide financial and other assistance to private nonprofit organizations in developing and maintaining shelters and programs for victims of domestic violence; to amend and reenact sections 14-03-21 and 14-03-22 of the North Dakota Century Code, relating to records of marriage and marriage license fees; and to provide an appropriation.

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

SECTION 1. PURPOSE. The legislative assembly finds that domestic violence is a serious and complex problem which affects families from all social and economic backgrounds. It is the purpose of this Act to provide grants to private nonprofit organizations for spouse abuse programs designed to assist victims of domestic violence and their dependents.

SECTION 2. DEFINITIONS. For the purposes of this Act:

1. "Department" means the state department of health.

2. "Domestic violence" means any act or threatened act which results or threatens to result in bodily injury, and which is committed by a person against another person to whom such person is married or has been married, or with whom such person is residing or has resided lawfully.

3. "Health officer" means the state health officer of the department.

4. "Spouse abuse program" means a program which provides emergency housing for victims of domestic violence and their dependents, plus some or all of the following additional services:

   a. Counseling.

b. Advocacy.

c. Community education on domestic violence.

d. Support groups.

e. Twenty-four hour crisis lines.

f. Referral to other sources for services not provided by the spouse abuse program.

SECTION 3. DOMESTIC VIOLENCE PREVENTION FUND ESTABLISHED. There is hereby established a special fund in the state treasury, to be known as the domestic violence prevention fund. The moneys accumulated in such fund shall be allocated to the department for distribution as provided by this Act and within the limits of legislative appropriation. The fund shall not be subject to the provisions of section 54-44.1-11 of the North Dakota Century Code.

SECTION 4. GRANTS - ELIGIBILITY - CONDITIONS - LIMITATION. Moneys in the domestic violence prevention fund shall be administered by the department for grants to private nonprofit organizations which are engaged in providing emergency housing for victims of domestic violence and their dependents. An eligible entity must receive at least twenty-five percent of its funding from one or more local, municipal, or county sources, either in cash or in kind.

Grants shall be renewable within the limits of legislative appropriation, provided the applicant continues to meet the eligibility criteria established by this Act and rules adopted by the department pursuant to this Act and chapter 28-32. Grant application deadlines may be included in any rules adopted pursuant to this section. No initial grant shall exceed the amount of ten thousand dollars per biennium, provided that any appropriated funds remaining unobligated after the first year of the biennium may be disbursed by the department as supplemental grants.

SECTION 5. DUTIES OF HEALTH OFFICER. The health officer shall:

1. Respond to all applicants within sixty days after the deadline for receipt of applications, whether or not the applicant is eligible for funds.

2. Ensure that no more than ten percent of the moneys allocated to the domestic violence prevention fund in any biennium is expended for departmental administration of the grant program.

3. Distribute grants to eligible applicants in accordance with the purposes of this Act.

SECTION 6. AMENDMENT. Section 14-03-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-21. LICENSE AND CERTIFICATE RETURNED TO COUNTY JUDGE - DUPLICATE DELIVERED TO PERSONS MARRIED - RECORDS KEPT. When a person authorized by law shall solemnize a marriage, he shall fill out and sign the certificate following the license in duplicate, giving his official title, or if a minister of the gospel or priest, the ecclesiastical body with which he is connected. The original copy of the certificate and license shall be returned to the county judge who issued the license within five days after the date of the solemnization of the marriage, and the duplicate copy shall be immediately delivered to the persons married. The judge shall file the original copy in his office and retain it as part of his records. Any person who willfully neglects to make such return within the time required shall be punished as provided in section 14-03-28.

SECTION 7. AMENDMENT. Section 14-03-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-22. ~~RECORDS OF~~ MARRIAGE ~~AND~~ LICENSE FEE - SUPPLEMENTAL FEE - DUTIES OF OFFICERS. ~~When a license is returned to the county judge with the certificate of the person performing the marriage ceremony properly filled out and signed, the judge shall file the license in his office and retain it as part of his records.~~ For the issuance and filing of a marriage license the county judge shall collect the sum of six dollars from the party applying for the license ~~and shall deposit the same monthly with the county treasurer~~. Beginning with the effective date of this Act, the judge shall also collect from the applicant a supplemental fee of nineteen dollars for aid to victims of domestic violence, pursuant to sections 1 through 5 of this Act. The judge shall deposit the collected sums monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund. The judge shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in his office for that purpose. The registrar shall index his records and upon request shall issue certified copies of the recorded license and certificate for a one dollar fee. He shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

SECTION 8. APPROPRIATION. There is hereby appropriated out of any moneys in the domestic violence prevention fund in the state treasury, not otherwise appropriated, the sum of $228,000, or so much thereof as may be necessary, to the state department of health for the purpose of initiating the grant program as provided by this Act for the biennium beginning July 1, 1981, and ending June 30, 1983.

Approved March 31, 1981

CHAPTER 169

HOUSE BILL NO. 1121
(Unhjem)

CHILD SUPPORT OR ALIMONY PAYMENT FAILURE NOTICE

AN ACT to amend and reenact subsection 1 of section 14-08-07 of the North Dakota Century Code, relating to support payments and procedures upon failure to make payments for child support or alimony combined with child support.

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 1977 Pocket 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 maintain records listing the amount of ~~such~~ the payments, the date when ~~such~~ the payments shall be made, the names and addresses of the parties subject to ~~such~~ the decree, and any other information ~~deemed~~ necessary for the proper administration of ~~such~~ the decree. 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 ~~registered or certified mail to be delivered only to such person ordered to make the support or alimony payments. Upon proof of receipt of such notice, the clerk of court shall, if payment of the entire arrearage has not been made to the clerk after ten days from the date of proof of such receipt of such notice,~~ first-class mail, with affidavit of service, to the person required to make the payments, or request ~~the~~ a district judge of the judicial district, on a form provided by ~~such~~ the judge, to issue a citation for contempt of court against ~~such~~ the person who has failed to make ~~such~~ the payments and the citation shall be served on ~~such~~ that person as provided by the ~~rules of civil procedure~~ North Dakota Rules of Civil Procedure.

Approved March 11, 1981

CHAPTER 170

HOUSE BILL NO. 1270
(Reiten)

APPOINTMENT OF GUARDIAN TO REPRESENT CHILD

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to the appointment of a guardian ad litem to represent minor children in court proceedings relating to their custody, support, and visitation.

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:

APPOINTMENT OF GUARDIAN AD LITEM FOR CHILDREN IN CUSTODY, SUPPORT, AND VISITATION PROCEEDINGS. In any action for an annulment, divorce, legal separation, or other action affecting marriage, where either party has reason for special concern as to the future of the minor children, and in actions affecting the marriage relationship where the custody of such children is contested, either party to the action may petition the court for the appointment of a guardian ad litem to represent the children concerning custody, support, and visitation. The court, in its discretion, may appoint a guardian ad litem on its own motion. If appointed, a guardian ad litem shall serve as an advocate of the children's best interests. The court may direct either or both parties to pay the guardian ad litem fee established by the court. If neither of the parties are able to pay the fee, the court may direct the fee 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 such payment.

Approved March 11, 1981

CHAPTER 171

SENATE BILL NO. 2077
(Legislative Council)
(Interim Judiciary "C" Committee)

WAGE ASSIGNMENT AND EARNINGS WITHHOLDING FOR CHILD SUPPORT

AN ACT to amend and reenact sections 14-09-09.1 and 14-09-09.2 of the North Dakota Century Code, relating to wage assignments and orders to withhold and transmit earnings for child support.

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

SECTION 1. AMENDMENT. Section 14-09-09.1 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.1. CHILD SUPPORT - WAGE ASSIGNMENT - PROCEDURES.

1. Each judgment containing child support provisions and each order for child support issued by a district court of this state shall include an order directing the obligor to assign such salary currently due or to be due in the future from the obligor's employer or successor employers to the clerk of the court where the judgment is granted or the order issued, in such amount as will be sufficient to meet the child support payments imposed by the court. This wage assignment shall take effect upon application of the person receiving payments or any person or public agency designated to receive such payments, when the requirements of this section have been met. The application shall be a sworn statement which states that the obligor has failed to make a child support payment in full within twenty days of the due date of such payment. This section does not authorize a clerk of court who receives child support payments as trustee under section 14-08-07 to make such application.

2. The clerk of court, upon application of an authorized person or agency, shall send a notice by certified mail to the last known address of any obligor who has failed to make the required child support payment within twenty days of its due date. The notice shall be postmarked no later

than ten days after the date on which the application was filed and shall inform the obligor that the wage assignment shall go into effect ten days after the date on which the notice was sent. The obligor may, within that ten-day period, request a hearing on the issue of whether the wage assignment should take effect, in which case the wage assignment shall be held in abeyance pending the outcome of the hearing. The district court or its referee shall hold a hearing requested under this section within ten working days after the date of the request.

3. If at the hearing the obligor establishes that extraordinary circumstances prevented fulfillment of the child support obligation and that such circumstances are beyond the control of the obligor, the court may direct that the wage assignment be delayed until such time, within twelve months, as another month's payment is missed. If such a delay is granted, the wage assignment shall, upon application, go into effect if, within the following twelve months, the obligor fails to make in full any payment within twenty days of its due date.

4. An assignment made under this section shall be binding upon the employer and successor employers one week after service upon the employer of a true copy of the assignment signed by the obligor-employee and annexed to a copy of the order, by personal service or by registered or certified mail, until further order of the court or as provided in section 14-09-09.4. For purposes of sections 14-09-09.1 through 14-09-09.5, the term employer includes the state and federal governments and the political subdivisions of the state.

5. The employer may not use such assignments as a basis for the discharge of an employee or for any disciplinary action against the employee.

6. The employer must notify the clerk of court entering the wage assignment order, in writing, of the termination of the obligor-employee's employment within thirty days of such termination. Such notice must include the name and address of the obligor-employee's new employer if known.

7. Any wage assignment under this section shall have priority over any attachment, execution, garnishment or wage assignment unless otherwise ordered by the court ~~and shall not be subject to any statutory limitations on such amounts levied against the income of the obligor-employee~~.

8. An employer may deduct one dollar from the obligor-employee's remaining salary for each payment made pursuant to an assignment under this section to cover the employer's expenses involved in such wage assignments.

9. Any wage assignment under this section shall be subject to any statutory limitations on wage assignments provided under federal law.

SECTION 2. AMENDMENT. Section 14-09-09.2 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.2. CHILD SUPPORT - ALTERNATIVE PROCEDURE TO WITHHOLD AND TRANSMIT EARNINGS.

1. In cases where a wage assignment has not been secured, upon application of the child or of any person having a direct interest in the welfare of the child, the court, pursuant to this section and upon a showing that a child support payment has not been made in full within twenty days of its due date, may order the employer of the obligor-employee:

   a. To withhold from the obligor-employee's earnings presently due and from future earnings as they become due, such amounts as shall satisfy the obligor-employee's previous arrearage in child support payments, the obligor-employee's obligation to pay child support as it accrues in the future, and any attorney's fees that may be awarded in a proceeding under this section;

   b. To deduct from the balance of the obligor-employee's salary, a fee of one dollar per month to cover the employer's expenses involved in withholding and transmitting the child support payment for that month;

   c. To remit at least once each calendar month the amount withheld under subdivision a to the clerk of court entering such order;

   d. To refrain from dismissing, disciplining, or in any way penalizing the obligor-employee on account of the proceeding to collect child support, on account of any order or orders entered by the court in such proceeding, and on account of employer compliance with such order or orders; and

   e. To notify in writing the clerk of court entering such order of the termination of such obligor-employee's employment and the name and address if known of the obligor-employee's new employer within thirty days after termination of employment.

   Such application may be filed as part of any proceeding brought for failure to make child support payments or may be made independently of any other support enforcement action.

2. Upon the filing of an application to withhold and transmit earnings, the court shall set a time for a hearing. The hearing shall be held within three weeks of the date the application is filed with the court.

3. The applicant shall then cause to be served on the employer a copy of the application, a notice of hearing and interrogatories to be completed and returned by the employer to the court no later than three days prior to the hearing. The interrogatories when completed shall show whether the obligor-employee is an employee of the employer, whether the obligor-employee performs work and provides services or makes sales for the employer in this state, the present length of employment of the obligor-employee with the employer, the present pay period for such obligor-employee, the average earnings of the obligor-employee per pay period, and the name and address of the person, office or division of the employer responsible for the preparation of the obligor-employee's earnings payments.

4. The applicant shall also cause to be served on the obligor-employee a copy of the application and a notice of hearing.

5. Service under this section shall be personally or by mailing by certified mail, the documents required to be served.

6. Any order to withhold and transmit earnings under this section shall have priority over any attachment, execution, garnishment or wage assignment unless otherwise ordered by the court ~~and--shall--not--be--subject--to--any statutory--limitations--on--executions--issued-against-the income-of-the-obligor-employee~~.

7. Any order to withhold and transmit earnings under this section shall be subject to any statutory limitations on executions issued against the income of the obligor-employee which are provided under federal law.

Approved March 9, 1981

CHAPTER 172

SENATE BILL NO. 2369
(Stenehjem)

CHILD SUPPORT PROPERTY LIEN

AN ACT to repeal section 14-09-09.5 of the North Dakota Century Code, relating to payment of child support as a lien upon real property of the obligor.

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

SECTION 1. REPEAL. Section 14-09-09.5 of the 1979 Interim Supplement to the North Dakota Century Code is hereby repealed.

Approved March 18, 1981

CHAPTER 173

SENATE BILL NO. 2132
(Committee on Social Services and Veterans Affairs)
(At the request of the Social Service Board)

ILLEGAL PLACEMENT OF CHILD FOR ADOPTION

AN ACT to amend and reenact sections 14-10-05 and 50-12-17 of the North Dakota Century Code, relating to the penalty imposed for the illegal placement of a child for adoption.

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

SECTION 1. AMENDMENT. Section 14-10-05 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-10-05. ASSIGNMENT OF CHILDREN PROHIBITED - PENALTY. No person, other than the parents, may assume the permanent care and custody of a child, unless authorized so to do by an order or decree of a court having jurisdiction, except that a parent, upon giving written notice to the social service board of North Dakota, may place his or her own child in the home of the child's grandparent, uncle, or aunt for adoption or guardianship by the person receiving the child. The child shall be considered abandoned if proceedings for the adoption or guardianship of the child are not initiated by such relative within one year following the date of notice of placement. No parent shall assign or otherwise transfer his rights or duties with respect to the care and custody of his child. Any such transfer or assignment, written or otherwise, shall be void. This section shall not affect the right of the parent to consent in writing to the legal adoption of his child, but such written consent shall not operate to transfer any right in the child in the absence of a decree by a court having jurisdiction. Any person who violates the provisions of this section is guilty of a class A misdemeanor.

SECTION 2. AMENDMENT. Section 50-12-17 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-12-17. PENALTY. No person shall place or cause to be placed any child ~~other than his or her own~~ in a family ~~homes~~ home for adoption without a license so to do from the social service board of North Dakota except that a parent, upon giving written notice to the social service board of North Dakota, may place his or her own child in the home of the child's grandparent, uncle, or aunt for adoption by the person receiving the child. The child shall be considered abandoned if proceedings for the adoption or guardianship of the child are not initiated by such relative within one year following the date of notice of placement. Every person who violates any provision in this chapter is guilty of a class C felony.

Approved April 1, 1981

CHAPTER 174

HOUSE BILL NO. 1065
Legislative Council
(Interim Judiciary "C" Committee)

CONSENT REQUIRED FOR ADOPTION

AN ACT to amend and reenact subsection 1 of section 14-15-05, subsection 1 of section 14-15-06, and subsection 1 of section 14-15-11 of the North Dakota Century Code, relating to consent required for adoption.

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

SECTION 1. AMENDMENT. Subsection 1 of section 14-15-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Unless consent is not required under section 14-15-06, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:

   a. The mother of the minor whether by birth or adoption;

   b. The father of the minor, if ~~the father was married to the mother at the time the minor was conceived or at any time thereafter, the~~:

      (1) The minor is his child by adoption, or he has otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought; or

      (2) He is presumed to be the natural father of the minor under subsection 1 of section 14-17-04, provided the nonexistence of the father and child relationship between them has not been judicially determined;

   c. Any person lawfully entitled to custody of the minor or empowered to consent;

   d. The court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the

person of the minor is not empowered to consent to the adoption;

e. The minor, if more than ten years of age, unless the court in the best interest of the minor dispenses with the minor's consent; and

f. The spouse of the minor to be adopted.

SECTION 2. AMENDMENT. Subsection 1 of section 14-15-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Consent to adoption is not required of:

a. A parent who has deserted a child without affording means of identification, or who has abandoned a child;

b. A parent of a child in the custody of another, if the parent for a period of at least one year has failed significantly without justifiable cause (i) to communicate with the child or (ii) to provide for the care and support of the child as required by law or judicial decree;

c. The father of a minor if the father's consent is not required by section 14-15-05(1) (b);

d. A parent who has relinquished his right to consent under section 14-15-19;

e. A parent whose parental rights have been terminated by order of court under section 14-15-19;

f. A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent;

g. Any parent of the individual to be adopted, if the individual is an adult;

h. Any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after examination of his written reasons for withholding consent, is found by the court to be withholding his consent unreasonably; ~~or~~

i. The spouse of the individual to be adopted, if the failure of the spouse to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or

circumstances constituting an unreasonable withholding of consent~~.~~; or

j. A parent of the minor, if the failure of the parent to consent is excused by the court in the best interest of the child by reason of the parent's prolonged unexplained absence, unavailability, incapacity, or significant failure, without justifiable cause, to establish a substantial relationship with the minor or to manifest a significant parental interest in the minor, or by reason of inability of the court to identify the parent.

SECTION 3. AMENDMENT. Subsection 1 of section 14-15-11 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing shall be given by the petitioner to (a) the social service board; (b) any agency or person whose consent to the adoption is required by this ~~Act~~ chapter but who has not consented; (c) a person whose consent is dispensed with upon any ground mentioned in subdivisions a, b, f, h, ~~and~~ i, and j of subsection 1 of section 14-15-06 but who has not consented; and (d) any person identified by the court as a natural parent or a possible natural parent of the minor, upon making inquiry to the extent necessary and appropriate, as in proceedings under section 27-20-45 and section 14-17-24, unless the person has relinquished parental rights or his parental rights have been previously terminated by a court. The notice to the social service board shall be accompanied by a copy of the petition.

Approved March 5, 1981

EDUCATION

CHAPTER 175

SENATE BILL NO. 2412
(Committee on Appropriations)

DICKINSON EXPERIMENT STATION LAND SALE LOAN

AN ACT to amend and reenact section 4 of chapter 208 of the 1979 Session Laws of North Dakota, authorizing the board of university and school lands to invest in property development related to the Dickinson experiment station land transfers; and providing an appropriation.

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

SECTION 1. AMENDMENT. Section 4 of chapter 208 of the 1979 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 4. The board of university and school lands may invest an amount not to exceed ~~two~~ three million two hundred sixty-five thousand dollars from the permanent fund of the common schools as a loan to the board of higher education for the section 1 unit purchase, section 2 committee implementation, and section 6 land sale. The board of higher education is authorized to borrow from the board of university and school lands the sum of ~~two~~ three million two hundred sixty-five thousand dollars, or so much thereof as may be necessary, for the purpose of the section 1 unit purchase, section 2 committee implementation, and section 6 land sale. The loan from the board of university and school lands shall be for a term not to exceed ten years, but the amount of the loan, interest rate, and method of repayment are to be negotiated by the board of university and school lands and the board of higher education. The board of higher education is authorized to grant a security interest to the permanent fund of the common schools in the property to be acquired. The members of the state board of higher education shall not be held personally liable for repayment of any loan obtained under this section, and the board shall be liable for repayment only in the manner provided pursuant to this section.

SECTION 2. APPROPRIATION. There is hereby appropriated the loan proceeds from any loan under section 1 to the state board of higher education for the following purposes:

Land development for sale	$1,000,000
Total	$1,000,000

There is also appropriated from any rents, profits, or proceeds described in section 7 of chapter 208 of the 1979 Session Laws of North Dakota an amount as necessary to pay interest due on loans made pursuant to this Act.

Approved March 26, 1981

CHAPTER 176

HOUSE BILL NO. 1333
(Reiten)

DEED OF LAND TO THE FELLOWS OF THE UNIVERSITY

AN ACT to authorize the state board of higher education to deed property owned by the state of North Dakota for the use and benefit of the university of North Dakota to the fellows of the university of North Dakota, inc.; and to declare an emergency.

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

SECTION 1. AUTHORITY TO CONVEY. The university of North Dakota, through the state board of higher education, is hereby authorized to deed to the fellows of the university of North Dakota, inc., the real property, owned by the state of North Dakota for the use and benefit of the university of North Dakota, described as lot eleven, block two, of the dacotah place addition to the city of Grand Forks, Grand Forks County, North Dakota.

SECTION 2. SALE OF PROPERTY - NO COMPENSATION - QUITCLAIM DEED. The deed shall contain a provision that if the fellows of the university of North Dakota, inc., shall sell the property, the proceeds shall be used for the benefit of the university of North Dakota, as determined by the state board of higher education. The conveyance authorized herein shall be without compensation to the state of North Dakota from the fellows of the university of North Dakota, inc. The real property shall be conveyed by quitclaim deed executed in the name of the state of North Dakota by the governor and attested by the secretary of state.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 11, 1981

CHAPTER 177

SENATE BILL NO. 2128
(Committee on State and Federal Government)
(At the request of the Geological Survey)

GEOPHYSICAL DATA ACQUISITION AND CONFIDENTIALITY

AN ACT providing for the acquisition of geophysical data by the office of the state geologist, the purchase of such data, the acceptance of donated data, and the confidentiality of such data when requested by the seller or donor.

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

SECTION 1. AUTHORITY OF THE STATE GEOLOGIST - ACQUISITION OF GEOPHYSICAL DATA - CONFIDENTIALITY. The state geologist has the authority:

1. To acquire geophysical data including seismic, magnetic, and gravity data by purchase or by acceptance of donated proprietary data.

2. To provide for the confidentiality of geophysical data when requested by the seller or donor until such time as the seller or donor notifies the state geologist that confidentiality is no longer required. Confidential data shall be used only by the state geologist and such staff members as may be designated by the state geologist.

Approved March 9, 1981

CHAPTER 178

SENATE BILL NO. 2203
(Senator Lips, Solberg, Wenstrom)
(Representatives Berg, Hughes, Wagner)

COMMUNITY OR JUNIOR COLLEGE AID

AN ACT to amend and reenact sections 15-18-07 and 15-18-09 of the North Dakota Century Code, relating to state aid for community or junior colleges.

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

SECTION 1. AMENDMENT. Section 15-18-07 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-18-07. STATE AID FOR COMMUNITY OR JUNIOR COLLEGES OR EDUCATIONAL CENTERS. ~~There--shall--be--paid--to--each~~ Each school district maintaining a community or junior college or educational center operated by a state-supported institution of higher education meeting the standards and eligibility requirements prescribed in section 15-18-08~~,-out-of-funds-appropriated-for--this--purpose,--the sum--of--twenty-four--dollars-per-calendar-week,-which-shall-be-paid for-every-full-time-student-in-attendance~~ shall have appropriated on its behalf such amounts as are determined necessary by the legislative assembly, provided the school district, city, or county shall levy taxes of not less than eight mills for the support of such community or junior college or educational center in accordance with the provisions of sections 15-18-03, 15-18-04.2, or 15-18-05. ~~For-the-purpose-of-this--section,--a--"full-time--student"--means--a person--enrolled-and-in-attendance,-exclusive-of-temporary-absences, in-a-junior-college-or--educational--center--operated--by--a--state-supported-institution-of-higher-education-carrying-a-course-of-study of-not-less-than-twelve-class-hours-during--each--calendar--week--in academic--courses-meeting-standards-prescribed-by-the-state-board-of higher--education,--or--in--vocational--courses--meeting---standards prescribed---by--the--state--board--for--vocational--education.----In addition,-an-amount-equal-to-the-weekly-payment-made-for-each--full-time--student--shall--be--made-for-each-full-time-equivalent-student enrolled-for--each--calendar--week--of--attendance--in--an--approved academic--or--vocational-program-meeting-the-standards-prescribed-by the-respective-boards.--The-number-of-full-time-equivalent--students enrolled--in--each--junior--college--or--educational-center-for-each~~

~~calendar-week-shall-be-computed-as-follows:--the-total--class--hours of--all-students-in-attendance,-exclusive-of-temporary-absences,-who are-enrolled-in-less-than-twelve-class-hours,-shall--be--divided--by twelve.----A--class--hour--means--not--less--than--fifty--minutes--of instruction-or-supervised-laboratory-training.---Payments--shall--be made--on--a-fiscal-year-basis,-which-shall-mean-the-period-from-July first-of-one-calendar-year-through-June-thirtieth-of--the--following calendar-year.~~

~~If--the-funds-appropriated-for-the-purpose-of-carrying-out-the provisions-of-this-section-should-prove-to-be-insufficient-based--on the--number--of--students--in--attendance--at--a--junior--college-or educational-center-as-provided-in-this-section,-the--amounts--to--be paid-to-such-junior-colleges-or-educational-centers-shall-be-reduced in-such-a-manner-so-that-the-payments-for-each-student-in-attendance at-a-junior-college-or-educational-center-will-be-made-on-a-pro-rata basis.~~ Community or junior colleges shall operate within the limits of their legislative appropriation. Before estimated income in excess of that included in the legislative appropriation acts can be spent by the community or junior college, and before transfers between line items in the legislative appropriation acts can be made, the community or junior college must receive emergency commission approval.

SECTION 2. AMENDMENT. Section 15-18-09 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-18-09. METHOD OF PAYMENT --~~VERIFICATION-OF-STUDENTS~~. ~~On or-before-July-first-of-each--year,--the~~ The chief administrative officer of each community or junior college or educational center operated by a state-supported institution of higher education ~~or-the superintendent--of--each-school-district~~ claiming state aid payments under section 15-18-07, shall file ~~with-the-state--board--of--public school--education--a--verified--statement--containing--the--name-and residence-of--each--student--enrolled--in--academic--and--vocational courses--for--whom--payments-are-claimed,-together-with-a-listing-of each-course-of-study-and-the-number-of-class-hours--for--which--such student--was--enrolled--and--in--attendance,--exclusive-of-temporary absences,-during-each-week--of--the--period--for--which--payment--is claimed.----Such--other--information--shall--be--submitted--as-may-be requested-by-the-state-board-of-public-school-education.--The--state board-of-public-school-education-shall-consider-all-claims-submitted for-payment-from-each-school-district,--and--shall--forward--to--the director--of--accounts--and-purchases-a-certified-list-of-all-school districts-entitled-to-payments-under-section-15-18-07,-together-with the--amount--of-the-approved-payments.--The-director-of-accounts-and purchases-shall-immediately-issue-a-warrant-to-each-school--district entitled--to--payment--in--accordance--with-the-certified-statements submitted-by-the--state--board--of--public--school--education.----The decision--of-the-state-board-of-public-school-education-in-regard-to all-claims-for-payment-shall-be-final.--The-staff-of-the-state-board of-vocational-education-shall-provide-such-professional-and-clerical assistance-as-the-state-board-of-public-school-education-may-require~~

~~in--performing-the-duties-required-by-this-section~~ vouchers with the department of accounts and purchases to receive funds from their legislative appropriation. Other than amounts necessary to maintain operating cash balances, the community or junior colleges shall be required to expend appropriated local funds before requesting revenues from the appropriated state moneys.

Approved April 3, 1981

CHAPTER 179

HOUSE BILL NO. 1051
(Legislative Council)
(Interim Education Committee)

RECIPROCAL VOCATIONAL EDUCATION AGREEMENTS

AN ACT to authorize reciprocal postsecondary vocational education agreements with Minnesota; and to provide an effective date.

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

SECTION 1. POSTSECONDARY VOCATIONAL EDUCATION RECIPROCITY WITH MINNESOTA. The state board for vocational education may enter into agreements with the Minnesota higher education coordinating board or with the governing board of any public postsecondary vocational technical institute in that state to enable, on a reciprocal basis, any resident of North Dakota to attend an approved vocational education program in Minnesota and to permit any resident of Minnesota to attend an approved vocational education program in North Dakota without being required to pay nonresident tuition fees. For the purposes of this Act, "approved vocational education program" means any postsecondary vocational or technical program offered by a Minnesota area vocational technical institute or a district-operated junior college in North Dakota.

SECTION 2. LEGISLATIVE INTENT. Any agreement made pursuant to this Act may provide for the transfer of funds between the states and any payment to Minnesota by North Dakota shall be within the limitations of the payment due North Dakota from Minnesota under the authority contained in chapter 15-10.1. Any payment to North Dakota by Minnesota shall be deposited in the state's general fund.

SECTION 3. EFFECTIVE DATE. If section 3 of Senate Bill No. 2007 relating to the continued availability of appropriations to Lake Region junior college after July 1, 1982, is enacted, then the provisions of this Act shall be effective on and after July 1, 1982.

Approved April 1, 1981

CHAPTER 180

SENATE BILL NO. 2404
(Senator Melland)
(Representative Hughes)

HIGHER EDUCATION STUDY COMMISSION

AN ACT to establish a higher education study commission and to provide for its membership, duties, responsibilities, and administrative procedures; to provide an appropriation; and to declare an emergency.

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

SECTION 1. HIGHER EDUCATION STUDY COMMISSION - MEMBERSHIP - APPOINTMENT - COMPENSATION - ASSISTANCE AND STAFF SERVICES.

1. The higher education study commission shall consist of nine members to be appointed by the chairman of the legislative council.

2. Members of the commission shall receive compensation and reimbursement for expenses in the same manner and amount as members of the legislative council.

3. The legislative council shall provide staff services for the commission, and the commission may hire such consultants as it deems necessary, within the limits of legislative appropriations.

4. The board of higher education, the state board for vocational education, the superintendent of public instruction, the president of each junior college or educational center, and all other agencies, departments, and institutions of the executive branch shall provide such reasonable assistance and such information as the commission may from time to time request.

SECTION 2. LEGISLATIVE FINDINGS.

1. The legislative assembly finds increasing competition among all postsecondary educational institutions in North Dakota, public and private, for students, for state support, and for private contributions, all brought about

by an anticipated decline in enrollment and the pressures generated by inflation and other demands being made on the public resources of this state.

2. The legislative assembly also finds the public institutions of this state searching for new missions to meet the demands of the future, to accommodate local changing conditions, to stabilize local economies, and to provide security for faculty and students.

3. Finally, the legislative assembly finds that the machinery for governance of postsecondary educational institutions is inadequate, encumbered by constitutional mandates, a multiplicity of governing boards and authorities, a variety of formulas and standards to provide public support for various types of institutions, and by various special interests vying for the same public dollars.

SECTION 3. DUTIES OF COMMISSION.

1. The higher education study commission shall review the entire structure of higher education in North Dakota, including both public and private institutions of higher education, vocational education, and continuing education. The first priority of this commission is a study of the state's junior colleges as to function, curriculum areas, and placement within the state system of higher education.

2. The commission shall make a comprehensive review of present offerings of each of the institutions and evaluate the effectiveness of each program area.

3. The commission shall study and review previous studies and reports on postsecondary education in North Dakota.

4. The commission shall consider, but shall not be limited by, the following alternatives or areas of concern with a view toward possible constitutional or statutory reform, or both:

   a. The possibility of a single university system with one chancellor in charge of all programs.

   b. The elimination of certain underclass divisions at universities.

   c. The assignment of program offerings on an exclusive basis by particular institutions.

   d. The role of the junior colleges, including the possibility of bringing them into the state system, as well as expanding the junior college concept to other institutions.

e. The need for the variety of boards which now exist with responsibilities over segments of postsecondary public education in North Dakota.

f. The type of postsecondary institution best suited to serve the interests of the local community and the state in each location in which institutions now exist.

g. The method of nomination of board of higher education members, including existing constitutional restrictions on board memberships.

h. The fiscal authority and responsibility over postsecondary institutions and the methods of providing state aid to each institution.

i. Private fundraising activities of public postsecondary institutions.

j. Staffing patterns for governance of postsecondary institutions.

5. The commission shall report its findings and recommendations, along with any legislation necessary to implement those recommendations, to the forty-eighth legislative assembly and, following adjournment of the forty-eighth legislative assembly, the commission shall be dissolved.

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 $75,000, or so much thereof as may be necessary, to the higher education study commission for the purpose of carrying out the provisions of this Act for the period beginning with the effective date of this Act and ending June 30, 1983.

SECTION 5. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 8, 1981

CHAPTER 181

HOUSE BILL NO. 1337
(Swiontek, Jacobson, Knudson, G. Larson)

UNIFORM ACCOUNTING AND REPORTING SYSTEM FOR SCHOOL DISTRICTS

AN ACT to direct the implementation of a uniform accounting and reporting system for school districts.

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

SECTION 1. UNIFORM ACCOUNTING AND REPORTING SYSTEM. The superintendent of public instruction shall implement a uniform system for the accounting, budgeting, and reporting of fiscal data for all school districts in the state. The accounting system shall be based on Handbook II-B, Revised, as developed and piloted in the state's school districts during the past two years. All school districts shall, upon request, submit additional reports concerning finances to the superintendent.

Approved March 5, 1981

CHAPTER 182

SENATE BILL NO. 2154
(Committee on Education)
(At the request of the Department of Public Instruction)

BOARD OF PUBLIC SCHOOL EDUCATION COMPENSATION

AN ACT to amend and reenact section 15-21-17 of the North Dakota Century Code, relating to compensation for state board of public school education members.

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

SECTION 1. AMENDMENT. Section 15-21-17 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-21-17. COMPOSITION OF STATE BOARD OF PUBLIC SCHOOL EDUCATION. The state board of public school education shall consist of the superintendent of public instruction, and one qualified elector from each of the following districts within the state, to be appointed by the governor subject to the consent of the senate:

1. District one shall consist of the counties of Barnes, Cass, Grand Forks, Griggs, Nelson, Steele, and Traill.

2. District two shall consist of the counties of Benson, Bottineau, Cavalier, McHenry, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, and Walsh.

3. District three shall consist of the counties of Dickey, Emmons, LaMoure, Logan, McIntosh, Ransom, Richland, and Sargent.

4. District four shall consist of the counties of Burleigh, Eddy, Foster, Kidder, McLean, Sheridan, Stutsman, and Wells.

5. District five shall consist of the counties of Burke, Divide, McKenzie, Mountrail, Ward, and Williams.

6. District six shall consist of the counties of Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, Slope, and Stark.

Nominations shall be made by the governor from a list of three names for each position to be filled on such board, such names to be selected by a committee consisting of the president of the North Dakota state's attorneys association, the president of the North Dakota school administrators association, and the president of the North Dakota school boards association. Appointive members shall serve for terms of six years, arranged so that the term of two members shall expire on June thirtieth of each even-numbered year. The governor shall fill vacancies upon the committee and all members so appointed as well as the members of the original committee shall possess all the powers of regularly appointed and confirmed members, pending confirmation by the senate or its refusal to confirm. At all times, two members of the board shall be members of the North Dakota school boards association. The superintendent of public instruction shall also serve as executive director and secretary of such board, shall call such meetings as may be required, shall supervise and carry out the policies of the board in relation to all functions of the board, and shall employ such personnel as shall be necessary to carry on such responsibilities as may be placed upon the board by law. The board shall annually elect a member of the board to serve as chairman. Appointive members shall be compensated at the rate of ~~thirty~~ fifty dollars per day for each day actually and necessarily spent in the performance of their duties as board members and all members shall receive reimbursement for actual necessary expenses incurred in the performance of their duties from the biennial appropriation of the department of public instruction at the same rates as provided by law for other state officers. The board shall have authority to call upon any state office, officer, department, or agency for such advice and assistance as it may from time to time require.

Approved March 5, 1981

CHAPTER 183

SENATE BILL NO. 2191
(Holmberg)

SCHOOL BOARD ELECTIONS

AN ACT to amend and reenact sections 15-22-23, 15-28-03, 15-28-04, and 15-28-07 of the North Dakota Century Code to allow school boards to hold annual elections on the first or second Tuesday in June and to share costs with the county.

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

SECTION 1. AMENDMENT. Section 15-22-23 of 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 ~~first~~ Tuesday in June of each year chosen for 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 Tuesday in June~~ in common and special school districts. If no newspaper is published in the county, the notice shall be published in a newspaper in an adjoining county in the state.

SECTION 2. AMENDMENT. Section 15-28-03 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-28-03. ANNUAL AND SPECIAL ELECTIONS - WHEN HELD - OFFICERS ELECTED - TERMS - OPTIONAL JOINDER WITH CITY ELECTION. An annual election shall be held in each public school district on the first or second Tuesday in June, at the discretion of the school board, of each year. At each annual election, members of the school board shall 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 term shall commence on the second Tuesday in July following his election, and he shall continue until his 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. The annual election provided for in this section may, upon resolution of the school board, be held in conjunction with the regularly scheduled city election held in a city encompassing or encompassed by that school district. The school board may enter into an agreement with the city commission or the city council concerning the sharing of election personnel, the printing of election materials, and the apportioning of election expenses. If the school election is held in conjunction with the primary election, the school board may enter into an agreement with the governing body of the county or counties in which the district lies concerning use of a single canvassing board, the sharing of election personnel, the printing of election materials, and the apportioning of election expenses.

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 days prior to the ~~first~~ Tuesday in June 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 precincts shall be arranged so as to divide the electors in the district as nearly equally as possible, and no precinct shall have a population in excess of six thousand residents as shown by the last federal decennial census. The polling places established in such precincts shall be located as conveniently as possible for the voters in the precinct, and a polling place once established by the board shall 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 perform his duties as judge or clerk, as the case may be, according to law and to the best of his 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 1977 Pocket Supplement to 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 be in substantially the following form:

> Notice is hereby given that on ~~the first~~ Tuesday, the ------- of June, -------, annual elections will be held for the purpose of electing member(s) of school boards, and the polls will be open at ------- ~~o'clock~~ a.m. ------- (insert time standard) and will close at ------- ~~o'clock~~ p.m. ------ (insert time standard) of that day.

Approved March 6, 1981

CHAPTER 184

SENATE BILL NO. 2394
(Tierney)

SCHOOLBUS SERVICE FEE

AN ACT to amend and reenact section 15-34.2-06.1, relating to the maximum total fees a nonreorganized school district may collect for schoolbus services.

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

SECTION 1. AMENDMENT. Section 15-34.2-06.1 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.2-06.1. CHARGE FOR BUS TRANSPORTATION OPTIONAL. The school board of any school district which has not reorganized pursuant to ~~article--III--of~~ chapter 15-53.1, may charge a fee for schoolbus service provided to anyone riding on buses provided by the school district. ~~The~~ For schoolbus service which was started prior to July 1, 1981, the total fees collected may not exceed an amount equal to the difference between the state transportation payment and the state average cost for transportation or the local school district's cost, whichever is the lesser amount. For schoolbus service started on or after July 1, 1981, the total fees collected may not exceed an amount equal to the difference between the state transportation payment and the local school district's cost for transportation during the preceding school year. Any districts that have not previously provided transportation for pupils may establish charges based on costs estimated by the school board during the first year that transportation is provided.

Approved March 31, 1981

CHAPTER 185

SENATE BILL NO. 2101
(Committee on Education)
(At the request of the Department of Public Instruction)

SCHOOLBUS PURCHASE

AN ACT to amend and reenact sections 15-34.2-12 and 57-15-52.1 of the North Dakota Century Code, relating to the school district levy for purchasing, operating, and maintaining schoolbuses.

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

SECTION 1. AMENDMENT. Section 15-34.2-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.2-12. SCHOOL BOARDS' AUTHORITY TO PURCHASE SCHOOLBUS EQUIPMENT. School boards shall have the power to purchase a bus body, a chassis, or complete motorbus. Such bus body, chassis, or complete motorbus shall meet the standards set up under the authority of section 39-21-27.1. School boards shall be required to advertise for bids in accordance with the provisions of section 15-47-15. School boards may use money in the general fund to purchase a bus body, a chassis, or a complete motorbus on the installment plan, provided that the payment of such plan shall not extend over a period greater than ~~four~~ six years.

SECTION 2. AMENDMENT. Section 57-15-52.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-52.1. SCHOOL DISTRICT LEVY FOR ~~DISTRICT-OWNED~~ SCHOOLBUS COSTS. Upon resolution of the school board and approval of sixty percent of the voters in the school district at the next election, a school district may levy an amount not to exceed five mills for the purpose of paying for the cost of purchasing, contracting, operating, and maintaining ~~district-owned~~ schoolbuses. Such levy may be discontinued by resolution of the school board, or if a petition signed by not less than twenty-five electors or five percent of the electors of the school district as indicated by the number of persons voting at the last school district election, whichever is greater, is presented to the school board and voted upon ~~in the same manner as it was established~~ and approved by a majority of the voters at the next election. The levy provided in this section shall be over and above any mill levy limitations provided by law.

Approved March 31, 1981

CHAPTER 186

HOUSE BILL NO. 1093
(Committee on Education)
(At the request of the Department of Public Instruction)

TORNADO AND DISASTER EMERGENCY DRILLS

AN ACT to amend and reenact sections 15-35-09 and 15-35-10 of the North Dakota Century Code; and to provide for tornado and disaster emergency drills in public schools.

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

SECTION 1. AMENDMENT. Section 15-35-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-35-09. FIRE, TORNADO, AND DISASTER EMERGENCY DRILLS - DUTY OF SUPERINTENDENTS AND TEACHERS. All public schoolteachers who teach in school buildings consisting of more than one room shall conduct at least ~~two~~ one fire ~~drills~~, tornado, or disaster emergency drill each month except when the weather is inclement. ~~No teacher shall receive his salary for any month until he has certified to the clerk of the board that fire drills have been given in compliance with this section.~~ In districts having a superintendent, the superintendent shall prescribe rules governing ~~fire drills and shall not receive his salary until he has certified to the clerk of the board that~~ fire, tornado, and disaster emergency drills ~~have been given~~ as provided in this section.

SECTION 2. AMENDMENT. Section 15-35-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-35-10. FIRE, TORNADO, AND DISASTER EMERGENCY DRILLS IN RURAL SCHOOLS - RULES - DUTY OF COUNTY SUPERINTENDENT AND OF TEACHERS. The county superintendent of schools shall prescribe reasonable rules for the conduct of fire, tornado, and disaster emergency drills in the rural schools of his county with special reference to prairie fires. ~~Any school board may direct that no teacher in a one room school shall receive his salary until at least one fire drill has been conducted in his school each month.~~

Approved March 26, 1981

CHAPTER 187

HOUSE BILL NO. 1514
(L. Hanson, Brokaw)

TEACHER CERTIFICATION CRITERIA

AN ACT to amend and reenact section 15-36-01 of the North Dakota Century Code, relating to criteria for teachers' certificates.

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

SECTION 1. AMENDMENT. Section 15-36-01 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-36-01. TEACHERS' CERTIFICATES - CRITERIA TO BE ESTABLISHED. The superintendent of public instruction, after consulting with the teachers' professional practices commission, shall determine the criteria for teacher certification for school terms beginning on or after July 1, 1974. The established criteria shall be based upon standards which shall include considerations of character, adequate educational preparation, and general fitness to teach in the public schools of this state. After holding a public hearing thereon, the superintendent shall issue rules and regulations concerning the issuance of teachers' certificates, and such certificates shall be issued by his office in accordance with such rules and regulations. However, any teacher who has graduated from college in an accredited teacher education program on or before September 1, 1980, shall not be required to earn any college credits in native American or other multicultural courses in order to be certified or recertified. Nothing in this section shall be interpreted to affect the validity of life certificates in existence on the effective date of this section, nor shall this section affect vocational education certificate qualifications as provided in chapter 15-20.1.

Approved March 18, 1981

CHAPTER 188

HOUSE BILL NO. 1222
(Representatives L. Hanson, Hoffner)
(Senator Tierney)

SCHOOL HOLIDAYS

AN ACT to amend and reenact section 15-38-04.1 of the North Dakota Century Code, relating to school holidays.

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

SECTION 1. AMENDMENT. Section 15-38-04.1 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-38-04.1. SCHOOL HOLIDAYS DEFINED. The following days shall be school holidays, and schools shall not be in session thereon:

1. Every Sunday~~,~~.
2. New Year's Day, the first day of January~~,~~.
3. The anniversary of the Declaration of Independence, the fourth day of July~~,~~.
4. Christmas Day, the twenty-fifth day of December~~,~~.
5. Memorial Day, the last Monday in May~~,~~.
6. Thanksgiving Day, the fourth Thursday in November~~,~~.
7. Good Friday, the Friday next preceding Easter Sunday~~,~~.
8. Labor Day, the first Monday in September~~,~~.
9. Veteran's Day, the eleventh day of November~~,~~.
10. Every day appointed by the President of the United States or by the governor of this state for a public holiday~~,~~.

Provided that, if the first day of January, the fourth day of July, the eleventh day of November, or the twenty-fifth day of December

falls upon a Sunday, the school holiday shall be the Monday following; and provided that, if the eleventh day of November falls upon a Saturday, the school holiday shall be the preceding Friday. Schools shall be in session as usual on all other legal holidays which do not fall upon a Saturday or Sunday, provided that at least one hour shall be devoted to patriotic exercises consistent with the day. School shall not be held when so prescribed by the school board, in a schoolhouse which is used as a polling place on a day upon which an election is held throughout the state.

Approved February 20, 1981

CHAPTER 189

HOUSE BILL NO. 1590
(Olafson)

TEACHERS' PROFESSIONAL PRACTICES COMMISSION MEMBERSHIP

AN ACT to amend and reenact section 15-38-17 of the North Dakota Century Code, relating to the teachers' professional practices commission.

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

SECTION 1. AMENDMENT. Section 15-38-17 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-38-17. TEACHERS' PROFESSIONAL PRACTICES COMMISSION. The teachers' professional practices commission shall consist of nine members. The governor shall appoint four ~~members from a list of nominees submitted by the North Dakota education association, two members from a list submitted by the North Dakota school boards association, two members from a list submitted by the North Dakota association of school administrators, and one member selected by the state board of public school education from among its membership. Each list of nominees shall include at least three nominees for each position upon the commission~~ classroom teachers from public schools, two school board members, two school administrators, and one member nominated by the state board of public school education. The term of office of members of the commission shall be three years commencing on July first of the year of the appointment, except that original appointments shall be for staggered terms of one, two, and three years in order that the terms of three members of the commission shall expire each year thereafter. Vacancies shall be filled for an unexpired term in the same manner as original appointments. No person shall serve for more than two consecutive terms as a member of the commission.

The commission shall annually select a chairman and vice chairman, and the superintendent of public instruction or his designee shall serve as secretary. Meetings shall be held after ten days' notice to all members at the call of the chairman or upon request in writing of a majority of the commission. A majority shall constitute a quorum and a majority of such quorum shall have

authority to act upon any matter properly before the commission. It shall adopt its own rules of order and procedure not inconsistent with sections 15-38-16 through 15-38-19 and shall hold meetings pursuant to the provisions of sections 15-38-16 through 15-38-19.

The members of the commission shall receive twenty-five dollars for each day actually engaged in the service of the commission and shall be paid actual and necessary traveling and other expenses at the same rate as for employees of the state. No member of the commission shall lose his regular salary or the above compensation while serving on official business of the commission. The superintendent of public instruction shall approve proper vouchers for such expenses.

Approved March 11, 1981

CHAPTER 190

HOUSE BILL NO. 1115
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

"TEACHER" DEFINED

AN ACT to amend and reenact subsection 1 of section 15-39.1-04 of the North Dakota Century Code, relating to the definition of teacher.

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

SECTION 1. AMENDMENT. Subsection 1 of section 15-39.1-04 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Teacher" shall include:

   a. All persons who are certified to teach in this state who are employed either in teaching or as a teacher's aide for more than ten days in any one school year 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. 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.

c. 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 previously members of and have credits in the fund.

The term "teacher" shall 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.

Approved February 4, 1981

CHAPTER 191

SENATE BILL NO. 2123
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

TEACHERS' RETIREMENT COVERAGE AND DEFINITIONS

AN ACT to create and enact two new subsections to section 15-39.1-04 of the North Dakota Century Code, relating to the definition of interest and base salary; and to amend and reenact sections 15-39.1-09.1, 15-39.1-15, 15-39.1-17, 15-39.1-20, and 15-39.1-24 of the North Dakota Century Code, relating to the participation of nonpublic schoolteachers in the teachers' fund for retirement, return to teaching by a previously withdrawn teacher, death of a member, withdrawal from the fund, and to when a teacher is entitled to additional credit.

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

SECTION 1. Two new subsections to section 15-39.1-04 of the 1979 Interim Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Interest", as applied to member assessments accumulated as of June 30, 1981, or as applied to the purchase of credit for service performed prior to July 1, 1981, shall be equal to the rate paid on June 30, 1981, by the Bank of North Dakota on one year certificates of deposit. "Interest", as applied to member assessments accumulated on or after July 1, 1981, or as applied to the purchase of credit for service performed on or after July 1, 1981, shall be five percent compounded annually.

"Base salary" as applied to the purchase of additional service credit shall be the teacher's first annual salary earned in North Dakota immediately following the period for which service credit may be purchased.

SECTION 2. AMENDMENT. Section 15-39.1-09.1 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-09.1. PARTICIPATION OF NONPUBLIC SCHOOL TEACHERS. Any nonpublic schoolteacher who has participated in chapter 15-39 between July 1, 1971, and June 30, 1979, may elect to receive benefits in accordance with chapter 15-39.1 by paying into the fund the difference between the amount actually paid in accordance with chapter 15-39 by the teacher and employer during such teacher's years of participation during that period and the amount which would have been required had the teacher participated in the fund during that period under the provisions of section 15-39.1-09, together with interest on the difference. ~~Interest on this difference shall be paid by the teacher to the fund at a rate equal to that then being paid by the Bank of North Dakota for one year certificates.~~ All nonpublic schoolteachers who elect to participate for the first time in the fund after July 1, 1979, shall be required to participate as provided for by chapter 15-39.1. For the purposes of this section, "nonpublic schoolteachers" shall mean "lay faculty" as defined by subdivision k of subsection 1 of section 15-39-01.

Any nonpublic schoolteacher who exercises the election to come within the provisions of this chapter as authorized by this section shall give the teacher's employer written notice of the teacher's election and shall authorize such employing authority, as part of said notice, to deduct from each payment of salary the teacher assessments due the fund as prescribed in section 15-39.1-09. The nonpublic school shall advise the teacher whether it assents to payment of employer contributions prescribed in section 15-39.1-09. If the nonpublic school assents, it shall pay the employer contribution and perform all other acts required of it under this chapter. If the nonpublic school declines to pay employer's contributions, it shall be paid by the teacher, in addition to the teacher's assessments deducted from the teacher's salary, and shall be forwarded to the fund as provided by this chapter. Once having assented to the payment of employer contributions for a specific teacher, the nonpublic school shall be required to continue payment of employer contributions as long as the teacher remains a member of the fund and continues teaching at that nonpublic school.

SECTION 3. AMENDMENT. Section 15-39.1-15 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-15. WITHDRAWAL FROM FUND - RETURN TO TEACHING. Any teacher who has withdrawn from the fund as set forth in this chapter may, by returning to teach one full school year in a public school or state institution of this state, regain credit for prior teaching by repaying to the fund, with interest, ~~at a rate to be set by the board,~~ the amount which was returned to him on withdrawal within five years of initial eligibility or by July 1, 1986, whichever is later.

SECTION 4. AMENDMENT. Section 15-39.1-17 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-17. DEATH OF MEMBER.

1. If the death of a member who has not acquired a vested interest should occur prior to retirement, a refund of his assessments accumulated with interest shall be made to such beneficiary as he may designate, or, if no beneficiary is designated, the same shall be paid to the surviving spouse, or if no surviving spouse, to the surviving children, or if none, to his estate; provided, however, that if no probate proceedings have been instituted within thirty days of the death of the member, then to such heirs at law who file claim with the fund within one hundred fifty days of the death of the member. ~~His assessments shall earn interest from the July first following the date the assessment is made with the interest credit each year determined at the current rate for one year certificates then being paid by the Bank of North Dakota.~~

2. If the death of a member who has acquired a vested interest should occur prior to retirement, then his designated beneficiary may apply for a refund of his assessments accumulated with interest ~~as described in the above paragraph~~. If there is no designated beneficiary, then the same shall be paid to the surviving spouse, or if no surviving spouse, to the surviving children, or if none, to his estate; provided, however, that if no probate proceedings have been instituted within thirty days of the death of the member, then to such heirs at law who file claim with the fund within one hundred fifty days of the death of the member. In lieu of such refund, the designated beneficiary, if a beneficiary has been designated, may elect either to receive a monthly annuity in accordance with option one as set forth in section 15-39.1-16, with the amount of such annuity being determined as though the deceased member had retired under the option on the day ~~of the month in which his death occurred~~ benefits commence to the beneficiary; or the designated beneficiary may elect to receive for sixty months an amount equal to the monthly annuity the member would have received if the member had attained age sixty-five and retired, based on the member's credited service to date of death. If any applicant for an annuity under this section has not paid into the fund assessments equal to the amounts required to be paid under section 15-39.1-09, he shall pay any deficiency into the fund before receiving the annuity.

3. If a member who has received annuity payments other than a reduced retirement allowance as provided in section 15-39.1-16 dies prior to receiving accumulated annuity payments which exceed the assessments paid by the member to the fund plus interest ~~as outlined in section 15-39.1-20~~, or a member who has elected a reduced

retirement allowance under option one or two in section 15-39.1-16 dies and the person who was nominated to receive his reduced allowance also dies prior to receiving, together, accumulated annuity payments which exceed the assessments paid by the member to the fund plus interest, the member's beneficiary shall receive a final payment equal to the assessments the member paid to the fund plus interest as provided in section 15-39.1-20 less the amount of the annuity payments made ~~prior to the member's death~~.

SECTION 5. AMENDMENT. Section 15-39.1-20 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-20. WITHDRAWAL FROM FUND. When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, he may, after a period of one hundred twenty days, withdraw from the fund and shall be then entitled to receive a refund of assessments accumulated with interest ~~credited for each year as determined at the current rate for one year certificates then being paid by the Bank of North Dakota~~. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. Such refund shall be in lieu of any other benefits to which the member may be entitled under the terms of this chapter.

SECTION 6. AMENDMENT. Section 15-39.1-24 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-24. TEACHER ENTITLED TO ADDITIONAL CREDIT. A Prior to retirement a teacher may ~~receive~~ purchase additional credit for ~~teaching~~ 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. ~~Credit may be claimed at any time prior to retirement and interest shall be paid on all payments required under this subsection at a rate equal to the rate being paid on one year certificates by the Bank of North Dakota. Every such teacher shall be advised of the provisions of this section by the school board in writing at the time of employment, and a copy of such notice with written acknowledgment thereof shall be filed with the board. Before receiving~~

~~any--retirement--annuity,--such-teacher-shall-pay-into-the fund-an-amount-equal-to-the-amount-of-assessments-for--the number--of--years--of-out-of-state-teaching-that-he-elects based-upon-his-first-annual-salary-in-North--Dakota--after his-resumption-of-teaching-in-this-state,-which-shall-also be-the-basis-of-the-retirement-benefits-which-he-shall--be entitled--to--receive.---He-shall-also-pay-the-full-amount which-the-employing-body-would-have-had-to-pay-as-matching funds-for-the-years-to-be-credited.~~

2. Any teacher who~~,--within--thirty--months-of-entering-the military-service-of-the--United--States--of--America,--was engaged--in--the--occupation--of--teaching-in-the-state-of North-Dakota,-and-who~~ has received an honorable discharge from ~~such~~ military service~~,-shall-be-entitled-to-have-the time-of-such-service-credited-under~~ 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 ~~his-return-to~~ teaching ~~and-the-payment-of-the-assessments, including--the-matching-funds-of-the-employing-body,-based upon-his-first-annual-salary-on-return-to-teaching-in--the state.---Any--teacher--who-has-made-such-back-payments-for military-service-may-elect-prior-to-retirement,-to-receive the--return--of--such--payments,-with-interest-at-the-rate being-paid--by--the--Bank--of--North--Dakota--on--one-year certificates--of--deposit,-and-reject-the-military-service credit-and-the-board-shall-forthwith-refund-said--amounts. The--teacher,--at-retirement,-may-again-elect-to-claim-the benefits-of--this--section.---The--same--rights--shall--be available-to-a-teacher-who-has-been-engaged-in-teaching-in North-Dakota-prior-to--such--time--but--was--attending--an institution---of---higher--learning--for--the--purpose--of improving-himself-in-such-profession-within-thirty--months of--the--time--of--entry--into--the--armed--services.--All payments-required-under-this-subsection-shall-be-made-with interest--at--the-rate-being-paid-on-one-year-certificates by-the-Bank-of-North--Dakota~~ 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 qualifications in the teaching profession shall be entitled to have such periods while in attendance at such college, university, or school credited as not to exceed three years of teaching service under the provisions of this chapter ~~upon--the--payment--of--the assessments-which-would-have-been-collected-from-him-if-he had-continued--as--a--teacher--during--the--time--of--such college,---university,--or--school--attendance,--plus--the payment-by-him-of-the-amount-that-would-have-been-paid--to the--fund--in-his-behalf-from-the-school-district-or-state institution-where-he-was-employed.--Such-back--assessments~~

~~must--be--paid-prior-to-or-at-the-time-of-retirement-under this-chapter~~, provided that~~:~~

a~~.~~--~~The~~ the teacher ~~must-have~~ has taught at least one full school year in North Dakota immediately preceding his entrance into the college, university, or school and that immediately following such training he shall have taught not less than one full school year in a public school or state institution of this state~~;~~-~~and~~

~~b.--The---period---of---college,---university,--or--school attendance-that-may-be-credited--as--teaching--service shall--not-exceed-three-full-academic-years,-exclusive of-summer-schools;-and~~

~~c.--Payments--on--back--assessments-and-back-contributions shall-be-based-on-the-salary-received-by--the--teacher during--the--first--year--of--teaching--following--the college,-university,-or--school--attendance,--together with-simple-interest-at-a-rate-equal-to-the-rate-being paid-on-one-year-certificates-of-deposit-by--the--Bank of--North--Dakota,--except--that--no-interest-shall-be charged-on-assessments-for-the-period--while--actually in-attendance-at-the-college,-university,-or-school.~~

The amount of additional service eligible to be purchased under this section shall 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.

Approved March 11, 1981

CHAPTER 192

SENATE BILL NO. 2109
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

EARLY RETIREMENT FOR TEACHERS

AN ACT to amend and reenact section 15-39.1-12 of the North Dakota Century Code, relating to early retirement for teachers.

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

SECTION 1. AMENDMENT. Section 15-39.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-12. EARLY RETIREMENT. Any teacher who has acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty-five may retire ~~at any time~~ prior to the normal retirement age as set forth herein but the benefits to which he shall then be entitled shall be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement.

Approved March 6, 1981

CHAPTER 193

HOUSE BILL NO. 1116
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

RETIREMENT OPTIONS FOR TEACHERS

AN ACT to amend and reenact section 15-39.1-16 of the North Dakota Century Code, relating to retirement options for retiring teachers.

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

SECTION 1. AMENDMENT. Section 15-39.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-16. OPTION OF TEACHERS ELIGIBLE TO RECEIVE ANNUITIES. At any time after his retirement under the circumstances provided in this chapter and before the first annuity payment shall become due, a teacher may elect to receive the actuarial equivalent, at that time, of the regular retirement allowance for life, in the form of a reduced retirement allowance payable throughout his life with ~~either, but not both,~~ one of the following additional provisions:

Option one. Upon the death of the teacher, the reduced retirement allowance shall be continued throughout the life of, and paid to, such person as the teacher shall have nominated by written designation filed with the board at the time of retirement~~, or~~.

Option two. Upon the death of the teacher, one-half of the reduced retirement allowance shall be continued throughout the life of, and paid to, such person as the teacher shall have nominated by written designation filed with the board at the time of retirement.

Option three. Upon the death of the teacher within five years of the commencement of annuity payments, such payments shall be continued for the remainder of the five-year period to such person as the teacher shall have nominated by written designation filed with the board at the time of retirement.

Option four. Upon the death of the teacher within ten years of the commencement of annuity payments, such payments shall be continued for the remainder of the ten-year period to such person as the teacher shall have nominated by written designation filed with the board at the time of retirement.

The amount of the reduced retirement allowance payable upon the exercise of either of such options shall be computed upon an actuarial basis through the use of standard actuarial tables and based upon the ages of the teacher and his designated beneficiary.

Approved February 12, 1981

CHAPTER 194

SENATE BILL NO. 2110
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

DISABILITY RETIREMENT BY TEACHERS

AN ACT to amend and reenact section 15-39.1-18 of the North Dakota Century Code, relating to disability retirements.

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

SECTION 1. AMENDMENT. Section 15-39.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-18. DISABILITY RETIREMENTS. Any teacher as defined in this chapter may also retire and receive a disability annuity if after a period aggregating ~~fifteen~~ ten years of service as a teacher in this state, such teacher suffers from total disability, such total disability to be determined by the board after an examination of such teacher has been made by two physicians appointed by the board. The fees of such physicians shall be paid by the applicant.

The amount of the disability annuity shall be equal to the retirement benefit credits which the member has earned to the date of disablement. The disability annuity shall continue until the death or prior recovery of the disabled annuitant. The board shall ascertain by examinations annually or as often as necessary to determine the continued disability status of a disabled annuitant.

If a disabled annuitant recovers and returns to active teaching, he shall retain the retirement benefit credits which he earned prior to the time of disablement and the credits which he earned after his return to active teaching shall be added to those earned prior to his disablement.

Approved March 6, 1981

CHAPTER 195

SENATE BILL NO. 2090
(Peterson)

ADDITIONAL RETIREMENT CREDIT FOR TEACHERS

AN ACT to create and enact a new subsection to section 15-39.1-24, granting additional retirement credit to teachers for prior service in nonpublic school teaching.

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

SECTION 1. A new subsection to section 15-39.1-24 of the 1979 Interim Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

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 section 15-39-01.

Approved March 19, 1981

CHAPTER 196

HOUSE BILL NO. 1114
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

"YEAR" DEFINED

AN ACT to amend and reenact section 15-39.1-27 of the North Dakota Century Code, relating to the definition of year.

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

SECTION 1. AMENDMENT. Section 15-39.1-27 of 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. In computing the terms of service of a teacher under the provisions of this chapter, a year shall be ~~a legal school year at the time and place where such service was rendered. Where the service was rendered in schools not included within the provisions of this chapter,~~ a one hundred seventy-five days of compensation. A time less than ~~a legal school year in this state~~ one hundred seventy-five days of compensation shall not be included as a full year but only as such proportion of a year as the number of ~~teaching weeks~~ days of compensation in each year taught ~~in such excluded school~~ bears to ~~the number of weeks required at such time to constitute a legal year in this state~~ one hundred seventy-five days of compensation.

At least four hours per day for twenty days per month shall constitute a month's teaching credit toward a retirement annuity for part-time teachers.

Approved February 4, 1981

CHAPTER 197

HOUSE BILL NO. 1276
(Wald)

MULTIDISTRICT SPECIAL EDUCATION RETIREMENT LEVY

AN ACT to amend and reenact sections 15-39.1-28 and 52-09-08 of the North Dakota Century Code, relating to mill levy for teachers' retirement, including covered employees of either a multidistrict special education board, or another school district, and levy of tax by political subdivisions.

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

SECTION 1. AMENDMENT. Section 15-39.1-28 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-28. MILL LEVY FOR TEACHERS' RETIREMENT. Any school district by a resolution of its school board may levy a tax of not to exceed forty mills on the assessed taxable valuation within the district, the proceeds to be used for the purposes of meeting the district's contribution to the fund arising under this chapter and to provide the district's share, if any, of contribution to the fund for contracted employees of either a multidistrict special education board or another school district where the contracted employees are also providing services to the taxing school district. The mill levy permitted by this section shall be in addition to any tax levy limitations now prescribed by law.

SECTION 2. AMENDMENT. Section 52-09-08 of 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 percentum 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.

A. 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.

B. 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.

C. The political subdivision, except a multidistrict special education board and a center board of a multidistrict vocational education center, is hereby authorized and directed to levy a tax sufficient to meet its obligations under the provisions of this chapter, and, in the case of a school district, to provide that district's share of contribution to the old-age survivors' fund for contracted employees of a multidistrict special education board, up to a maximum levy of forty mills on each dollar of the net assessed taxable valuation of the political subdivision, over and above any levy limitations now prescribed by law for such political subdivisions. 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.

Approved April 6, 1981

CHAPTER 198

SENATE BILL NO. 2230
(Senators Moore, Tennefos)
(Representatives Strinden, Knudson, A. Olson)

COUNTY EQUALIZATION FUND

AN ACT to amend and reenact sections 1 and 7 of initiated measure No. 6 as voted on in the 1980 general election, and sections 15-20.1-10, 15-40.1-01, 15-40.1-05, 15-40.1-07, 15-40.1-08, 15-40.1-09, 15-40.1-11, 15-40.1-14, 15-40.1-16, 15-40.1-16.1, 15-40.1-18, 15-40.2-05, 15-40.2-10, 15-47-16, and 15-59-06 of the North Dakota Century Code to eliminate the county equalization fund for schools; to repeal sections 9 and 10 of initiated measure No. 6 as voted on in the 1980 general election, and sections 15-40.1-03, 15-40.1-04, 15-40.1-10, 15-40.1-12, subdivision b of subsection 3 of section 57-15-06, and 57-15-24 of the North Dakota Century Code, relating to the county equalization fund for schools and the county mill levy for schools; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 1 of initiated measure No. 6 as voted on at the general election of 1980 is hereby amended and reenacted to read as follows:

SECTION 1. INTENT. It is the intent of the electors of the state of North Dakota to increase the funding of educational opportunities for students in the elementary and secondary schools in North Dakota, to provide funds for Grafton state school, to provide for energy conservation and development programs, and to equalize the tax structure and revenue sources of the state by enactment of an excise tax to be known as the "oil extraction tax" and enactment of an income tax credit ~~and a credit for the county twenty-one mill property tax levy for schools~~.

SECTION 2. AMENDMENT. Section 7 of initiated measure No. 6 as voted on at the general election of 1980 is hereby amended and reenacted to read as follows:

SECTION 7. ALLOCATION OF MONEYS IN OIL EXTRACTION TAX DEVELOPMENT FUND. Moneys deposited in the oil extraction tax

development fund shall be apportioned quarterly by the state treasurer as follows:

1. ~~Forty-five~~ Sixty percent shall be allocated to the state school aid program for use in accordance with the provisions of chapter 15-40.1 of the North Dakota Century Code. It is the intent of the electors ~~that other appropriations made by the legislative assembly for state aid to schools in accordance with chapter 15-40.1 of the North Dakota Century Code when added to the amount allocated under this subsection shall provide at least seventy percent of the funds required to meet the educational cost per pupil in elementary and secondary education as determined under the provisions of that chapter~~ and the legislative assembly that the allocation made by this subsection shall not exceed seventy percent of the educational cost per pupil in public elementary and secondary education as determined under the provisions of chapter 15-40.1. Should the allocation exceed seventy percent, the balance of the allocation above seventy percent shall be deposited in the general fund. Should the allocation not exceed seventy percent, it is the intent of the electors and the legislative assembly that other appropriations made by the legislative assembly for state aid to schools in accordance with chapter 15-40.1, when added to the amount allocated under this subsection, shall provide at least seventy percent of the funds required to meet the educational cost per pupil in public elementary and secondary education as determined under the provisions of chapter 15-40.1.

2. Ten percent shall be allocated and credited to a special trust fund to be established in the state treasury and shall be deposited and invested as are other state funds to earn the maximum amount permitted by law; provided that the first fifteen million dollars allocated and credited to this special trust fund shall be appropriated by the legislative assembly for Grafton state school for the remodeling or reconstruction and equipping of existing buildings and other facilities, for the construction and equipping of new buildings and other facilities, and for providing additional staffing for that institution, as shall be provided by the legislative assembly. The principal of this special trust fund shall not be used for any other purpose, but the income therefrom shall be administered by the state industrial commission pursuant to appropriations made by the legislative assembly for the following: the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith. Any

income earned by the special trust fund that is not appropriated by the legislative assembly, or if appropriated but not expended or loaned by the state industrial commission by the end of a fiscal biennium, shall be transferred to the state's general fund.

3. ~~Forty-five~~ Thirty percent shall be allocated and credited to the state's general fund for general state purposes ~~and as--an--offset-for-the-reduction-in-income-tax-revenue-and for-the-replacement-of-the-county-twenty-one-mill-property tax--credit--for--school-as-provided-in-section-10-of-this Act~~.

SECTION 3. AMENDMENT. Section 15-20.1-10 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-20.1-10. SPECIFIC POWERS - TUITION PAYMENTS - BOND ISSUES. The school board of a vocational school district is specifically authorized to accept on behalf of the district any real or personal property available for distribution by the United States or any of its departments or agencies, and also, to accept any federal grants which may be made available in the field of vocational education. It may accept enrollments and set the amount of tuition for students residing outside of the district, provided that the amount of tuition so set shall not exceed the difference between the average cost per student for educating a student in the district and the payments, if any, received by the district from ~~a--county equalization-fund-and-from~~ state payments on behalf of such student. ~~Payments--from--the-county-equalization-fund-of-the-student's-county of-residence-and-from-state~~ State payments on behalf of each student attending a vocational school shall be made to the vocational school of attendance at the same rate as paid for high school students. A vocational school district shall be deemed a municipality within the meaning of section 21-03-01.

SECTION 4. AMENDMENT. Section 15-40.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-01. DEFINITION OF "HIGH SCHOOL STUDENT". As used in this chapter and in the provisions relating to payments from the ~~county-equalization-fund~~ state, the term "high school student" shall include only students who:

1. Have completed all of the work of the first eight grades, but have not completed the work of the twelfth grade.

2. Are residents of this state.

SECTION 5. AMENDMENT. Section 15-40.1-05 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-05. DISTRIBUTION OF PAYMENTS TO SCHOOL DISTRICTS - DUTY OF DEPARTMENT OF ACCOUNTS AND PURCHASES. The superintendent of public instruction shall certify to the department of accounts and purchases a list of all school districts in the state, together with a statement of payments equal to one-fourth of the total payments made to each respective school district during the previous fiscal year, and the department of accounts and purchases shall pay each school district the amounts due, within the limits of legislative appropriation, on or before September first of each year. The superintendent of public instruction~~,--after--certifying--to--the respective--county--auditors--the-amount-that-shall-be-levied-on-all taxable--property--in--accordance--with--section--15-40.1-04~~ shall determine what amounts in addition to the September first payments are necessary to constitute one-half of the payments due to each school district for the current school year, and shall certify to the department of accounts and purchases a list of all school districts in the state, together with a statement of the payments due them. On or before November first, the department of accounts and purchases shall pay to each school district, within limits of legislative appropriation, the amounts needed in addition to the September first payment in order to constitute fifty percent of the sum found to be due under the provisions of this chapter. On or before January first, payments equal to one-fourth of the total payments shall be made to each respective school district; on or before March first, payments equal to one-eighth of the total payments shall be made to each respective school district; and the balance shall be paid on or before May first.

SECTION 6. AMENDMENT. Section 15-40.1-07 of the 1979 Interim 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 ~~and-from-the-county-equalization-fund~~ 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. No school district shall receive less in foundation program per-pupil payments for the 1979-80 school year than such district would have received in such payments based upon the average enrollment in such district for the previous three school years, and no school district shall receive less in foundation program per-pupil payments for any year thereafter than such district would have received in such payments based upon the enrollment in such district for the previous school year. 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, 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.

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.

* SECTION 7. AMENDMENT. Section 15-40.1-08 of the 1979 Interim 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 ~~and out of the county equalization fund~~ 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, 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.

* NOTE: Subsection 7 of section 15-40.1-08 was also amended by section 1 of House Bill No. 1227, chapter 201, and by section 1 of House Bill No. 1561, chapter 202.

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 ~~after June 30, 1980,~~ which are established according to provisions of section 15-45-01, 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 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.

No school district shall receive less in foundation program per-pupil payments for the 1979-80 school year than such district would have received in such payments based upon the average enrollment in such district for the previous three school years, and no school district shall receive less in foundation program per-pupil payments for any year thereafter than such district would have

received in such payments based upon the enrollment in such district for the previous school year. 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 8. AMENDMENT. Section 15-40.1-09 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-09. APPLICATION FOR PAYMENTS - VERIFICATION AND DETERMINATION OF PAYMENTS FOR HIGH SCHOOL STUDENTS - REPORT OF COUNTY SUPERINTENDENT OF SCHOOLS - APPEAL. Immediately upon the completion of the registration of students at the beginning of each school term and in no event later than September tenth of each year, the clerk of each school district within or without this state which is claiming payments from ~~a county equalization fund or from~~ state funds under the provisions of this chapter shall file with the county superintendent of schools a claim on a form prescribed by the superintendent of public instruction stating the number of students registered in high school and elementary grades for which payments are claimed, and such other information as may be reasonably requested by the superintendent of public instruction. Not later than December first, the superintendent of public instruction shall certify to the department of accounts and purchases a list of the school districts and schools not operated by school districts entitled to payments from ~~the county equalization fund or from~~ state funds, together with the amounts to which the several districts and schools are entitled. Such certification shall include an adjustment in the amounts to which the districts and schools are entitled, based upon the difference between payments made under this chapter to such districts and schools for the previous school year as compared to the amount calculated, as provided in sections 15-40.1-07 and 15-40.1-08, upon the average daily membership during the previous school year. For purposes of this chapter, "average daily membership" shall mean the total days all students in a given school are in attendance, including days set aside for the North Dakota education association convention, plus any three holidays selected from those listed in subsections 2 through 10 of section 15-38-04.1 which have been decided upon after consultation with the teachers, and the total days all students are absent, divided by one hundred eighty days. School districts educating children of agricultural migratory workers or offering high school summer school programs during the months of June, July, and August shall not be restricted to payments for a one-hundred-eighty-day school term.

Immediately upon the termination of the school term and in no event later than July fifteenth of each year, the clerk of each school district within or without this state which has received payments from ~~a county equalization fund or from~~ state funds under the provisions of this chapter shall file with the county superintendent of schools a verified statement of the name,

residence, and membership of elementary and high school students as provided for in this section, and number of units of high school work taken by each high school student enrolled during the previous school year. Such statement shall be attested to by the county superintendent of schools. The county superintendent shall investigate the validity of the statement and shall determine the residence and other qualifications of each student named in the statement filed with him. He shall certify to the superintendent of public instruction on or before September first of each year the number of enrolled students in each district in his county for the previous school year upon which any adjustment may be based as provided in this section. If any statement is disallowed in whole or in part, notice thereof and the names of students who are disallowed shall be reported to the superintendent of public instruction and to the district filing the statement. Any district may appeal to the superintendent of public instruction from the determination of the county superintendent of schools on or before September fifteenth in the year in which the determination is made. The superintendent of public instruction may change or modify the determination of the county superintendent if the evidence submitted by the district warrants a modification. The judgment of the superintendent of public instruction shall be final.

SECTION 9. AMENDMENT. Section 15-40.1-11 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-11. FRACTIONAL PAYMENTS. Should the moneys in the ~~county--equalization--fund--or--in--the~~ state general fund be insufficient to make all payments, the payments to the various school districts or schools shall be prorated by the ~~county superintendent---of---schools---and--the~~ superintendent of public instruction on a fractional basis. When fractional payments are made, additional payments may be made from time to time as sufficient moneys come into each fund, so as to make full payments under this chapter. If the appropriation made by the legislative assembly is inadequate to meet all claims against such appropriation and is thus the cause of the insufficiency, such prorated fractional payments made pursuant to this section shall constitute payment in full.

SECTION 10. AMENDMENT. Section 15-40.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-14. TAYLOR GRAZING ACT FUNDS - DISPOSITION. Payments to the state from the federal government under the provisions of 43 United States Code 315i (the Taylor Grazing Act), shall be apportioned by the state treasurer among the counties in the state in the proportion that the number of acres of Taylor Grazing Act land in each county bears to the total amount of such land in the state. Such distributions shall be ~~credited--to--the--county equalization-fund-of-the-county-receiving-them-and-expended-for--the support--of-the-public-schools~~ made to school districts on the basis

of average daily membership of all students residing within the county.

* SECTION 11. AMENDMENT. Section 15-40.1-16 of the 1979 Interim 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 ~~the county equalization fund and from~~ state funds to each school district providing schoolbus transportation in contract schoolbuses or in district-owned and operated schoolbuses, a sum equal to twenty cents per mile [1.61 kilometers] for schoolbuses having a capacity of sixteen or fewer pupils and forty cents per mile [1.61 kilometers] for schoolbuses having a capacity of seventeen or more pupils. In addition, those school districts qualifying for payments for buses having a capacity of seventeen or more pupils shall be entitled to an amount equal to fifteen cents per day for each public school pupil who is transported in such buses, provided that no such payment shall be made for any pupil who lives within the incorporated limits of a city with a population in excess of two hundred fifty and an area in excess of two square miles [518.00 hectares] in which the school in which he is enrolled is located except as provided in section 15-40.1-16.1. 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.

** SECTION 12. AMENDMENT. Section 15-40.1-16.1 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-16.1. TRANSPORTATION AID FOR CERTAIN VOCATIONAL EDUCATION AND SPECIAL EDUCATION PROGRAMS. There shall be paid from ~~the county equalization fund and from~~ state funds to each school district an amount for transporting pupils to and from schools in other districts and to and from schools within school districts for vocational education courses offered through cooperative arrangements approved by the state board of vocational education. Similar payments shall be paid to the school districts transporting pupils for special education programs approved by the superintendent of public instruction. Such amount shall be the same amount for mileage and per day as is provided in section 15-40.1-16, except that school districts entitled to transportation aid pursuant to this section shall receive such aid for all miles [kilometers] traveled and for all pupils transported, regardless of whether or not such pupils live within the incorporated limits of cities in which the schools in which they are enrolled are located. Provided, however, that no school district shall receive more than one per-

* NOTE: Section 15-40.1-16 was also amended by section 1 of Senate Bill No. 2245, chapter 203.

** NOTE: Section 15-40.1-16.1 was also amended by section 2 of Senate Bill No. 2245, chapter 203.

pupil payment for transportation regardless of the number of times any pupil is transported in any one day.

SECTION 13. AMENDMENT. Section 15-40.1-18 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-18. STATE TRANSPORTATION PAYMENTS TO SCHOOL DISTRICTS ~~---COUNTY--EQUALIZATION--FUND--TRANSPORTATION--PAYMENTS--TO---SCHOOL DISTRICTS.----State---payments--to--school--districts,--as--aid--for transportation,-shall-be-as-follows.~~

~~1.--State--transportation--payments--to-school-districts.~~ The superintendent of public instruction shall determine the total amount of payments to be made to the school districts for transportation aid. The department of accounts and purchases shall pay the sum certified by the superintendent of public instruction to each school district. Such payments shall be made in the same manner and at the same time as other payments from the state to school districts are made, as provided in section 15-40.1-05.

~~2.--County--equalization--fund--payments--to-school-districts. Payments--from--the--county--equalization--fund---to---the respective--school-districts-entitled-to-payment-therefrom shall-be-upon-warrant-of-the-county-auditor--at--the--same time--and--in-the-same-manner-as-county-per-pupil-payments from-the-county-equalization-fund-to-the-respective-school districts-are-made,-as-provided-in-section-15-40.1-10.~~

SECTION 14. AMENDMENT. Section 15-40.2-05 of the 1979 Interim 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, 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 and render a decision in

regard to payment of the tuition charges. In making such 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, 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 other reasons of convenience, 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 other reasons of convenience, 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.

If any portion of the school district lies in more than one county, the committee shall consist of the county judge, state's attorney, and county superintendent of schools from each county lying within the district, and the concurrence of at least two members from each county shall be necessary for a majority of the committee. 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 ~~county equalization fund payments and~~ 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 15. AMENDMENT. Section 15-40.2-10 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-10. RECIPROCAL MASTER AGREEMENTS FOR PUPIL ATTENDANCE IN OTHER STATES. The superintendent of public instruction shall enter into reciprocal master agreements with the appropriate state educational agencies or officers of bordering states in regard to the cost of educating elementary and high school pupils in the public schools or institutions in such bordering states. Such reciprocal agreements shall provide for payment on a per-pupil basis from the state foundation aid program for pupils from this state attending schools in bordering states in a sum equal to payments received by the district of the pupil's residence from the ~~county equalization--fund--and--the~~ state foundation aid program. The superintendent of public instruction, by certificate to the department of accounts and purchases, shall authorize payments from the appropriation for state payments to school districts pursuant to chapter 15-40.1 for the attendance of pupils in bordering states, and the department of accounts and purchases, within the limits of legislative appropriations, shall make such payments. The balance of the tuition payment by the pupil's district of residence shall not exceed the amount established by reciprocal agreement less the amount paid from the ~~county--equalization--fund--and--the~~ state foundation aid program to the school district or institution in the bordering state.

SECTION 16. AMENDMENT. Section 15-47-16 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-16. PAYMENTS FROM STATE TUITION~~,--COUNTY-EQUALIZATION FUNDS,~~ AND STATE FOUNDATION AID MAY BE PAID TO UNITED STATES. Whenever the educational responsibility of a school district within an Indian reservation in this state shall be completely taken over by the government of the United States, payments from the state tuition fund~~,--the-county-equalization-fund,~~ and the state foundation aid program which otherwise would be paid to such school district shall be paid to the United States if the compulsory school attendance laws of this state are enforced in such district and government school.

* SECTION 17. AMENDMENT. Section 15-59-06 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59-06. STATE COOPERATION IN SPECIAL EDUCATION. Exceptional children who are enrolled in approved programs of special education shall be deemed to be regularly enrolled in the school and school districts providing such program and shall be included in determination of elementary and high school per-pupil

* NOTE: Section 15-59-06 was also amended by section 2 of Senate Bill No. 2153, chapter 221, and by section 1 of House Bill No. 1252, chapter 222.

payments from the ~~county equalization fund and~~ state foundation aid program whether or not such pupils are regularly attending school in the school or school district receiving such payments. In the case of a student who is enrolled in a nonpublic school but who is attending a public school special education program, payments shall be made to the appropriate public school district in relation to the proportion of a normal school day as such student participates in such special education program. For the purposes of this section, a normal school day shall be deemed to consist of six hours. Upon the determination by the director of special education that the school district has made expenditures for each exceptional child in such program equal to the average expenditures made in such district for elementary or high school students, as the case may be, and that the parents of a child receiving special education under such program, or the legally responsible person, have made adequate efforts to provide needed education or that adequate reasons otherwise exist for the provision of special education to such child, the director by vouchers drawn upon funds provided by the legislative assembly for such purpose may provide reimbursement to such school or school district in an amount not exceeding three times the state average per-pupil cost of education computed by the department of public instruction for the previous school year for such child per year for instruction and four times the state average per-pupil cost of education computed by the department of public instruction for the previous year for such child per year for transportation, equipment, and residential care.

SECTION 18. REPEAL. Sections 9 and 10 of initiated measure No. 6 as approved by the electorate at the 1980 general election, and sections 15-40.1-03, 15-40.1-04, and 15-40.1-10 of the 1979 Interim Supplement to the North Dakota Century Code, sections 15-40.1-12 and 57-15-24 of the North Dakota Century Code, and subdivision b of subsection 3 of section 57-15-06 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 19. EFFECTIVE DATE. The provisions of this Act relating to property tax levies shall be effective for property tax years beginning on or after January 1, 1981.

Approved March 31, 1981

CHAPTER 199

HOUSE BILL NO. 1092
(Committee on Education)
(At the request of the Department of Public Instruction)

ELEMENTARY AND SECONDARY EDUCATION SUPPORT

AN ACT to amend and reenact section 15-40.1-02, subsection 2 of section 15-40.1-06, and sections 15-40.1-16 and 15-44-03 of the North Dakota Century Code, relating to state support for elementary and secondary education of approximately seventy percent of the cost of education, what constitutes state school aid, and distribution of the state tuition fund; and to repeal sections 15-44-04, 15-44-05, 15-44-07, and 15-44-08 of the North Dakota Century Code, relating to apportionment of tuition funds by counties, withholding of tuition funds, and the use and accounting of tuition funds; providing an appropriation; providing a limit on oil and gas bonus distributions; and providing an effective date.

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

SECTION 1. AMENDMENT. Section 15-40.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-02. STATE SCHOOL AID - APPROPRIATION. All payments authorized by this chapter shall be made by the state treasurer out of the general fund of the state within the limits of legislative appropriation. Funds distributed to each school district pursuant to article IX, section 2 of the constitution are hereby appropriated and shall constitute state aid to meet the educational cost per pupil in elementary and secondary schools.

SECTION 2. AMENDMENT. Subsection 2 of section 15-40.1-06 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. It is hereby determined that the educational support per pupil during the first year of the ~~1979-81~~ 1981-83 biennium shall be ~~nine--hundred-three~~ one thousand four hundred twenty-five dollars and for the second year of the biennium the educational support per pupil shall be ~~nine hundred--seventy~~ one thousand five hundred ninety-one 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. 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 3. AMENDMENT. Section 15-40.1-16 of the 1979 Interim 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 the county equalization fund and from state funds to each school district providing school bus transportation in contract school buses or in district-owned and operated school buses, 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 school buses 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 ~~twenty~~ thirty-four cents per mile [1.61 kilometers] during the first year of the 1981-83 biennium and thirty-eight cents during the second year of the 1981-83 biennium for school buses having a capacity of sixteen or fewer pupils and ~~forty~~ sixty-eight cents per mile [1.61 kilometers] during the first year of the 1981-83 biennium and seventy-six cents per mile the second year of the 1981-83 biennium for school buses having a capacity of seventeen or more pupils. In addition, those school districts qualifying for payments for buses having a capacity of seventeen or more pupils shall be entitled to an amount equal to ~~fifteen~~ nineteen cents per day for each public school pupil living outside the city limits who is transported in such buses~~,--provided--that-no-such-payment-shall-be-made for-any-pupil-who-lives-within-the-incorporated-limits--of a--city--with--a-population-in-excess-of-two-hundred-fifty and--an--area--in--excess--of--two--square--miles--[518.00 hectares]--in--which-the-school-in-which-he-is-enrolled-is located-except-as-provided-in-section-15-40.1-16.1~~.

2. For pupils who ride school buses 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 of this section.

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 school buses in accordance with the laws of this state relating to standards for school buses, and to the qualifications of school bus drivers. Certification as to the compliance with the laws of this state in regard to school buses 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.

SECTION 4. AMENDMENT. Section 15-44-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-44-03. CERTIFICATE BY DEPARTMENT OF ACCOUNTS AND PURCHASES - APPORTIONMENT BY SUPERINTENDENT OF PUBLIC INSTRUCTION - WARRANT - ~~NOTICE TO COUNTY TREASURERS~~ PAYMENT. The department of accounts and purchases on or before the third Monday in February, ~~May~~ April, August, October, and ~~November~~ December in each year, shall certify to the superintendent of public instruction the amount of the state tuition fund. The superintendent shall apportion such fund ~~immediately~~ among the several ~~counties~~ school districts of the state in proportion to the number of children of school age residing in each as shown by the last enumeration provided for by law, and shall certify to the department of accounts and purchases, and state treasurer~~, and to the county treasurer and county superintendent of schools of each county,~~ the amount apportioned to the respective ~~counties~~ school districts. Immediately upon receipt of the apportionment from the superintendent of public instruction, the department of accounts and purchases shall ~~prepare and issue a warrant, signed by the state auditor, upon the state treasurer for the full amount of the state tuition fund apportioned to the several counties and shall deliver the same to the state treasurer, taking his receipt therefor. The department of accounts and purchases shall notify the several county treasurers of the amount due their respective counties and that the warrant has been issued therefor. The state treasurer, upon such warrant, shall pay the amount due the several counties to the respective county treasurers~~ pay each school district the amount to which it is entitled from the state tuition fund and such payments shall be combined with and paid at the same time as per-pupil payments pursuant to section 15-40.1-05.

SECTION 5. REPEAL. Sections 15-44-07 and 15-44-08 of the North Dakota Century Code and sections 15-44-04 and 15-44-05 of the 1977 Pocket Supplement to the North Dakota Century Code are hereby repealed.

SECTION 6. APPROPRIATION. There is hereby appropriated to the superintendent of public instruction for distribution by the department of accounts and purchases out of any moneys in the state tuition fund in the state treasury, not otherwise appropriated, the sum of $29,877,400, or such greater or lesser sums as become available, to the public schools of this state as provided in article IX, section 2 of the Constitution of the State of North Dakota and chapter 15-44 of the North Dakota Century Code, for the biennium beginning July 1, 1981, and ending June 30, 1983.

SECTION 7. LIMIT ON DISTRIBUTION OF OIL AND GAS BONUS MONEYS. Notwithstanding the provisions of section 15-08-01.1 and subdivision c of subsection 3 of section 15-40.1-06, no more than $16,000,000 of oil and gas bonus payments on common school lands shall be apportioned and distributed during the biennium beginning July 1, 1981, and ending June 30, 1983, and the remainder, if any, shall be deposited in the common school trust fund created by section 1 of article IX of the Constitution.

SECTION 8. EFFECTIVE DATE. Section 1 of this Act shall be effective on and after July 1, 1983.

Approved April 6, 1981

CHAPTER 200

HOUSE BILL NO. 1406
(Representatives Lipsiea, Kent)
(Senator Tweten)

FOUNDATION AID PAYMENT ADJUSTMENT

AN ACT to amend and reenact section 15-40.1-04.1 of the North Dakota Century Code, relating to adjustments in foundation aid payments resulting from changes in a school district's property tax base.

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

SECTION 1. AMENDMENT. Section 15-40.1-04.1 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-04.1. ADJUSTMENT OF FOUNDATION AID PAYMENT.

1. Whenever the taxable valuation of property is diminished because of the reclassification of real property as personal property which results from either legislative or judicial action, the state foundation aid payment to the affected school district shall be based on the diminished valuation in the year in which it is paid to the school district.

2. Whenever the foundation aid payment to any school district is based upon a determination of property valuation which is later diminished by legislative or judicial action, the school district shall have one year from the date of final determination or adjudication of the adjustment of the property tax base to make application to the superintendent of public instruction for a supplemental foundation aid payment in the amount necessary so the district will have received the amount it would have received had the correct property tax base been used. A school district shall be entitled to the supplemental payment even if the payment is received in a new biennial period. The superintendent of public instruction shall certify the supplemental payment to which a school district is entitled to the department of accounts and purchases, which shall pay the amounts due within the limits of legislative appropriations for the foundation program.

Approved March 5, 1981

CHAPTER 201

HOUSE BILL NO. 1227
(Hoffner, Black, Gates, Reed)

KINDERGARTEN FOUNDATION AID PAYMENT

AN ACT to amend and reenact subsection 7 of section 15-40.1-08 of the North Dakota Century Code, relating to payment of foundation aid for kindergarten.

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

* SECTION 1. AMENDMENT. Subsection 7 of section 15-40.1-08 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. For elementary schools providing kindergartens ~~after June 30, 1980,~~ which are established according to provisions of section 15-45-01, there shall be paid that amount of money resulting from multiplying the factor ~~.49~~ .50 times the educational support per pupil ~~as provided in section 15-40.1-06~~ 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.

Approved March 31, 1981

* NOTE: Section 15-40.1-08 was also amended by section 7 of Senate Bill No. 2230, chapter 198, and subsection 7 was also amended by section 1 of House Bill No. 1561, chapter 202.

CHAPTER 202

HOUSE BILL NO. 1561
(Representatives Knudson, Martin)
(Senator Quail)

OUT-OF-STATE KINDERGARTEN FOUNDATION PAYMENT

AN ACT to amend and reenact subsection 7 of section 15-40.1-08 of the North Dakota Century Code to allow foundation payments to approved out-of-state kindergarten programs.

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

* SECTION 1. AMENDMENT. Subsection 7 of section 15-40.1-08 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. For elementary schools providing kindergartens after June 30, 1980, 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 .49 times the educational support per pupil as provided in section 15-40.1-06 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.

Approved March 5, 1981

* NOTE: Section 15-40.1-08 was also amended by section 7 of Senate Bill No. 2230, chapter 198, and subsection 7 was also amended by section 1 of House Bill No. 1227, chapter 201.

CHAPTER 203

SENATE BILL NO. 2245
(Hanson, H. Christensen, Fritzell, Tierney)

SCHOOLBUS TRANSPORTATION AID

AN ACT to amend and reenact sections 15-40.1-16, 15-40.1-16.1, and 15-40.1-17 of the North Dakota Century Code to provide transportation aid for school children bused within the city limits.

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

* SECTION 1. AMENDMENT. Section 15-40.1-16 of the 1979 Interim 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 the county equalization fund and 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 transporting pupils who live outside the incorporated limits of the city in which the school the pupil is enrolled in is located, a sum equal to twenty cents per mile [1.61 kilometers] for schoolbuses having a capacity of sixteen or fewer pupils and forty cents per mile [1.61 kilometers] for schoolbuses having a capacity of seventeen or more pupils. In addition, those school districts qualifying for payments for buses having a capacity of seventeen or more pupils shall be entitled to an amount equal to fifteen cents per day for each public school pupil living outside the city limits who is transported in such buses~~,--provided--that--no--such--payment shall---be--made--for--any--pupil--who--lives--within--the incorporated-limits-of-a-city-with-a-population-in--excess of--two--hundred-fifty-and-an-area-in-excess-of-two-square miles-[518.00-hectares]-in-which-the-school-in-which-he-is enrolled---is---located--except--as--provided--in--section 15-40.1-16.1~~.

* NOTE: Section 15-40.1-16 was also amended by section 11 of Senate Bill No. 2230, chapter 198.

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 seven 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 of this section.

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.

* SECTION 2. AMENDMENT. Section 15-40.1-16.1 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-16.1. TRANSPORTATION AID FOR CERTAIN VOCATIONAL EDUCATION AND SPECIAL EDUCATION PROGRAMS. There shall be paid from the county equalization fund and from state funds to each school district an amount for transporting pupils to and from schools in other districts and to and from schools within school districts for vocational education courses offered through cooperative arrangements approved by the state board of vocational education. Similar payments shall be paid to the school districts transporting pupils for special education programs approved by the superintendent of public instruction. Such amount shall be the same amount for mileage and per day as is provided in subsection 1 of section 15-40.1-16, except that school districts entitled to transportation aid pursuant to this section shall receive such aid for all miles [kilometers] traveled and for all pupils transported, regardless of whether or not such pupils live within the incorporated limits of cities in which the schools in which they are enrolled are located. Provided, however, that no school district shall receive more than one per-pupil payment for transportation regardless of the number of times any pupil is transported in any one day.

SECTION 3. AMENDMENT. Section 15-40.1-17 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-17. APPLICATION FOR TRANSPORTATION PAYMENTS. On or before July fifteenth of each year, the clerk of each school district in this state providing schoolbus transportation shall certify to the county superintendent of schools the following information:

* NOTE: Section 51-40.1-16.1 was also amended by section 12 of Senate Bill No. 2230, chapter 198.

1. For schoolbuses transporting pupils who live outside the incorporated limits of the city in which the school is located, if applicable, the number of schoolbuses operated on a contract basis or owned and operated by the district, the manufacturer's rated pupil capacity of each ~~such~~ bus, the daily mileage each ~~such~~ bus traveled on a schoolbus route during the school year in transporting pupils as provided for in section 15-40.1-16 and in section 15-40.1-16.1~~,~~.

2. For schoolbuses or commercial buses transporting pupils who live within the incorporated limits of the city in which the school is located, a city plat or plats indicating each school building location, the routes traveled by each bus, the manufacturer's rated capacity and the number of one-way trips either to or from school made by pupils from within the city limits on each bus during the school year.

Each school district clerk shall also certify the amount of transportation payments claimed, and such other information as the superintendent of public instruction may require. On or before the first day of September in each year, the county superintendent of schools shall certify all claims for transportation payments submitted by school districts in the county to the state superintendent of public instruction. At the time the county superintendent of schools certifies such claims to the superintendent of public instruction, he shall also give notice to any district of any disallowance that may have been made by him in the claim for transportation payments. Any district may appeal the decision of the county superintendent of schools to the superintendent of public instruction on or before the fifteenth day of September of any year in which the determination is made. The superintendent of public instruction may change or modify the determination of the county superintendent if the evidence submitted by the district warrants a modification. The judgment of the superintendent of public instruction shall be final.

Approved March 26, 1981

CHAPTER 204

HOUSE BILL NO. 1496
(Representatives Meyer, Schindler)
(Senator Leibhan)

FAMILY SYSTEM TRANSPORTATION REIMBURSEMENT

AN ACT to provide for reimbursement from the foundation aid fund for family system transportation granted by school districts.

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

SECTION 1. INTENT. It is hereby recognized that because of certain geographic and population density factors there are certain areas within the state where the providing of a program of vehicular transportation is not practical financially even though a portion of the cost is met through reimbursement payments from the state foundation aid fund. It is also recognized that in such areas parents are often willing to transport their own children to the school, provided that they receive payments for such transportation under the family system of transportation embodied in section 15-34.2-03. It is hereby found to be equitable that assistance be provided from the foundation aid fund to those districts that are now meeting the full cost of paying parents under the family system of transportation, in order to induce such districts to provide transportation for their pupils as economically as they can.

SECTION 2. SUPERINTENDENT TO MAKE RULES AND REGULATIONS - REIMBURSEMENT TO DISTRICTS FOR FAMILY SYSTEM METHOD OF TRANSPORTATION PAYMENTS. School districts shall be entitled to reimbursement from the foundation aid fund for payments made to persons entitled thereto for transporting pupils under the family system of transportation, section 15-34.2-03, as provided in this Act.

The superintendent of public instruction shall grant such reimbursement to districts entitled thereto at the rate of fifty percent of the actual payment made by the district. Said superintendent shall promulgate rules and regulations establishing under what circumstances a district is eligible to receive such reimbursement. The rules and regulations will take into consideration the following factors:

1. The density of population within the district boundaries.

2. The geographic factors, if any, which impede the furnishing of vehicular transportation.

3. The cost to the district to provide a system of vehicular transportation, including the amount of capital outlay for the purchase of vehicular equipment and the physical facilities for storage and maintenance of the same.

4. Savings to the district that would result if family system reimbursement was granted rather than the providing of vehicular transportation.

The superintendent of public instruction shall administer the reimbursement provided for and shall prepare all forms and statements that may be necessary for school districts to apply for the same.

Payments made by school districts for family system transportation under this Act shall be subject to the provisions of sections 15-34.2-04 and 15-34.2-05.

Approved March 12, 1981

CHAPTER 205

SENATE BILL NO. 2196
(Albers)

HANDICAPPED CHILD'S EDUCATION PAYMENT

AN ACT to amend and reenact section 15-40.2-08 of the North Dakota Century Code, providing for the state to pay for educating handicapped children when neither a parent nor a legal guardian is residing in North Dakota.

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

SECTION 1. AMENDMENT. Section 15-40.2-08 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-08. RESIDENCY DETERMINATION IN CHILD PLACEMENT CASES - DECISION BY THREE-MEMBER COMMITTEE - PROVISIONS OF SECTION 15-40.2-05 TO APPLY. For purposes of applying this chapter, the school district in which a child resides shall be construed to be the residence district of such child:

1. 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. At the time of any placement for any prescribed period of time by a county or state ~~welfare~~ social service agency with the consent of the parent or guardian at a foster home or home maintained by any nonprofit corporation; or

3. At the time of any voluntary admission to Grafton state school or any state-licensed child care home or agency.

Such residence district shall be liable for tuition upon claim of the admitting district, provided that both the residence district 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. Where the parent or parents of the child were residents of the district at the time of placement under subsections 1 through 3, but such parent or both parents have

subsequently moved elsewhere, so that there is no parent residing in said residence district, then the tuition and excess cost due the admitting district shall 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 residence district shall be liable for the cost of tuition and for the excess educational costs related to such special education unless the child does not have a parent or legal guardian residing in North Dakota, in which case, the state shall pay the cost of tuition and the excess educational costs. In the event of placement by a county or state ~~welfare~~ social service agency with the consent of the parent or guardian, or the voluntary admission to any state-licensed child care home or agency, including referrals made therefrom, the determination of tuition may be subject to an appeal filed with the county superintendent of schools and the three-member committee referred to in section 15-40.2-05, which 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 county equalization fund payments and state payments shall apply to this section.

Approved March 31, 1981

CHAPTER 206

SENATE BILL NO. 2274
(Grotberg, Tierney)

SCHOOL DISTRICT TUITION CHARGE AUTHORITY

AN ACT to amend and reenact section 15-40.2-12 of the North Dakota Century Code, relating to school district authority to levy for tuition charges.

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

SECTION 1. AMENDMENT. Section 15-40.2-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-12. LEVY FOR TUITION CHARGES PERMITTED. The school board of any school district approving the payment of ~~high--school~~ tuition charges for students in grades seven through twelve or required to make ~~such~~ tuition payments under the provisions of this chapter may levy an amount sufficient to pay tuition charges, which levy shall not be subject to any mill levy limitations prescribed by law.

Approved March 31, 1981

CHAPTER 207

SENATE BILL NO. 2208
(Senators Holmberg, Redlin, Reiten)
(Representatives Black, Mattson, Reed)

SCHOOL ELECTION QUALIFICATIONS OF AIR BASE RESIDENTS

AN ACT to amend and reenact section 15-47-05 of the North Dakota Century Code to allow air base residents to vote in school district elections held pursuant to chapter 15-28; and declaring an emergency.

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

SECTION 1. AMENDMENT. Section 15-47-05 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-05. QUALIFICATIONS OF SCHOOL ELECTORS AND OFFICERS. Any person who is a qualified elector of this state is qualified to vote for the election of school officers in any school district in which he is a resident, and is eligible to the office of school district clerk, or member of the school board, or may be appointed as a judge or clerk of election. The school district clerk need not be a resident of the district. For the purposes of elections held pursuant to ~~this~~ chapter, 15-28 only, a person who resides on an air force base is a resident of a school district if the school district receives students from the air force base pursuant to contract and receives impact aid pursuant to Public Law 81-874, as amended [64 Stat. 1100, 20 U.S.C. 236 et seq.].

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 6, 1981

CHAPTER 208

SENATE BILL NO. 2200
(Nelson)

"TEACHER" DEFINED

AN ACT to amend and reenact section 15-47-26 of the North Dakota Century Code, relating to the definition of the word "teacher".

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

SECTION 1. AMENDMENT. Section 15-47-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-26. DEFINITIONS. The term "teacher", as used in sections 15-47-27 and 15-47-28, shall be construed to include all teachers, principals, and superintendents in all public school districts within this state, and all persons employed in teaching in any state institution, except institutions of higher education. The term "teacher", as used in section 15-47-38, shall be construed to include all teachers and principals in all public school districts within this state, and all persons employed in teaching in any state institution, except institutions of higher ~~learning~~ education. For purposes of the sections above referenced, the term "teacher" shall not include teachers who are replacing teachers on leave of absence or sabbatical leave.

Approved March 18, 1981

CHAPTER 209

HOUSE BILL NO. 1336
(Representatives Schindler, Berger, A. Olson)
(Senator Leibhan)

TEACHER DISMISSAL PROCEDURE

AN ACT to amend and reenact subsection 2 of section 15-47-38 of the North Dakota Century Code, relating to dismissal of teachers under the Administrative Agencies Practices Act.

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

* SECTION 1. AMENDMENT. Subsection 2 of section 15-47-38 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The school board of any school district contemplating discharging a teacher for cause prior to the expiration of the term of the teacher's contract shall notify such teacher in writing of such fact at least ten days prior to the date of contemplated discharge. Such teacher shall be informed in writing of the time and place for a special meeting of the school board to be held for such purpose prior to the final decision on the matter. Such teacher shall also be informed in writing of his right to demand a specification of the reasons for such discharge, which must on demand of the teacher be furnished not less than five days prior to said meeting to be held on the question of contemplated discharge. Such reasons shall be sufficient to justify the contemplated action of the board and shall not be frivolous or arbitrary. At the meeting with the board, if the teacher has informed the board in writing at least two days prior thereto that he will contest the charges brought against him, the board must sustain the charges with evidence produced at such hearing with witnesses who shall be subject to cross-examination by the teacher or his representative. A witness, if a minor, shall be accompanied by a parent or parents, legal guardian, or legal counsel, if requested by the minor or the minor's parents. The teacher may then produce such witnesses as may be necessary to refute the charges, which witnesses shall be subject to cross-examination. ~~The proceedings--may,--at--the--request--of--either--party,-be~~

* NOTE: Subsection 2 of section 15-47-38 was also amended by section 1 of Senate Bill No. 2072, chapter 210.

~~transcribed by a court reporter at the expense of the person requesting such transcript and the witnesses may on demand of either party be placed under oath by a person authorized by law to administer oaths. Any person testifying falsely under oath shall be guilty of perjury and punished according to law.~~ All procedures relative to evidence, subpoena of witnesses, oaths, record of testimony, decision, rehearing, appeals, certification of record, scope and procedure for appeals, and appeals to the supreme court shall be conducted in accordance with the provisions of sections 28-32-06, 28-32-07, 28-32-09, 28-32-10, 28-32-11, 28-32-12, 28-32-13, 28-32-14, 28-32-15, 28-32-16, 28-32-17, 28-32-18, 28-32-19, 28-32-20, and 29-32-21. The meeting shall be an executive session of the board unless both the school board and the teacher requesting such meeting shall agree that it shall be open to other persons or the public. The teacher may be represented at the meeting by two representatives of his own choosing. In addition to board members, the school district clerk, and the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. If the teacher so requests he shall be granted a continuance of not to exceed seven days by the board unless for good cause otherwise shown. No cause of action for libel or slander shall lie for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section.

Approved March 2, 1981

CHAPTER 210

SENATE BILL NO. 2072
(Legislative Council)
(Interim Judiciary "C" Committee)

TEACHER'S CONTRACT SESSION ATTENDEES

AN ACT to amend and reenact subsections 2 and 5 of section 15-47-38 of the North Dakota Century Code, relating to the procedures to be followed by school boards in discharging a teacher for cause or failing to renew the contract of a teacher.

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

* SECTION 1. AMENDMENT. Subsection 2 of section 15-47-38 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The school board of any school district contemplating discharging a teacher for cause prior to the expiration of the term of the teacher's contract shall notify ~~such~~ the teacher in writing of ~~such~~ that fact at least ten days prior to the date of contemplated discharge. ~~Such~~ The teacher shall be informed in writing of the time and place for a special meeting of the school board to be held ~~for such purpose~~ on the question of the teacher's discharge prior to ~~the~~ a final decision on the matter. ~~Such~~ The teacher shall also be informed in writing of his right to demand a specification of the reasons for ~~such~~ discharge, which must ~~on~~, upon receipt of the demand of the teacher, be furnished not less than five days prior to ~~said~~ the meeting to be held on the question of ~~contemplated~~ the teacher's discharge. ~~Such~~ The reasons shall be sufficient to justify the contemplated action of the board and shall not be frivolous or arbitrary. At the meeting with the board, if the teacher has informed the board in writing at least two days prior thereto that he will contest the charges brought against him, the board must sustain the charges with evidence produced at ~~such~~ the hearing with witnesses who shall be subject to cross-examination by the teacher or his representative. The teacher may then produce such witnesses as may be necessary to refute the charges, which witnesses shall be subject to cross-examination. The proceedings may, at the request of

* NOTE: Subsection 2 of section 15-47-38 was also amended by section 1 of House Bill No. 1336, chapter 209.

either party, be transcribed by a court reporter at the expense of the person requesting ~~such~~ the transcript and the witnesses may on demand of either party be placed under oath by a person authorized by law to administer oaths. Any person testifying falsely under oath shall be guilty of perjury and punished according to law. The meeting shall be an executive session of the board unless both the school board and the teacher requesting ~~such~~ the meeting shall agree that it shall be open to other persons or the public. The teacher may be represented at the meeting by two representatives of his own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the school district clerk, and the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. If the teacher so requests he shall be granted a continuance of not to exceed seven days by the board unless for good cause otherwise shown. No cause of action for libel or slander shall lie for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section.

SECTION 2. AMENDMENT. Subsection 5 of section 15-47-38 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The school board of any school district contemplating not renewing a teacher's contract, as provided in section 15-47-27, shall notify ~~such~~ the teacher in writing of such contemplated nonrenewal no later than April first. ~~Such~~ The teacher shall be informed in writing of the time, which shall not be later than April seventh, and place of a special school board meeting for the purpose of discussing and acting upon such contemplated nonrenewal. ~~Such~~ The teacher shall also be informed in writing of the reasons for ~~such~~ nonrenewal. ~~Such~~ The reasons shall be sufficient to justify the contemplated action of the board and shall not be frivolous or arbitrary but shall be related to the ability, competence, or qualifications of the teacher as a teacher, or the necessities of the district such as lack of funds calling for a reduction in the teaching staff. At the meeting with the board the teacher may then produce such evidence as may be necessary to evaluate the reasons for nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The school board shall give an explanation and shall discuss and confirm at ~~such~~ the meeting its reasons for the contemplated nonrenewal of the contract. The meeting shall be an executive session of the board unless both the school board and the teacher shall agree that it shall be open to other persons or the public. The teacher may be

represented at ~~such~~ the meeting by any two representatives of his own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the school district clerk, and the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. ~~Upon such hearing~~ At the meeting, if the teacher so requests, he shall be granted a continuance of not to exceed seven days. No cause of action for libel or slander shall lie for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section. The determination not to renew a contract if made in good faith shall be final and binding on all parties. Final notice of the determination not to renew a contract shall be given in writing by April fifteenth as provided in section 15-47-27.

Approved March 18, 1981

CHAPTER 211

HOUSE BILL NO. 1303
(Representatives Gorder, Olafson, A. Olson)
(Senators Lee, Tennefos, Vosper)

SILENT MEDITATION OR PRAYER IN SCHOOL

AN ACT to authorize a period of silent meditation in public schools, and to give public school boards the discretion to direct that all schools in a school district provide such a period of meditation.

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

SECTION 1. SCHOOLS - PERIOD OF SILENCE. At the commencement of the first class of each day in all grades in all public schools, the teacher in charge of the room in which such class is held may announce that a period of silence not to exceed one minute in duration shall be observed for meditation or prayer, and during any such period, silence shall be maintained and no activities engaged in. The school board of any public school district may, in its discretion, direct that all public schools within that school district shall provide a period of silence in each classroom in accordance with the provisions of this section.

Approved March 11, 1981

CHAPTER 212

HOUSE BILL NO. 1234
(Matchie)

SCHOOL SAFETY PATROLS

AN ACT to provide for the establishment of school safety patrols.

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

SECTION 1. SCHOOL SAFETY PATROLS AUTHORIZED. In the exercise of authorized control and supervision over students attending public or private schools and other educational institutions in this state, the governing boards or other directing authorities of those schools or institutions may authorize the organization and supervision of school safety patrols to influence and encourage students to refrain from crossing any highway, street, or road at points other than at regular crossings and to direct students when and where to cross highways, streets, and roads.

SECTION 2. WHO MAY BE APPOINTED. School authorities may appoint school patrols and, in the case of an appointment of a minor to a school patrol, the parents' or legal guardian's written consent must be obtained.

Approved March 2, 1981

CHAPTER 213

HOUSE BILL NO. 1637
(Swiontek, Kelly)

FARGO BOARD OF EDUCATION TREASURER

AN ACT to amend and reenact sections 15-51-12, 15-51-14, 15-51-15, 15-51-16, and 15-51-22 of the North Dakota Century Code, relating to powers and duties of the Fargo school district board of education, and providing for the appointment by the Fargo board of education of a board treasurer.

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

SECTION 1. AMENDMENT. Section 15-51-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-51-12. TAX COLLECTION - EXTENDING ON ASSESSMENT ROLL AND TAX LIST. The tax so to be levied as aforesaid and collected by virtue of this ~~act~~ chapter, shall be collected in the same manner as other city taxes, and for that purpose said board of education shall have power to levy and cause to be collected, such taxes as are herein authorized, and shall cause the rate for each purpose to be certified by the secretary to the city auditor in time to be added to and put upon the annual tax list of the city~~,~~ ~~and it~~. It shall be the duty of the city auditor to calculate and extend upon the annual assessment roll and tax list, such tax so levied by said board, and said tax shall be collected as other city taxes are collected~~,~~ ~~and in case~~. If the city council ~~shall fail~~ fails to levy any tax for city purposes or ~~shall fail~~ fails to cause an assessment roll or tax list to be made as now or hereafter may be provided by ordinance, the board of education may cause an assessment roll and tax list to be made by its secretary, and put into the hands of the city ~~treasurer~~ auditor, with a warrant for the collection of the same under the hand of the president and seal of the board and attested by the secretary, and may cause the same to be collected in the same manner as other city taxes are collected, or as may by resolution of said board be provided.

SECTION 2. AMENDMENT. Section 15-51-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-51-14. MONEY RAISED, APPROPRIATED, OR PROVIDED TO BE PAID TO ~~CITY~~ TREASURER TO CREDIT OF BOARD. All moneys to be raised

pursuant to the provisions of this chapter, and all school moneys which shall by law be appropriated to or provided for said city, shall be paid over to the ~~city~~ treasurer of ~~said city to the credit of~~ the board of education, and the county treasurer of Cass County, from time to time as he shall receive the county school funds, and at least once in each month on the first Monday thereof, shall pay over to the ~~said city~~ treasurer the proportion thereof belonging to ~~said~~ the city, the same as though ~~said~~ the city constituted one school district, and for that purpose ~~said~~ the board shall have power to cause all needful steps to be taken, including census reports or other acts or things, to enable ~~said~~ the board to receive the school moneys belonging to said city, as fully and completely as though said city formed one of the school districts of Cass County.

SECTION 3. AMENDMENT. Section 15-51-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-51-15. ~~CITY TREASURER TO ACT AS~~ TREASURER OF BOARD - BOND - ACCOUNTABILITY ON, FAILURE TO GIVE - EFFECT. The ~~treasurer of said city shall serve as treasurer of said~~ board of education ~~without compensation and~~ shall appoint a treasurer who shall hold office at the pleasure of the board and whose compensation shall be fixed by the board. The treasurer shall give ~~bonds~~ a bond to ~~such~~ the board ~~of education~~ in such ~~sums~~ sum and with such conditions and sureties, as they from time to time shall require in order to insure the safekeeping of the school funds~~, which shall be in addition to his other bonds~~, and the ~~said~~ treasurer and his sureties upon ~~such bonds~~ his bond shall be accountable to the board for the school moneys that came into his hands~~, and in case of the failure of such~~. If the treasurer fails to give ~~such bonds~~ a bond when required ~~so to do~~ by said board, within ten days thereafter, ~~such~~ the treasurer's office shall ~~become~~ be deemed vacant, and the ~~mayor and council of said city~~ board shall appoint another person ~~in his place~~ to serve ~~until the next annual election in said city, and until his successor shall be elected and qualified~~ as treasurer.

SECTION 4. AMENDMENT. Section 15-51-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-51-16. MONEY TO BE RAISED - HOW PAID IN - DEPOSITED ~~TO CREDIT~~ WITH TREASURER OF BOARD - HOW PAID OUT. All moneys required to be raised by virtue of this chapter shall be paid in cash, or in the warrants hereinafter provided, drawn on the school funds ~~only and such moneys and all~~. All moneys received by ~~said city for the use of the common schools therein,~~ the school district shall be deposited for safekeeping with the treasurer of ~~said city, to the credit of~~ the board of education~~, and shall be by him safely kept separate and apart from any other funds of said city,~~. Such funds shall be kept by the treasurer until drawn from ~~said~~ the treasury as herein provided. The treasurer shall pay out the moneys authorized by this ~~act~~ chapter to be received by him upon warrants drawn by the president and countersigned by the secretary ~~and attested by the seal of the board of education~~.

SECTION 5. AMENDMENT. Section 15-51-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-51-22. REPORTS OF RECEIPTS AND DISBURSEMENTS. It shall be the duty of ~~said~~ the board, at least fifteen days before the annual school board election ~~of members of said board in each year~~, to prepare and report to the mayor and city council, true and correct statements of the receipts and disbursements of moneys under ~~and in pursuance of~~ the provisions of this ~~act~~ chapter, during the preceding year, which shall be stated under appropriate heads:

1. The moneys raised by the board under section 15-51-11~~;~~.
2. The school moneys received by the treasurer of the ~~city~~ board from the county treasurer~~;~~.
3. The moneys received by the treasurer of the ~~city~~ board from the sale of bonds~~;~~.
4. All other moneys received by the ~~city~~ treasurer of the board subject to the order of the board of education, specifying the sources from which they have been derived, and to these ends, the ~~city~~ treasurer shall make a report to ~~said~~ the board when ~~required~~, and as required of all school moneys received and disbursed by him~~;~~.
5. The manner in which all moneys paid out have been expended, specifying the amount under each head of expenditure, and the city council shall at least one week before ~~such~~ the election, cause the same to be published in the official newspaper of ~~said~~ the city.

Approved March 5, 1981

CHAPTER 214

HOUSE BILL NO. 1090
(Wagner)

MEDICAL CENTER ADVISORY COUNCIL MEETINGS

AN ACT to amend and reenact section 15-52-03 of the North Dakota Century Code, relating to the meetings of the medical center advisory council.

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

SECTION 1. AMENDMENT. Section 15-52-03 of the 1977 Pocket 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 said medical center advisory 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 medical center advisory council shall consist of eleven members, two to be named by the governor, one to be named by and from the membership of each of the following: The social service board of North Dakota, 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; the North Dakota state medical association; and the North Dakota hospital association; and the remaining four members shall be the persons serving as ~~directors~~ chairmen of the area health education ~~centers~~ center governing bodies in Grand Forks, Fargo, Bismarck, and Minot, North Dakota.

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 medical center advisory council shall name its own chairman and the dean of the university of North Dakota medical school shall serve as executive secretary thereof. The medical center advisory council shall meet ~~in January and June of~~ 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 ~~legislature~~ legislative assembly.

Approved January 30, 1981

CHAPTER 215

SENATE BILL NO. 2232
(Senators Tierney, Lips)
(Representative Martinson)

JUNIOR COLLEGE BOND ISSUE MAXIMUM

AN ACT to amend and reenact section 15-55-18 of the North Dakota Century Code, relating to bond issue for community junior colleges and off-campus educational centers.

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

SECTION 1. AMENDMENT. Section 15-55-18 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-55-18. BOND ISSUE FOR COMMUNITY JUNIOR COLLEGES AND OFF-CAMPUS EDUCATIONAL CENTERS. The school board of ~~any~~ a school district having a community junior college or off-campus educational center as provided in chapter 15-18 ~~is--hereby--authorized--and empowered--to~~ may issue and sell tax-exempt bonds in an amount limited to the cost of purchasing or constructing buildings, adding to or repairing or renovating existing buildings, furnishing or equipping these buildings, or operating and maintaining these buildings for its community junior college or off-campus educational center students. The total principal amount of ~~such~~ the bonds shall not exceed ~~two--and--one-half~~ four million dollars. The bonds authorized by this section shall be retired from revenues of the buildings and facilities purchased or constructed under ~~the provisions of~~ this section. The school board may also use tuition and fee revenue to retire these bonds. These bonds shall never become a general obligation of the school district, or the state ~~of North Dakota~~.

Approved March 26, 1981

CHAPTER 216

SENATE BILL NO. 2422
(Senator Hanson)
(Representative Swiontek)

STATE UNIVERSITY STUDENT HOUSING BONDS

AN ACT to amend and reenact section 1 of chapter 256 of the 1979 Session Laws of North Dakota, authorizing the state board of higher education to issue revenue bonds for the construction of student housing at North Dakota state university of agriculture and applied science.

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

SECTION 1. AMENDMENT. Section 1 of chapter 256 of the 1979 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 1. BOARD OF HIGHER EDUCATION - BOND ISSUANCE - PURPOSE. In accordance with chapter 15-55, the state board of higher education is hereby authorized and empowered to issue and sell bonds for the purpose of constructing student housing facilities at North Dakota state university of agriculture and applied science, in an amount not to exceed ~~two~~ three million dollars. The bonds authorized by this section shall be retired solely from revenue from the student housing facilities, and shall not be a general obligation of the state of North Dakota.

Approved March 11, 1981

CHAPTER 217

HOUSE BILL NO. 1342
(Kuchera, Reiten)

UNIVERSITY STEAM MAIN REVENUE BONDS

AN ACT to authorize the state board of higher education to issue and sell self-liquidating, tax-exempt bonds to construct a revenue-producing facility at the university of North Dakota; to make an appropriation; to set a limitation and provide for an exception; 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 one million five hundred thousand dollars for the purpose of constructing a revenue-producing steam main at the university of North Dakota. Bonds issued under the provisions of this Act shall 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, 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 equipment of the facility authorized in section 1. Any unexpended balances from the sale of bonds shall be placed in sinking funds for the retirement of the authorized bonds.

SECTION 3. LIMITATION - EXCEPTION. Funds used for construction and equipment of the authorized facility shall not exceed the amount authorized in section 1, except to the extent that funds received from private or federal sources exceed the authorized amount.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved February 18, 1981

CHAPTER 218

SENATE BILL NO. 2276
(Senator Stenehjem)
(Representative Reiten)

UNIVERSITY STUDENT HOUSING REVENUE BONDS

AN ACT to authorize the state board of higher education to issue and sell self-liquidating, tax-exempt bonds to construct a revenue-producing facility at the university of North Dakota; to provide an appropriation; to set a limitation and provide an exception; 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 three million dollars, for the purpose of constructing a revenue-producing student housing facility at the university of North Dakota at Grand Forks. Bonds issued under the provisions of this Act shall not become a general obligation of the state of North Dakota.

SECTION 2. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of the bonds authorized by 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 equipment of the facility authorized in section 1. Any unexpended balances from the sale of the bonds shall be placed in a sinking fund for the retirement of the authorized bonds.

SECTION 3. LIMITATION - EXCEPTION. Funds used for construction and equipment of the facility authorized by this Act shall not exceed the amount authorized in section 1, except to the extent that funds received from private or federal sources exceed the authorized amount.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 19, 1981

CHAPTER 219

SENATE BILL NO. 2281
(Senator Thane)
(Representative R. Hausauer)

SCHOOL OF SCIENCE PARKING LOT REVENUE BONDS

AN ACT to authorize the state board of higher education to issue and sell self-liquidating, tax-exempt bonds to construct revenue-producing facilities at the state school of science; and to make an appropriation.

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 to exceed one hundred thousand dollars for the purpose of constructing revenue-producing parking lots at the state school of science. Bonds issued under the provisions of this Act shall 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, 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 equipment of the facility authorized in section 1. Any unexpended balances from the sale of bonds shall be placed in a sinking fund for the retirement of the authorized bonds.

SECTION 3. LIMITATION - EXCEPTION. Funds used for the construction equipping of the authorized facilities shall not exceed the amount authorized in section 1, except to the extent the funds received from private or federal sources exceed the authorized amount.

Approved March 19, 1981

CHAPTER 220

HOUSE BILL NO. 1153
(Committee on Education)
(At the request of the Department of Public Instruction)

"EXCEPTIONAL CHILD" DEFINED

AN ACT to amend and reenact subsection 1 of section 15-59-01 of the North Dakota Century Code, relating to the definition of an exceptional child.

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

SECTION 1. AMENDMENT. Subsection 1 of section 15-59-01 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Exceptional child" means a natural person ~~not less than three nor more than twenty one years of age~~ who has reached the age of three years by midnight August thirty-first and has not reached the age of twenty-one years by midnight August thirty-first, who, because of mental, physical, emotional, or learning characteristics, requires special education services. This may include a handicapped child or a gifted child. Services to handicapped children from three to six years of age may be provided in accordance with regulations as established by the state superintendent of public instruction.

Approved March 16, 1981

CHAPTER 221

SENATE BILL NO. 2153
(Committee on Education)
(At the request of the Department of Public Instruction)

SPECIAL EDUCATION SERVICES

AN ACT to provide a statement of legislative intent; to amend and reenact sections 15-59-06 and 15-59-08 of the North Dakota Century Code, relating to the state cooperation in special education and levy limitations for special education programs.

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

SECTION 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 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, for determining a child's medically related handicapping condition 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.

* SECTION 2. AMENDMENT. Section 15-59-06 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59-06. STATE COOPERATION IN SPECIAL EDUCATION. Exceptional children who are enrolled in approved programs of special education shall be deemed to be regularly enrolled in the ~~school-and-school-districts-providing-such-program~~ school district of residence and shall be included in the determination of elementary and high school per-pupil payments from the county equalization fund and state foundation aid program whether or not such pupils are regularly attending school in the school or school district receiving such payments. In the case of a student who is enrolled in a nonpublic school but who is attending a public school special education program, payments shall be made to the appropriate public school district in relation to the proportion of a normal school day as such student participates in such special education program. For the purposes of this section, a normal school day shall be deemed to consist of six hours. Upon the determination by the director of special education that the school district has made expenditures for each exceptional child in such program equal to the average expenditures made in such district for elementary or high school students, as the case may be, ~~and-that-the-parents-of-a-child receiving-special-education--under--such--program,--or--the--legally responsible--person,--have--made--adequate-efforts-to-provide-needed education-or-that-adequate-reasons-otherwise-exist-for-the-provision of--special--education-to-such-child,~~ the director by vouchers drawn upon funds provided by the legislative assembly for such purpose may provide reimbursement to such school or school district in an amount not exceeding three times the state average per-pupil cost of education computed by the department of public instruction for the previous school year for such child per year for instruction and four times the state average per-pupil cost of education computed by the department of public instruction for the previous year for such child per year for ~~transportation,-equipment,-and-residential-care~~ the cost of related services. If any school district within a special education unit has any handicapped elementary or high school student who, in the opinion of a qualified psychologist, a medical doctor, district superintendent, and the district or multidistrict

* NOTE: Section 15-59-06 was also amended by section 1 of House Bill No. 1252, chapter 222, and by section 17 of Senate Bill No. 2230, chapter 198.

director of special education, is unable to attend the public schools in the special education unit because of a handicapping condition, such school district shall contract with an in-state public school outside the special education unit in which the student is a legal resident which will accept such student and has proper facilities for the education. No school district shall enter into a contract with any in-state public school for the education of any student because of a handicapping condition, unless the curriculum provided by such school and the contract has been approved in advance by the superintendent of public instruction. The contract shall provide that such school district agrees to pay to the in-state public school 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 shall not exceed the actual per-pupil cost incurred by such in-state public school. The transportation shall be furnished as provided by rules and regulation of the department of public instruction. The remainder of the actual cost of educating the handicapped student not covered by other payments or credits shall be paid from funds provided by the legislative assembly for such purpose. The department of public instruction may provide reimbursement to such school or school district in an amount not exceeding three times the state average per-pupil cost of education computed by the department of public instruction for the previous school year for such child per year for instruction and four times the state average per-pupil cost of education computed by the department of public instruction for the previous year for such child per year for the cost of related services.

SECTION 3. AMENDMENT. Section 15-59-08 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59-08. SCHOOL DISTRICT SPECIAL EDUCATION PROGRAM - FINANCING - LEVY - LIMITATIONS OF LEVY. The school board of any school district may budget funds from the school district general fund for a special education program for the school district. ~~If the school district is located in a county which is not levying a county tax for special education, the~~ The school board may, upon approval by a majority of the school board, levy a tax not to exceed a total of ~~five~~ ten mills upon all taxable property in the school district for the purpose of carrying out a special education program for the school district, separately or~~, whenever possible,~~ in cooperation with other school districts. ~~Funds presently in the county special education program will be prorated back to all school districts within the county or multidistrict special education board by a majority vote of the county special education board.~~ The levy provided in this section shall be over and above any mill levy limitations provided by law and shall be collected and paid in the same manner as are other school district property taxes. The county treasurer shall credit the proceeds of the tax levy to a school district special education fund. Such funds shall be expended for the school district special education program.

Approved April 3, 1981

CHAPTER 222

HOUSE BILL NO. 1252
(Representatives Olsen, Goetz)
(Senator Reiten)

SPECIAL EDUCATION SUMMER SCHOOL AID

AN ACT to amend and reenact section 15-59-06 of the North Dakota Century Code, relating to foundation aid payments for summer school programs for special education pupils.

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

* SECTION 1. AMENDMENT. Section 15-59-06 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59-06. STATE COOPERATION IN SPECIAL EDUCATION. Exceptional children who are enrolled in approved programs of special education shall be deemed to be regularly enrolled in the school and school districts providing such program and shall be included in determination of elementary and high school per-pupil payments from the county equalization fund and state foundation aid program whether or not such pupils are regularly attending school in the school or school district receiving such payments. A prorated state foundation aid payment for a student to attend a public school program for handicapped students, approved by the superintendent of public instruction, may be made provided that the individualized education program for the child is written during the last quarter of the school term and specifically requires that the child attend a summer special education program. In the case of a student who is enrolled in a nonpublic school but who is attending a public school special education program, payments shall be made to the appropriate public school district in relation to the proportion of a normal school day as such student participates in such special education program. For the purposes of this section, a normal school day shall be deemed to consist of six hours. Upon the determination by the director of special education that the school district has made expenditures for each exceptional child in such program equal to the average expenditures made in such district for elementary or high school students, as the case may be, and that the parents of a child receiving special education under such program, or the legally responsible person, have made adequate efforts to provide needed education or that adequate reasons otherwise exist for the provision

* NOTE: Section 15-59-06 was also amended by section 2 of Senate Bill No. 2153, chapter 221, and by section 17 of Senate Bill No. 2230, chapter 198.

of special education to such child, the director by vouchers drawn upon funds provided by the legislative assembly for such purpose may provide reimbursement to such school or school district in an amount not exceeding three times the state average per-pupil cost of education computed by the department of public instruction for the previous school year for such child per year for instruction and four times the state average per-pupil cost of education computed by the department of public instruction for the previous year for such child per year for transportation, equipment, and residential care.

Approved March 18, 1981

CHAPTER 223

HOUSE BILL NO. 1435
(Representatives G. Larson, Hoffner)
(Senator Erickson)

STATE INSTITUTION RESIDENT'S TRAVEL REIMBURSEMENT

AN ACT to amend and reenact section 15-59-07, subsection 3 of section 25-04-05, and sections 25-04-05.2, 25-06-04, and 25-07-04 of the North Dakota Century Code, relating to transportation costs to and from state institutions.

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

SECTION 1. AMENDMENT. Section 15-59-07 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59-07. CONTRACTS FOR HANDICAPPED CHILDREN TO ATTEND PRIVATE OR OUT-OF-STATE PUBLIC SCHOOLS. If any school district in this state has any handicapped elementary or high school student who in the opinion of a qualified psychologist, a medical doctor, and the district superintendent is unable to attend the public schools in the district because of a physical or mental handicap or because of a learning disability, such school district shall contract with any accredited private nonsectarian nonprofit corporation within or without the state or an out-of-state public school which has proper facilities for the education of such student, if there are no public schools in the state with the necessary facilities which will accept such student. No school district shall enter into a contract with any private nonsectarian nonprofit corporation or out-of-state public school for the education of any student having a physical handicap or learning disability, unless the curriculum provided by such school and the contract has been approved in advance by the superintendent of public instruction. The contract shall provide that such school district agrees to pay to the private nonsectarian nonprofit corporation or the out-of-state public school 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 shall not exceed the actual per-pupil cost incurred by such private, nonsectarian nonprofit corporation or out-of-state public school. The transportation shall be furnished and reimbursed 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 ~~at least eighty percent of the costs incurred by it in providing transportation for the applicant. The reimbursement shall not be for~~ not more than ~~six~~ 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. The remainder of the actual cost of educating the handicapped student not covered by other payments or credits shall be paid from funds appropriated by the legislative assembly for special education notwithstanding limitations cited in section 15-59-06. The district of residence shall be entitled to the per-pupil foundation payment. The reimbursement herein provided to the contracting district from the state special education funds shall be in lieu of any other foundation aid to which the district might otherwise be entitled.

SECTION 2. AMENDMENT. Subsection 3 of section 25-04-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. ~~On and after July 1, 1975, care~~ Care and treatment at the state school shall 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 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 be reimbursed by the state special education fund for ~~at least eighty percent of the costs incurred by it in providing transportation for the applicant. The reimbursement shall not be for~~ not more than ~~six~~ 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. ~~On and after July 1, 1975, persons~~ Persons over twenty-one years of age who are qualified for admission pursuant to this chapter shall be responsible for expenses incurred through care and treatment at the state school in the manner provided by chapter 25-09.

SECTION 3. AMENDMENT. Section 25-04-05.2 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-05.2. SAN HAVEN - TRANSPORTATION COSTS - PAYMENT LIMITED. All residents not more than twenty-one years of age admitted to San Haven shall be 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 be reimbursed by the state special education fund for ~~at least eighty percent of the costs incurred by it in providing transportation for the applicant. The reimbursement shall not be for~~ not more than ~~six~~ 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.

SECTION 4. AMENDMENT. Section 25-06-04 of the 1979 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 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 be reimbursed by the state special education fund for ~~at least eighty percent of the costs incurred by it in providing transportation for the applicant. The reimbursement shall not be for~~ not more than ~~six~~ 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. 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.

SECTION 5. AMENDMENT. Section 25-07-04 of the 1979 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 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 be reimbursed by the state special education fund for ~~at least eighty percent of the costs incurred by it in providing transportation for the applicant. The reimbursement shall not be for~~ not more than ~~six~~ 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. 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 31, 1981

CHAPTER 224

SENATE BILL NO. 2092
(Committee on Appropriations)
(At the request of the Department of Public Instruction)

STATE SCHOOL CONSTRUCTION FUND

AN ACT to amend and reenact subsection 2 of section 15-60-03 of the North Dakota Century Code, relating to the value of property for determining the maximum limit of indebtedness; and to provide an appropriation for the state school construction fund.

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

SECTION 1. AMENDMENT. Subsection 2 of section 15-60-03 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The board shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any other school districts. No obligations or debts of the board shall be deemed to be obligations of the state or any other school districts, and the state or any other school districts shall not be liable for the payment of principal or interest on such obligations. The board shall at no time enter into any contract with a school district under the provisions of this chapter, unless such school district is at that time annually levying a sufficient mill levy which the board has determined will provide for repayment of the contracted loan within twenty years after the initial payment from the state school construction fund to the school district, but a school district shall not borrow more than thirty percent of the taxable valuation of the district from the fund and shall not be permitted to levy less than ten mills for the maintenance of a building fund. The levy required by this section for repayment must be maintained over the life of the contract with the board, and the school district must have at the time of the loan an existing indebtedness to the maximum limit permitted by law. In determining whether a school district has an existing indebtedness to the maximum limit permitted by law for purposes of this section, the value of taxable property means twice the net

value of all taxable property in the school district rather than six times such value as provided in subsection 4 of section 21-03-01.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the lands and minerals trust fund in the state treasury, not otherwise appropriated, the sum of $3,000,000, or so much thereof as may be necessary, to the state school construction fund for the purpose of constructing and improving public school buildings and furnishing and equipping the same.

Approved April 8, 1981

CHAPTER 225

SENATE BILL NO. 2197
(Lodoen)

STATE SCHOOL CONSTRUCTION FUND LOAN LIMITATION

AN ACT to amend and reenact section 15-60-04 of the North Dakota Century Code, relating to the limit the state board of public school education may loan from the state school construction fund to a single school district.

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

SECTION 1. AMENDMENT. Section 15-60-04 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-60-04. LIMITATIONS OF PURPOSES AND AMOUNT EXPENDED. The board may expend for construction or improvements for any district thirty percent of its taxable valuation, but not to exceed ~~two~~ three million dollars to any one school district. No money shall be expended for gymnasiums or auditoriums except that in the event an entire school unit is constructed, the auditorium or gymnasium may be considered as part of the total plant and the district may be eligible, provided priority shall first be given the construction and improvements of school units not including an auditorium or gymnasium.

Approved March 5, 1981

CHAPTER 226

SENATE BILL NO. 2147
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

STUDENT LOAN GUARANTEE PROGRAM ADMINISTRATION

AN ACT to amend and reenact section 15-62.1-01 of the North Dakota Century Code, relating to the administration of the student loan guarantee program.

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

SECTION 1. AMENDMENT. Section 15-62.1-01 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.1-01. GUARANTEE LOAN PROGRAM - ADMINISTRATION - ADVISORY BOARD. The Bank of North Dakota, hereinafter called the "agency", shall be the state agency designated to administer a state guarantee loan program, as provided in this chapter. ~~The industrial commission shall appoint an advisory board consisting of a representative of the board of higher education, two representatives of the financial community, three representatives of both public and private education, one student, one representative of the Bank of North Dakota who is involved in the loan function, and one lay person. The industrial commission shall solicit nominations from the appropriate constituent groups. The constituent groups may include, but are not limited to, the North Dakota bankers association, the state credit union board, the state savings and loan association, the accredited or approved postsecondary institutions in the state, the North Dakota student association, the state board of higher education, and the Bank of North Dakota~~ The advisory board of directors to the Bank of North Dakota appointed pursuant to chapter 6-09.1 shall act in an advisory capacity concerning the program. The agency, upon recommendation of the advisory board and subject to approval of the industrial commission, may expend moneys from the interest earned on the principal balance in the reserve fund established pursuant to this chapter as may be necessary to implement and administer the program.

Approved March 11, 1981

CHAPTER 227

HOUSE BILL NO. 1071
(Legislative Council)
(Legislative Audit and Fiscal Review Committee)

STATE SCHOLARSHIP REVOLVING FUND ASSETS

AN ACT to amend and reenact section 15-62.1-13 of the North Dakota Century Code, relating to the state scholarship revolving fund.

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

SECTION 1. AMENDMENT. Section 15-62.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.1-13. STATE SCHOLARSHIP ~~BOARD--TO-DISCONTINUE-MAKING LOANS~~ REVOLVING FUND - STUDENT LOAN COLLECTIONS - UNCOLLECTIBLE LOANS. The ~~state-scholarship-board-shall-discontinue-making-loans under-chapter-15-62-of-the-North-Dakota-Century-Code,-and-the~~ funds in the state scholarship revolving fund along with the available interest on such moneys and subsequent payments of interest and principal received from students shall be transferred by the Bank of North Dakota to a special fund in the bank to serve as a reserve fund for a state guarantee loan program ~~in-a-special-fund-in-the bank~~. The bank ~~and-the-state-scholarship-board~~ shall continue to collect all outstanding loans and provide such other services as may be necessary to collect such loans, and may cease collection efforts on loans determined uncollectible by action of the industrial commission.

Approved February 4, 1981

CHAPTER 228

HOUSE BILL NO. 1552
(Unhjem)

PRIVATE TUITION ASSISTANCE GRANT PROGRAM

AN ACT to amend and reenact subsection 1 of section 15-62.3-01 and sections 15-62.3-04 and 15-62.3-06 of the North Dakota Century Code, relating to the private tuition assistance grant program.

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

SECTION 1. AMENDMENT. Subsection 1 of section 15-62.3-01 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Accredited private institution" means an institution of higher learning located in North Dakota which is operated privately and not controlled or administered by any state agency or subdivision of the state, and which is accredited by the north central association of colleges and secondary schools or the accrediting association of bible colleges.

SECTION 2. AMENDMENT. Section 15-62.3-04 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.3-04. TUITION ASSISTANCE GRANT MAXIMUM. The maximum amount of a tuition assistance grant to a qualified full-time resident student for each academic year consisting of two semesters is the lesser of (a) the amount of the student's financial need for that period, (b) the difference between the tuition charged by the accredited private institution and the highest undergraduate tuition charged by state colleges or universities, or (c) one thousand five hundred dollars. The maximum amount of a tuition assistance grant to a qualified half-time resident student is one-half the amount which would be paid to a qualified full-time resident student.

SECTION 3. AMENDMENT. Section 15-62.3-06 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.3-06. DISTRIBUTION OF GRANT FUNDS. ~~Subject to section 15-62.3-04, the agency shall distribute available grant funds among qualified students so as to reduce the unmet financial need to the same amount for each student. The total funds appropriated for tuition assistance grants are to be equally divided for awarding grants during each academic year of the appropriation.~~ Subject to the maximum amount of a tuition assistance grant pursuant to section 15-62.3-04, each eligible student shall receive a grant in an amount which, for the first year of each biennium, is the product of the student's financial need and the quotient obtained by dividing one-half of the tuition assistance funds available for the biennium by the aggregate financial needs of all qualified students, and for the second year of each biennium, the amount of the grant for each eligible student is the product of the student's financial need and the quotient obtained by dividing the funds available for that year by the aggregate financial needs of all qualified students. The agency shall pay one-half of the tuition assistance grant to the student at the beginning of the fall semester and one-half to the student at the beginning of the spring semester upon receipt of certification by the accredited private institution that the student is enrolled and is in attendance. If the student discontinues attendance before the completion of any term, any refund to the student, repayment to the tuition assistance grant fund, or both, shall be governed by the published refund or repayment policy of the institution. The distribution of tuition assistance grant funds shall be by warrant-check prepared by the department of accounts and purchases upon vouchers submitted by the agency.

Approved March 5, 1981

ELECTIONS

CHAPTER 229

HOUSE BILL NO. 1231
(Hoffner, Heigaard, G. Pomeroy)

INITIATIVE, REFERENDUM, AND RECALL PETITIONS

AN ACT to amend and reenact section 16-01-11 of the North Dakota Century Code, relating to initiative, referendum, and recall petitions.

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

* SECTION 1. AMENDMENT. Section 16-01-11 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-01-11. REGULATIONS GOVERNING INITIATIVE, REFERENDUM, OR RECALL PETITIONS - PENALTY.

1. No person shall sign any initiative, referendum, or recall petition circulated pursuant to the provisions of ~~sections 25--and-202-of-the-Constitution-of-this-state,-and-article 33-of-the-amendments-to~~ article III of the Constitution, of the State of North Dakota unless he is a qualified elector. No person shall sign any petition more than once, and each signer shall add, ~~after-his-signature,~~ his post-office address and the date of signing. Every qualified elector signing a petition pursuant to the constitution and this section shall do so in the presence of the person circulating the petition. A petition shall be in substantially the following form:

	MONTH DAY YEAR	NAME OF ELECTOR	RESIDENCE (Mailing Address)	CITY, STATE
1				
2				
3				
4				
5				
6				
7				
8				

* NOTE: Section 16-01-11 was repealed by section 14 of House Bill No. 1225, chapter 241.

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter.

2. Each copy of any petition provided for in this section, before being filed, shall have attached thereto an affidavit executed by the circulator ~~to the effect that each signature to the paper appended is the genuine signature of the person whose name it purports to be, that it was signed in his presence, and that each such person is a qualified elector,~~ in substantially the following form:

State of North Dakota)
) ss.
County of----------)
(County where signed)
I, ----------, being duly sworn,
(Circulator)
depose and say that I am a qualified elector; that each signature contained on the attached petition is the genuine signature of the person whose name it purports to be; that each signature contained on the attached petition was executed in my presence; and that each person whose signature appears on the attached petition is a qualified elector.

(Signature of Circulator)
Subscribed and sworn to before me, this ---------- day of ----------, 19--- at ----------, North Dakota.
(city)

(Signature of Notary)
Notary Public
(Seal) North Dakota
My commission expires:

3. A petition for recall must include, before the signature lines, the name of the person being recalled, the office from which that person is being recalled, and a list of the names and post-office addresses of not less than five electors of the state, county, or district in which the official is to be recalled who are sponsoring the recall.

4. Any person not an elector who signs an initiative, referendum, or recall petition, any person signing a name other than his own on such a petition, and any person who executes the affidavit required by this section knowing all or part of the affidavit to be false, shall be guilty of a class A misdemeanor. All signatures on each copy of a petition to which is attached a false affidavit shall be invalid.

Approved April 1, 1981

CHAPTER 230

SENATE BILL NO. 2322
(Stenehjem, Holmberg)

BALLOT ARRANGEMENT

AN ACT to amend and reenact sections 16-04-20 and 16-11-06 of the North Dakota Century Code, relating to requirements a political party must meet to receive a separate column on the primary election ballot and to the arrangement of names on the general election ballot; and to repeal section 16.1-06-07 of the North Dakota Century Code, as created by section 16, chapter 271 of the 1979 Session Laws, relating to the arrangement of names on the general election ballot.

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

SECTION 1. AMENDMENT. Section 16-04-20 of the North Dakota Century Code, as amended by section 9 of chapter 276 of the 1979 Session Laws, is hereby amended and reenacted to read as follows:

16-04-20. 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; and

4. Any other party, if a petition signed by ~~fifteen~~ at least seven thousand ~~or more~~ electors of this state is filed with the secretary of state before four p.m. ~~on March first of any~~ of the fifty-fifth day prior to a primary election ~~year~~, 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 March first~~ on the fifty-fifth 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 2. AMENDMENT. Section 16-11-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-11-06. ARRANGEMENT OF NAMES ON BALLOT - PRESIDENTIAL ELECTORS. The ballot provided for in section 16-11-05 shall be arranged as follows: ~~The names of the candidates of the party casting the highest number of votes in the state for members of Congress at the last preceding general election shall be arranged in the first or left-hand column of such ballot, of the party casting the next highest number of votes in the second column, of the party casting the next highest number of votes in the third column, and of such other party as the secretary of state may direct for state officers. In presidential years, the names of electors of president and vice president of the United States, presented in one certificate of nomination, shall be arranged in a group enclosed in brackets to the right and opposite the center of which shall be printed in bold type the surname of the presidential candidate represented. To the right and in a line with such surname, near the margin, shall be placed a single square, and a mark within such square shall be designated a vote for all the electors, and such group shall be placed at the head of the column under the party designated or represented in such certificate.~~

1. Initially, the names of the candidates of the party casting the highest number of votes in the state for members of Congress at the last preceding general election shall be arranged in the first or left-hand column of such ballot; of the party casting the next highest number of votes in the second column; of the party casting the next highest number of votes in the third column; and of such other party as the secretary of state may direct in the fourth and successive columns.

2. In printing each set of official ballots for the various election precincts, all columns in subsection 1 shall be rotated so that an equal number of ballots shall be printed with each in the first or left-hand position.

3. After the ballots are printed as prescribed in subsection 2, they shall be kept in separate piles and then rearranged by taking one from each pile and placing it upon the new pile. This rearrangement for political party column rotation shall be done in conjunction with the required rotation of names within the political party columns. After the rearrangement is completed, the ballots shall be cut and packaged for the various election precincts.

4. In presidential election years the names of presidential electors presented in one certificate of nomination shall

be arranged in a group enclosed in brackets to the right and opposite the center of which shall be printed in bold type the surname of the presidential candidate represented. To the right and in a line with such surname, near the margin, shall be placed a single square, and a mark within such square shall be designated a vote for all the electors, and such group shall be placed at the head of the column under the party designated or represented in such certificate.

5. In precincts in which voting machines or electronic voting systems are used, the rotation of columns required by this section, or any rotation necessary to carry out the intent of this section when a different ballot format is used with electronic voting systems, shall be performed in the same manner as provided for the rotation of names on the primary election ballot.

* SECTION 3. REPEAL. Section 16.1-06-07, as created by section 16 of chapter 271 of the 1979 Session Laws and printed as a footnote in the 1979 Interim Supplement to the North Dakota Century Code, is hereby repealed.

Approved March 31, 1981

* NOTE: Section 16.1-06-07 , as created by section 16 of chapter 271 (1979), was also repealed by section 8 of Senate Bill No. 2078, chapter 240.

CHAPTER 231

HOUSE BILL NO. 1209
(Representatives Wald, Goetz)
(Senator Olin)

NO-PARTY BALLOT VACANCY

AN ACT to amend and reenact section 16-08-07 of the North Dakota Century Code, relating to the filing of a vacancy existing on a no-party ballot.

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

* SECTION 1. AMENDMENT. Section 16-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-08-07. 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 thirty-five days prior to the general election and before four ~~o'clock~~ p.m. on the thirty-fifth day, a written petition as provided in section 16-04-02, 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 ~~o'clock~~ p.m. on the thirty-fifth 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 at the most recent general election in the state or district at which the office of governor was voted upon.

Whenever a vacancy shall exist on a no-party ballot in a county or district within a county, such vacancy may be filled by filing with the county auditor at least thirty-five days prior to the general election and before four ~~o'clock~~ p.m. of the thirty-fifth day a written petition as provided in section 16-04-04, stating that the petitioner desires to become a candidate for election to the office for which a vacancy exists. If such petition is mailed it shall be in the possession of the county auditor before four ~~o'clock~~ p.m. on the thirty-fifth 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

* NOTE: Section 16-08-07 was repealed by section 14 of House Bill No. 1225, chapter 241.

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.

A vacancy in the no-party ballot shall be deemed to exist when a:

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.

Approved March 9, 1981

CHAPTER 232

SENATE BILL NO. 2424
(Lashkowitz, Reiten)

VOTING MACHINE USE

AN ACT to amend and reenact sections 16-09-01 and 16-21-01 of the North Dakota Century Code, relating to the use of voting machines in all election precincts.

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

SECTION 1. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly or for some other reason does not take effect, then section 16-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-09-01. BOARD OF COUNTY COMMISSIONERS ~~MAY~~ SHALL DIVIDE COUNTY INTO PRECINCTS - COMBINE CITIES WITH TOWNSHIPS UNDER CERTAIN CONDITIONS - PRESERVATION OF BOUNDARIES - ~~NUMBER OF ELECTORS~~ -- WHEN MAY REDIVIDE, ANNEX, VACATE OR COMBINE VOTING PRECINCTS - ELECTION INSPECTORS DESIGNATED. The board of county commissioners ~~may~~ shall divide the county into precincts and establish the boundaries of the same except that within the boundaries of incorporated cities the governing body of such cities shall divide the cities into precincts and establish their boundaries pursuant to the provisions of title 40.

The entirety of civil townships or cities shall be preserved as precincts except when such preservation would be in conflict with the provisions of this chapter. In such case, the civil township or city, except as provided in this chapter, shall be divided into two or more precincts, but in no case shall a precinct be composed of parts of two civil townships, or part of a township and of a city, except as provided in this chapter. ~~No precinct in which voting machines are not used shall contain more than five hundred electors.~~ It is further provided that the board of county commissioners may redivide the county into precincts, annex an existing precinct to another existing precinct, or combine two or more existing precincts one to another when:

1. A petition signed by seventy percent of the electors residing within an existing precinct is presented

requesting such existing precinct to be annexed to and become a part of another existing precinct;

2. In the board's discretion, prompted by inaccessibility of polling places, difficulty in obtaining election boards, or economic infeasibility, an existing precinct may be annexed to and become a part of another existing precinct; or

3. The board of county commissioners may combine in their entirety two or more adjoining civil townships into one voting precinct with a common polling place for all elections other than township or school district elections or as otherwise provided by this chapter.

In the case of precincts which are combined, the board of county commissioners shall designate the person to be the inspector of elections of the new voting precinct. In the case where one precinct is annexed to another, the inspector of elections of the annexing precinct shall be the inspector of elections for the new precinct.

Notwithstanding other provisions of law, and for the purpose of statewide elections and the election of precinct committeemen, the county commissioners shall have the further authority to combine a city with an adjacent civil township, which wholly or partially encompasses such city, into one voting precinct, when the votes cast in the city for governor in the preceding election were less than three hundred and the total vote for governor at the previous election of the city and township to be combined would not exceed three hundred votes. If a city is partially encompassed by more than one civil township, the county commissioners shall select the civil township which will be combined with the city by taking into account accessibility of roads, trade area and compactness.

The county commissioners shall appoint the inspector for such combined voting precinct. The judges and clerks shall be appointed as otherwise provided by law.

If the vote in the combined voting precincts at a later date exceeds four hundred and upon request of the city governing body, the board of county commissioners shall restore the city to a separate voting precinct.

SECTION 2. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly or for some other reason does not take effect, then section 16-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-21-01. VOTING MACHINES AUTHORIZED ~~IN-CITY-PRECINCTS~~. The use of voting machines, in accordance with the provisions of this chapter, is hereby authorized in any ~~city~~ election precinct upon finding and declaration by resolution of the city or township governing body ~~of--the--city,~~ and also of the board of county

commissioners of the county in which such ~~city~~ election precinct is located, that such use is advisable or necessary in ~~such~~ that precinct ~~and procurement of such machines~~. Thereafter, the machines shall be procured, on a temporary or permanent basis, under ~~such~~ terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, ~~as may be~~ agreed upon by the respective ~~boards, and such~~ governing bodies. The machines may ~~thereupon~~ then be used in any state, county, city, or district election in ~~such~~ that precinct or other voting area of which such precinct is a part.

Approved March 31, 1981

CHAPTER 233

HOUSE BILL NO. 1427
(Conmy)

CHALLENGE OF THE RIGHT TO VOTE

AN ACT to amend and reenact section 16-12-14 of the North Dakota Century Code, relating to challenging the right of a person to vote.

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

SECTION 1. AMENDMENT. If House Bill No. 1225 is approved by the forty-seventh legislative assembly, then section 16-12-14 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-12-14. CHALLENGING RIGHT OF PERSON TO VOTE - AFFIDAVIT REQUIRED - PENALTY FOR FALSE SWEARING - OPTIONAL POLL CHECKERS.

1. ~~One--challenger--appointed-and-designated-from-each-of-the political-party-organizations-shall-be-entitled-to--be--in attendance--at-each-polling-place.--If-any-person-offering to-vote-shall-be-challenged-by-one-of-such-challengers--or by--any--member--of--the--board-of-elections,-such-person, unless-such-challenge-is-withdrawn,-shall-stand-aside--and shall--not-vote-unless-he-makes-an-affidavit,-acknowledged before-the-inspector-of-elections-or--any--notary--public, that--he--is--a-legally-qualified-elector-of-the-precinct. Any-person-who-falsely-swears-in-order-to--cast--his--vote shall--be--guilty--of--perjury--and--shall--be-punished-as prescribed-in-section--12.1-11-01.~~ 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 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. 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.

SECTION 2. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly, then section 16-12-14 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-12-14. CHALLENGING RIGHT OF PERSON TO VOTE - AFFIDAVIT REQUIRED - PENALTY FOR FALSE SWEARING - OPTIONAL POLL CHECKERS.

1. ~~One--challenger--appointed-and-designated-from-each-of-the-political-party-organizations-shall-be-entitled-to--be--in-attendance--at-each-polling-place.--If-any-person-offering-to-vote-shall-be-challenged-by-one-of-such-challengers--or-by--any--member--of--the--board-of-elections,-such-person,-unless-such-challenge-is-withdrawn,-shall-stand-aside--and-shall--not-vote-unless-he-makes-an-affidavit,-acknowledged-before-the-inspector-of-elections-or--any--notary--public,-that--he--is--a-legally-qualified-elector-of-the-precinct.-Any-person-who-falsely-swears-in-order-to--cast--his--vote-shall--be--guilty--of--perjury--and--shall--be-punished-as-prescribed-in-section--12.1-11-01.~~ 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 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. 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 section 12.1-11-01. 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.

Approved March 26, 1981

CHAPTER 234

SENATE BILL NO. 2306
(Lee, Wright)

ABSENT VOTER'S BALLOT AGENT USE

AN ACT to amend and reenact section 16-18-09 of the North Dakota Century Code, relating to obtaining a ballot for absentee voting.

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

SECTION 1. AMENDMENT. If House Bill No. 1235 is not approved by the forty-seventh legislative assembly, then section 16-18-09 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-18-09. DELIVERING BALLOTS - ENVELOPE ACCOMPANYING - STATEMENT ON ENVELOPE - INABILITY OF ELECTOR TO SIGN NAME.

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, auditor of the city, or clerk of the school district, as the case may be, shall send to such absent voter by mail, postage prepaid, one official ballot, or personally deliver said ballot to the applicant or his agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter; provided that the agent ~~deposit~~ signs his name before receiving the ballot and deposits with the auditor or clerk, as the case may be, authorization in writing from the applicant to receive such ballot or according to requirements hereinafter set forth for signature by mark. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election.

2. If there is more than one ballot to be voted by an elector of such precinct, one of each kind shall be included and an envelope shall be enclosed with such ballot or ballots. Such envelope shall bear upon the front thereof the name,

official title, and post-office address of the officer supplying the voter with the ballot, and upon the other side a printed statement in substantially the following form:

State of ----------)
) ss.
County of ----------)

I, --------, under penalty of possible criminal prosecution for making a false statement, do solemnly swear that I am a resident of the township of --------, or of the -------- precinct of the -------- ward in the city of --------, residing at -------- in said county, county of -------- and state of North Dakota, and entitled to vote in such precinct at the next election; that I expect to be absent from the said county of my residence on the day of holding such election or that by reason of physical disability I am unable to attend at the polling place for such election, and that I will have no opportunity to vote in person on that day.

If such absent voter is unable to sign his name, he shall make his mark (X) in the presence of a disinterested person. Such disinterested person shall print the name of the person marking his X below the X, and shall sign his own name following the printed name with the notation "witness to his mark".

Approved April 1, 1981

CHAPTER 235

HOUSE BILL NO. 1262
(Conmy)

CAMPAIGN EXPENSE LIMITATIONS

AN ACT to repeal sections 16-20-04, 16-20-05, 16-20-06, and 16-20-07 of the North Dakota Century Code, relating to limitations on campaign expenses, the requirement that actual contributor's names be supplied, offers to procure an office for an elector, and prohibition of charitable contributions.

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

* SECTION 1. REPEAL. Sections 16-20-04 and 16-20-05 of the North Dakota Century Code, section 16-20-06 of the 1977 Pocket Supplement to the North Dakota Century Code, and section 16-20-07 of the 1979 Special Supplement to the North Dakota Century Code are hereby repealed.

Approved March 19, 1981

* NOTE: Section 16-20-05 was also repealed by section 5 of Senate Bill No. 2161, chapter 243.

CHAPTER 236

HOUSE BILL NO. 1230
(Gerl)

TIMEOFF TO VOTE

AN ACT to establish a state policy regarding time-off for employees to vote at any statewide special, primary, or general election.

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

SECTION 1. STATE POLICY ENCOURAGING EMPLOYERS TO ESTABLISH POLICY GRANTING EMPLOYEES TIME TO VOTE. It is the policy of this state to encourage voting by all eligible voters at all statewide special, primary, or general elections. To this end, employers are encouraged to establish a program to grant an employee who is a qualified voter to be absent from his employment for the purpose of voting when an employee's regular work schedule conflicts with voting during time when polls are open.

Approved April 6, 1981

CHAPTER 237

SENATE BILL NO. 2300
(Lee, Holmberg)

PRECINCT CAUCUS MEETING PLACE

AN ACT to amend and reenact section 16.1-03-01 of the North Dakota Century Code, relating to the time and manner for holding a precinct caucus to elect precinct committeemen; and declaring an emergency.

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

SECTION 1. AMENDMENT. Section 16.1-03-01 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-03-01. PRECINCT CAUCUS TO ELECT PRECINCT COMMITTEEMEN - TIME AND MANNER OF HOLDING - CAUCUS CALL - NOTICE.

1. On or before May fifteenth following the last preceding general election, a party caucus shall be held ~~in~~ by every election precinct at a site within or reasonably close to the precinct in the manner provided in sections 16.1-03-01 through 16.1-03-04.

2. The legislative district chairman of each party shall issue the call for the precinct caucus at least twenty days before the time set for holding the caucus and the call shall contain the following:

   a. Name of party.

   b. Precinct number or name.

   c. Date of caucus.

   d. Place of caucus.

   e. Hours of caucus.

   f. A statement of the business to be conducted, including the election of precinct committeemen and such other

persons as may be provided by state law and party rules.

g. The name of the district chairman issuing the call.

3. The district chairman shall provide ten days published notice in the official newspaper in circulation within each precinct in the district. The notices shall contain that information set forth in subsection 2. The district chairman may include the information required by this section for all precincts in the district in one notice for publishing purposes.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 18, 1981

CHAPTER 238

HOUSE BILL NO. 1165
(A. Hausauer)

DISTRICT COMMITTEE MEMBERSHIP

AN ACT to amend and reenact section 16.1-03-07 of the North Dakota Century Code, relating to organization of party district committees.

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

SECTION 1. AMENDMENT. Section 16.1-03-07 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-03-07. MEETING OF DISTRICT COMMITTEE - ORGANIZATION. In every odd-numbered year, the district committee of each party shall meet within fifteen days after the precinct caucus provided for in section 16.1-03-01. The day, hour, and site shall be set by the existing district committee chairman. The district committee shall organize by:

1. Selecting a chairman, vice chairman, vice chairwoman, secretary, and treasurer chosen by the district committee. The officers selected need not be precinct committeemen; however, all the officers shall be voting members of the district committee.

2. Adopting rules and modes of procedure not in conflict with law.

3. Filling any vacancies in the office of precinct committeeman pursuant to section 16.1-03-05.

4. Selecting an executive committee consisting of from five to ~~fifteen~~ eighteen persons chosen from the district committee. The chairman, vice chairman, vice chairwoman, treasurer, and secretary of the district committee shall be members and the officers of the executive committee. That party's nominees for and members of the legislative assembly shall also be members of the executive committee. The five to ~~fifteen~~ eighteen person membership limitation

shall include the officers of the executive committee and that party's nominees for and members of the legislative assembly.

The newly elected chairman shall notify the county auditor of the names of the party officers selected. If the office of chairman becomes vacant, the vice chairman shall hold the office until the next regular election for the office or until a new chairman is selected by the district committee for the balance of the term, whichever shall first occur.

Approved March 16, 1981

CHAPTER 239

HOUSE BILL NO. 1413
(Wentz, Boyum)

PRECINCT CAUCUS PROXY USE

AN ACT to amend and reenact section 16.1-03-09 of the North Dakota Century Code, relating to the use of proxies at precinct committee elections; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 16.1-03-09 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-03-09. PROXIES PERMISSIBLE - EXCEPTION. Proxies are permissible at all meetings, except at a precinct caucus, held pursuant to the provisions of this chapter, but all persons exercising proxies shall be residents of the precinct or district which the person giving the proxy represents.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 16, 1981

CHAPTER 240

SENATE BILL NO. 2078
(Legislative Council)
(Interim Judiciary "C" Committee)

1979 ELECTION LAW REVISION CORRECTIONS

AN ACT to amend and reenact sections 16-10-12, 16-10-12.1, 16.1-03-02, 16.1-03-11, 16.1-03-17, 16.1-03-18, and 16.1-05-05 of the North Dakota Century Code, relating to compensation paid election officials, persons who may participate in and vote at caucuses, the organization of the state committee, political party reorganization after apportionment, and applicability of the chapter on unfair and corrupt election practices; and to repeal sections 16-10-16 and 16.1-06-07, as created by the 1979 Session Laws, chapter 271, section 16, relating to compensation paid inspectors, judges, and clerks at elections and arrangement of names on the general election ballot.

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

SECTION 1. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly, then section 16-10-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-10-12. POLL CLERKS AND ADDITIONAL POLL CLERKS - APPOINTMENT - DUTIES - QUALIFICATIONS - OATHS - COMPENSATION. The judge of the election representing the two parties which cast the largest number of votes in the state at the last general election shall each appoint as a poll clerk a qualified elector of the precinct, who is a member of the same party making the appointment. In voting precincts or districts in which over three hundred votes are cast in any election, such judge of the election may each appoint an additional poll clerk who shall assume their duties at the time of the closing of the polls and shall assist the regular board in the opening, counting, and telling of ballots. Such additional poll clerks shall have the same qualifications and shall subscribe to the same oath as the regular poll clerks and shall receive as compensation for their services the sum ~~of--six--dollars each--to--be-paid-in-the-same-manner-as-regular-poll-clerks-are-paid~~ as provided in section 16-10-16.1.

SECTION 2. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly, then section 16-10-12.1 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-10-12.1. VOTING MACHINES - ADDITIONAL POLL CLERKS. All election precincts having voting machines as authorized in chapter 16-21 may, in addition to all other authorized poll clerks, have at least two additional poll clerks whose duties it shall be to assist any voter in the operation of the voting machine. Such additional poll clerks shall be from each of the two political parties which cast the largest vote at the last general election, and any assistance given to any voter shall be in the presence of a poll clerk from each of the above-mentioned political parties. Such additional poll clerks shall have the same qualifications and shall subscribe to the same oath as the regular clerks and shall receive as compensation for their services such sum as is provided in section ~~16-10-16~~ 16-10-16.1, to be paid in the same manner as regular poll clerks are paid.

SECTION 3. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly, then section 16.1-03-02 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-03-02. WHO MAY PARTICIPATE IN AND VOTE AT CAUCUS.

1. Only those persons who are qualified electors pursuant to section ~~16-1-01-04~~ 16-01-03 may vote or be elected as committeemen or officers at the precinct caucus.

2. Only those persons who either voted or affiliated with the party at the last general election or intend to vote or affiliate with the party at the next general election, may vote at the precinct caucus.

3. In case the right of a person to participate at the caucus is challenged, the question of his right to participate shall be decided by a vote of the whole caucus. A person so challenged may not vote on the question of his right to participate in the caucus, and a two-thirds vote of the whole caucus shall be required to exclude a person from participation.

4. No person may vote or participate at more than one precinct caucus in any one year.

SECTION 4. AMENDMENT. Section 16.1-03-11 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-03-11. STATE COMMITTEE - MEETINGS - ORGANIZATION - VACANCIES. The state committee shall meet on or before July first of each odd-numbered year. The committee shall organize by

selecting a chairman, vice chairman, vice chairwoman, if provided for in the rules of the party, secretary, and treasurer and by adopting rules and modes of procedure. The officers elected need not be members of the committee, but they shall become voting members of the committee after their election. These officers, together with the national committeeman, national committeewoman, a representative of state elected officials who are members of that party, the party's floor leaders in the house of representatives and senate and four district chairmen to be selected by the state committee, shall constitute the executive committee of the state committee. If a vacancy occurs in the office of committee tresurer, the committee chairman may appoint a person to serve as acting treasurer. The vacancy shall be permanently filled for the balance of the term by a majority vote of the state committee at the first committee meeting following the occurence of the vacancy. A vacancy in an office of the state committee, other than a party district chairman, shall be filled upon a majority vote of the state committee.

SECTION 5. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly, then section 16.1-03-17 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-03-17. POLITICAL PARTY REORGANIZATION AFTER APPORTIONMENT BY NONLEGISLATIVE DIRECTION. If apportionment of the legislative assembly is accomplished by means other than action by the legislative assembly and the apportionment becomes effective after the organization of political parties as provided in this chapter and before the primary or the general election, the secretary of state shall establish a timetable for the reorganization of the parties as rapidly as possible before the ensuing election. When the timetable is established, the secretary of state shall notify all the county auditors of the timetable and of the details of the legislative apportionment as it affects each county. Each county auditor shall publish notice in the official county newspaper, which notice shall contain:

1. A statement that legislative apportionment has occurred.

2. A description and a map of the new legislative districts and the precincts as established by the governing bodies of the counties and cities in the county, pursuant to section ~~16-1-04-01~~ 16-09-01.

3. The date, time, and places of the precinct caucuses and district committee meetings determined by the secretary of state and the county auditor to be necessary according to the new districts and precincts established.

The political parties, in the newly established precincts and districts, shall then proceed to reorganize as closely as possible in conformance with this chapter and in conformance with the timetable established by the secretary of state.

SECTION 6. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly, then section 16.1-03-18 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-03-18. UNFAIR AND CORRUPT ELECTION PRACTICES APPLICABLE TO CHAPTER. The provisions of chapter ~~16.1-10~~ 16-20, relating to unfair and corrupt election practices, are applicable to all elections and conventions provided for in this chapter.

SECTION 7. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly, then section 16.1-05-05 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-05-05. COMPENSATION OF ELECTION OFFICERS - COMMISSIONER OF LABOR TO CERTIFY MINIMUM WAGE APPLICABLE TO ELECTION OFFICIALS - SECRETARY OF STATE TO CERTIFY AMOUNT TO COUNTY AUDITORS. The state commissioner of labor, thirty days before each statewide primary, general, or special election, shall determine the state minimum wage applicable to election inspectors, election judges, poll clerks, or any other private individual who performs duties in the election process, and shall certify the amounts to the secretary of state. The secretary of state shall then certify the amounts to the county auditors. As required by this title, the county auditors shall pay the amounts so determined to the relevant election officials, but in no event shall the compensation exceed fifty dollars for each election. State, county, or other election officials who are required to incur expenses while performing duties in the election process shall be reimbursed only for their actual and necessary expenses and mileage in the performance of those duties, in accordance with sections 54-06-09, 44-08-04, and 11-10-15. Other persons performing election duties shall also be paid for expenses and mileage in like manner and amounts. Members of election boards and poll clerks who attend the training sessions provided by ~~section 16.1-05-03~~ law shall be paid twenty-five percent more than the minimum wage determined in this section, during the time spent in the performance of their election duties; however, they shall receive only their actual and necessary expenses and mileage for attendance at the training session.

* SECTION 8. REPEAL. Section 16-10-16 of the North Dakota Century Code and section 16.1-06-07, as created by the 1979 Session Laws, chapter 271, section 16, of the 1979 Interim Supplement to the North Dakota Century Code are hereby repealed.

Approved April 1, 1981

* NOTE: Section 16.1-06-07, as created by section 16 of chapter 271 (1979), was also repealed by section 3 of Senate Bill No. 2322, chapter 230.

CHAPTER 241

HOUSE BILL NO. 1225
(Conmy)

ELECTION LAW REVISION

AN ACT to create and enact chapters 16.1-04, 16.1-09, 16.1-10, 16.1-12, 16.1-14, 16.1-15 and 16.1-16, and sections 16.1-01-02, 16.1-01-03, 16.1-01-04, 16.1-01-05, 16.1-01-06, 16.1-01-07, 16.1-01-08, 16.1-01-09, 16.1-01-10, 16.1-01-11, 16.1-01-12, 16.1-05-01, 16.1-05-02, 16.1-05-03, 16.1-05-04, 16.1-06-01, 16.1-06-02, 16.1-06-03, 16.1-06-04, 16.1-06-06, 16.1-06-08, 16.1-06-09, 16.1-06-10, 16.1-06-11, 16.1-06-12, 16.1-06-13, 16.1-06-14, 16.1-06-15, 16.1-06-16, 16.1-06-17, 16.1-06-18, 16.1-06-19, 16.1-06-20, 16.1-06-21, 16.1-06-22, 16.1-06-23, 16.1-06-24, 16.1-06-25, 16.1-07-01, 16.1-07-02, 16.1-07-03, 16.1-07-04, 16.1-07-05, 16.1-07-06, 16.1-07-07, 16.1-07-09, 16.1-07-10, 16.1-07-11, 16.1-07-12, 16.1-07-13, 16.1-07-14, 16.1-11-06, 16.1-11-08, 16.1-11-09, 16.1-11-10, 16.1-11-11, 16.1-11-12, 16.1-11-13, 16.1-11-14, 16.1-11-15, 16.1-11-16, 16.1-11-17, 16.1-11-18, 16.1-11-19, 16.1-11-20, 16.1-11-21, 16.1-11-22, 16.1-11-24, 16.1-11-25, 16.1-11-26, 16.1-11-27, 16.1-11-28, 16.1-11-29, 16.1-11-31, 16.1-11-32, 16.1-11-33, 16.1-11-35, 16.1-11-36, 16.1-11-37, 16.1-11-38, 16.1-11-39, 16.1-11-40, 16.1-13-01, 16.1-13-02, 16.1-13-03, 16.1-13-04, 16.1-13-05, 16.1-13-06, 16.1-13-07, 16.1-13-09, 16.1-13-10, 16.1-13-11, 16.1-13-12, 16.1-13-13, 16.1-13-14, 16.1-13-15, 16.1-13-16, 16.1-13-17, 16.1-13-18, 16.1-13-19, 16.1-13-20, 16.1-13-21, 16.1-13-22, 16.1-13-23, 16.1-13-24, 16.1-13-25, 16.1-13-26, 16.1-13-27, 16.1-13-28, 16.1-13-29, 16.1-13-30, 16.1-13-31, 16.1-13-32, and 16.1-13-33, relating to a new election code establishing qualifications for electors, initiative and referendum procedures, election offenses, the administration of elections, the establishment of voting precincts, the qualifications and duties of election officers, election supplies, ballots, electronic voting systems, and voting machines, absent voters' ballots, the disclosure of financial interests, corrupt practices, primary elections, nominations at the general election, the conduct of elections, presidential electors, election returns, recounts, and contests; and to repeal chapters 16-01, 16-03, 16-05, 16-06, 16-07, 16-08, 16-09, 16-10, 16-13, 16-14, 16-15, 16-16, 16-21, 16-21.1, 16-22 and sections 16-04-02, 16-04-02.1, 16-04-03, 16-04-04, 16-04-05, 16-04-06, 16-04-07, 16-04-08, 16-04-09, 16-04-10, 16-04-12, 16-04-13, 16-04-15.1,

16-04-15.2, 16-04-16, 16-04-17, 16-04-18, 16-04-19, 16-04-21, 16-04-25, 16-04-26, 16-04-27, 16-04-28, 16-04-29, 16-04-30, 16-04-31, 16-04-32, 16-04-33, 16-04-34, 16-04-35, 16-04-36, 16-11-01, 16-11-02, 16-11-03, 16-11-04, 16-11-05.1, 16-11-07, 16-11-09, 16-11-10, 16-11-11, 16-11-12, 16-11-13, 16-11-14, 16-11-15, 16-11-16, 16-12-01, 16-12-02, 16-12-03, 16-12-04, 16-12-05, 16-12-06, 16-12-07, 16-12-08, 16-12-09, 16-12-10, 16-12-11, 16-12-12, 16-12-13, 16-12-16, 16-18-01, 16-18-02, 16-18-03, 16-18-04, 16-18-05, 16-18-06, 16-18-07, 16-18-08, 16-18-11, 16-18-12, 16-18-14, 16-18-15, 16-18-16, 16-18-17, 16-18-20, 16-20-01, 16-20-01.1, 16-20-16, 16-20-17, 16-20-17.1, 16-20-17.2, 16-20-17.3, 16-20-18, 16-20-19, 16-20-22, 16-20-23, and 16-20-24 of the North Dakota Century Code, relating to general election provisions, individual nominations, primary elections, nominations for office, general and special elections, the no-party ballot, the establishment of precincts and voting places, election officers and supplies, the conduct of elections, returns and contests of elections, presidential electors, absent voters' ballots, corrupt practices, voting machines, electronic voting machines, and the disclosure of financial interest.

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

* SECTION 1. Chapter 16.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-01-02. APPLICABILITY OF PROVISIONS OF TITLE. The provisions of this title shall govern all primary, general, and special statewide and legislative elections, and all other elections, unless otherwise provided by law.

16.1-01-03. OPENING AND CLOSING OF THE POLLS. The polls at all primary, general, and special elections shall be opened at nine a.m. or at such earlier hour, but not earlier than seven a.m., that may be designated for any precinct by resolution of the governing body of the city or county in which such precinct is located except that in precincts in which seventy-five or fewer votes were cast in the last general election, the governing body may direct that the polls be opened at twelve noon. They shall remain open continuously until seven p.m. or such later hour, not later than nine p.m., as may be designated for a precinct by resolution of the governing body of the city or county in which the precinct is located. All electors standing in line to vote at the time the polls are set to close shall be allowed to vote, but electors arriving after closing time shall not be allowed to vote. The election officers present shall be responsible for determining who arrived in time to vote, and they shall establish appropriate procedures for making that determination. All determinations required to be made pursuant to this section relating to polling hours shall be made, and the county auditor notified of them, no later than thirty days prior to an election.

* NOTE: Section 16.1-01-07 was amended by section 4 of Senate Bill No. 2378, chapter 242, and section 16.1-01-09 was amended by section 5 of Senate Bill No. 2378, chapter 24

16.1-01-04. QUALIFICATIONS OF ELECTORS.

1. Every citizen of the United States who is: eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14, shall be a qualified elector.

2. Every qualified elector of the state shall have only one voting residence.

3. A person's voting residence shall be determined in accordance with the rules for determining residency as provided in section 54-01-26.

4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by persons convicted and sentenced for treason or felony shall be limited according to chapter 12.1-33.

5. Pursuant to section 2 of article II of the Constitution of North Dakota, no person who is under guardianship, non compos mentis, or insane shall be qualified to vote at any election. To be denied the right to vote under this subsection, a person must have a guardian duly appointed by a court of competent jurisdiction, upon a finding of incompetence or incapacitation due to mental illness or defect.

16.1-01-05. VOTING BY QUALIFIED ELECTOR MOVING FROM ONE PRECINCT TO ANOTHER. Where a qualified elector moves from one precinct to another precinct within this state, he shall be entitled to vote in the precinct from which he moved until he has established his new voting residence.

16.1-01-06. HIGHEST NUMBER OF VOTES ELECTS. Unless otherwise expressly provided by the laws of this state, in all elections for the choice of any officer, the person receiving the highest number of votes for any office shall be deemed to have been elected to that office.

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 fifty 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 section 16.1-06-09 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.

16.1-01-08. CORRECTING ERRORS ON BALLOTS - REQUIRING PERFORMANCE OF DUTY - CORRECTING OR PROSECUTING WRONGFUL PERFORMANCE. The secretary of state shall thoroughly investigate, when the matter comes to his attention, any of the following:

1. Any error or omission which has occurred or is about to occur in the placing of any name on an official election ballot.

2. Any error which has been or is about to be committed in printing the ballot.

3. Any wrongful act which has been or is about to be done by any judge or election clerk, county auditor, canvassing board, a canvassing board member, or any other person charged with any duty concerning the election.

4. Any neglect of duty which has occurred or is about to occur.

If required, the secretary of state shall order the officer or person charged with such error, wrong, or neglect to correct the error, desist from the wrongful act, or perform any required duty. The secretary of state may call upon any county auditor for aid in investigation and correction of the problem. The secretary of state shall cause any person who violates his order to be prosecuted, if the violation constitutes an offense pursuant to this chapter. If the administrative remedies fail to correct the problem, or if the secretary of state refuses to act, any person may petition the supreme court, or the district court of the relevant county where

the election of a county officer is involved, for an order compelling the correction of the error, wrong, neglect, or act.

16.1-01-09. REGULATIONS GOVERNING INITIATIVE, REFERENDUM, OR RECALL PETITIONS.

1. No person shall sign any initiative, referendum, or recall petition circulated pursuant to the provisions of article III of the Constitution of North Dakota unless he is a qualified elector. No person shall sign any petition more than once, and each signer shall add, after his signature, his post-office address, telephone number if he has one, and the date of signing. Every qualified elector signing a petition shall do so in the presence of the person circulating the petition. Each copy of any petition provided for in this section, before being filed, shall have attached thereto an affidavit executed by the circulator to the effect that each signature was signed in his presence, and that the petition was circulated in its entirety.

2. No petition shall be circulated under the authority of article III of the Constitution by a person who is less than eighteen years of age, nor shall the affidavit called for by subsection 1 of this section be executed by a person who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the Constitution and of this section must be circulated in their entirety.

16.1-01-10. SECRETARY OF STATE TO PASS UPON SUFFICIENCY OF PETITIONS - METHOD - TIME LIMIT. The secretary of state shall have a reasonable period, not to exceed thirty-five days, in which to pass upon the sufficiency of any petition mentioned in section 16.1-01-09. The secretary of state shall conduct a representative random sampling of the signatures contained in such petitions by the use of questionnaires, post cards, telephone calls, personal interviews, or other accepted information gathering techniques, or any combinations thereof, to determine the validity of the signatures. Signatures determined by the secretary of state to be invalid shall not be counted, and all violations of law discovered by the secretary of state shall be reported to the attorney general for prosecution.

16.1-01-11. CERTAIN QUESTIONS NOT TO BE VOTED UPON FOR THREE MONTHS. Whenever at any election a bond issue or mill levy question has failed to receive the required number of votes for approval by the electors, the matter shall not again be submitted to a vote until a period of at least three months shall have expired, and in no event shall more than two elections on the same general matter be held within twelve consecutive calendar months.

16.1-01-12. ELECTION OFFENSES - PENALTY. It shall be 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 an 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. 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. Willfully violate any rule or regulation promulgated by the secretary of state pursuant to this title.

13. 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. Destroy ballots, ballot boxes, election lists, or other election supplies except as provided by law.

A violation of subsections 1 through 13 of this section shall be a class A misdemeanor. A violation of subsection 14 occurring after an election but before the final canvass, or during an election, shall be a class C felony, and in other cases shall be 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 electors to be decided by votes cast at an election.

SECTION 2. Chapter 16.1-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-04-01. PRECINCTS - DUTIES AND RESPONSIBILITIES OF THE BOARD OF COUNTY COMMISSIONERS OR THE GOVERNING BODY OF THE CITY. The board of county commissioners of each county:

1. Shall divide the county into precincts and establish the precinct boundaries, except that within the boundaries of any incorporated city, the governing body of the city shall divide the city into precincts and establish their boundaries pursuant to title 40. Any number of townships or parts of townships may be joined into a single precinct provided that no precinct shall encompass more than one legislative district.

2. May alter the number and size of precincts within the county by combining or dividing precincts. However, the governing body of any incorporated city shall have the authority to alter the number and size of precincts located within its boundaries. The board of county commissioners may relinquish the jurisdiction provided under subsection 1 of this section over all or any portion of a township or townships under its jurisdiction to a city for the purpose of establishing a voting precinct if a majority of the governing body of the city agrees to assume such jurisdiction. The governing body of a city, by majority vote, may return jurisdiction granted herein to the county and the county shall accept that jurisdiction.

16.1-04-02. VOTING PLACES - DUTIES AND RESPONSIBILITIES OF THE BOARD OF COUNTY COMMISSIONERS OR THE GOVERNING BODY OF THE CITY. The board of county commissioners of each county:

1. Shall designate a voting place for each precinct and may alter such voting places when there is a good and sufficient reason. However, the voting places for precincts located within the boundaries of any incorporated city shall be designated, and altered if required, by the governing body of the city.

2. Shall provide voting places which are reasonably accessible to the elderly and the handicapped.

16.1-04-03. TIME LIMITATIONS. The authority granted by this chapter shall be exercised by the respective governing bodies no later than sixty 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 3. Chapter 16.1-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-05-01. ELECTION OFFICERS. At each primary, general, and special statewide or legislative district election, and at county elections, each polling place shall have an election board in attendance. The election board shall consist of an election inspector and two election judges.

1. The election inspector shall be selected in the following manner:

   a. In all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and shall fill all vacancies occurring in those offices.

   b. In all other areas, the board of county commissioners shall appoint the election inspectors and shall fill all vacancies occurring in those offices.

   c. Except in the case of special elections, all appointments required to be made under this section shall be made at least twenty-one days preceding an election. The governing body or board shall notify the county auditor of the appointments, and of any vacancies filled, within twenty-four hours of its action.

2. The election judges for each precinct shall be the precinct committeemen receiving the largest number of votes at the precinct caucus at which they were elected, and representing the two parties which cast the largest and next largest number of votes in the state at the last general election. If for any reason a precinct committeeman does not wish to serve as an election judge, he shall appoint from his precinct a member of his party to serve as election judge. Should such appointment not be made, the position shall be filled by appointment by the district party chairman. Each election judge shall be given a certificate of appointment signed by the chairman of the district committee of his party. The district committee chairman shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges at least two weeks prior to the primary, general, or special election. If this notice is not received within the time specified in this section, the election inspector shall appoint the judge no later than one week prior to the election. If at any time before or during an election, it shall be made to

appear to an election inspector, by the affidavit of two or more qualified electors of the precinct, that either of the election judges or any poll clerk is disqualified under the provisions of this chapter, the inspector shall remove such judge or clerk at once and shall fill the vacancy by appointing a qualified person of the same political party as that of the judge or clerk removed. If the disqualified judge or clerk had taken the oath of office as prescribed in this chapter, the inspector shall place such oath or affidavit before the state's attorney of the county.

3. Poll clerks shall be appointed by the election judges. Each election judge may appoint one poll clerk. However, in voting precincts or districts in which over three hundred votes are cast in any election, election judges may each appoint one additional poll clerk. The appointment of poll clerks by the election judges shall be made on the basis of the prospective clerks' knowledge of the election procedure and ability to write legibly. All election precincts that use voting machines as authorized in chapter 16.1-06 may, in addition to all other authorized poll clerks, have as many as two additional poll clerks appointed by each election judge. The additional poll clerks shall be appointed on the same basis as other poll clerks.

16.1-05-02. QUALIFICATIONS OF MEMBERS OF THE BOARD OF ELECTION - OATH OF OFFICE.

1. Every member of the election board and each poll clerk must be a qualified elector of the precinct in which he is assigned to work and must be eligible to vote at the polling place to which he is assigned.

2. No person may serve as a member of the election board or as a poll clerk who:

   a. Has anything of value bet or wagered on the result of an election.

   b. Is a candidate in the election at which he is serving.

   c. Is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate in the election at which he is serving.

3. Prior to assuming their duties, all members of the election board and the poll clerks severally shall take and subscribe an oath in the following form:

I do solemnly swear (or affirm as the case may be), that I will perform the duties of inspector, judge, or clerk (as the case may be) according to law and to the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

Such oath may be taken before any officer authorized by law to administer oaths, and in case no such officer is present at the opening of the polls, the inspector or election judges shall administer the oath to each other and to the poll clerks. The person administering the oath shall cause an entry thereof to be made and subscribed by him and prefixed to the pollbook.

4. A person serving as a member of the election board shall, prior to each election, attend a period of instruction conducted by the county auditor or his designated representative, provided that such period of instruction has been conducted since the appointment of the election judges or election inspector.

5. If any member of the election board fails to appear at the hour appointed for the opening of the polls, the remainder of the board shall select a person to serve in the absent person's place. In filling a vacancy in the office of election judge, the remainder of the board shall select a person of the absent person's political party if such a person is reasonably available. The office of election inspector may be filled by any qualified person without regard to political affiliation. If no members of the election board appear at the hour appointed for opening the polls, the qualified electors present shall orally elect a board as nearly as possible in conformity with the provisions of this section. If any poll clerk fails to appear at the opening of the polls, the election judge who appointed the absent clerk may appoint a person from the same political party to fill the vacancy.

16.1-05-03. SECRETARY OF STATE AND COUNTY AUDITORS TO DISTRIBUTE ELECTION INFORMATION - COUNTY AUDITOR TO PROVIDE INSTRUCTION.

1. Not less than thirty days before any primary, general, or special election, the secretary of state shall provide an instruction manual approved by the attorney general, which in layman's terms presents in detail the responsibilities of each election official. The secretary of state shall forward sufficient copies of this manual to each county auditor who shall distribute them to each member of all the election boards in the county.

2. Not more than eight days nor less than three days before each primary, general, or special statewide or legislative

district election, each county auditor or his designated representative shall conduct a course on election laws and election procedures for all members of each election board in the county. The course shall be conducted at such place or places throughout the county as the county auditor deems necessary. Attendance at the course is mandatory for members of the election board and optional for poll clerks at the discretion of the board of county commissioners of each county, and the auditor shall notify the members of the election boards, and poll clerks if applicable, of the time and place of the course. The county auditor shall also notify the state's attorney of the time and place of the course. The state's attorney shall attend all sessions of the course to give advice on election laws. On the date of such course or courses, the county auditor may deliver to all election inspectors at such meeting the official ballots, suitable manila envelopes, and all other materials as provided in chapter 16.1-06. Each person attending the course or courses provided for herein shall be compensated as hereinafter provided. Poll clerks attending the course at the discretion of the board of county commissioners shall be reimbursed for expenses and mileage and compensated for performance of election duties as are members of election boards pursuant to 16.1-05-05.

16.1-05-04. DUTIES OF THE MEMBERS OF THE ELECTION BOARD DURING POLLING HOURS.

1. The election inspector shall assign ministerial duties to poll clerks, who shall carry out the ministerial duties assigned by the election inspector.

2. The election inspector shall assign two poll clerks, one from each political party represented on the election board, to perform the function of maintaining the pollbooks. The two designated poll clerks shall each maintain a pollbook. Each pollbook shall contain the name and address of each person voting at the precinct, and shall be arranged in the form and manner prescribed by the secretary of state.

3. It shall be the duty of the members of the election board to challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector.

4. Each member of the election board shall remain on the premises of the polling place during the time the polls are open to prevent the occurrence of fraud, deceit, or other irregularity in the conduct of the election.

5. All members of the election board shall distribute ballots and other election materials to electors. Both election judges shall together give any assistance requested by

electors in marking ballots or operating voting machines. The election officers shall instruct voters on how to open and close voting machines and how to move the levers to cast and change votes. The election inspector shall supervise the conduct of the election at the polling place, and shall assign duties so as to equally and fairly include both political parties represented on the election board.

6. Each member of the election board shall maintain order in the polling place.

SECTION 4. Chapter 16.1-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-06-01. BALLOTS FURNISHED AT PUBLIC EXPENSE - EXCEPTIONS. Except for local elections, election ballots shall be printed and distributed at county expense. For a local election, the expense shall be a charge against the local subdivision in which the election is held. For the purpose of this chapter, local elections shall include elections in townships, school districts, cities, and park districts.

16.1-06-02. BALLOTS PREPARED BY COUNTY AUDITOR OR LOCAL OFFICIAL. For a local election, the ballots shall be printed and distributed under the direction of the auditor or clerk of the local subdivision. For all other elections, ballots shall be printed and distributed under the direction of the county auditor, subject to the supervision and approval of the secretary of state as to the legal sufficiency of the form, style, wording, and contents of the ballots.

16.1-06-03. OFFICIAL BALLOTS ONLY TO BE USED. The official ballot prepared by the county auditor or the local auditor or clerk shall contain the name of each candidate whose name has been certified to or filed with such auditor or clerk in the manner provided in this title. Ballots other than official ballots prepared by the county auditor or local auditor or clerk shall not be cast or counted in any election governed by this title. The list of officers and candidates and the statements of measures and questions to be submitted to the voters shall be deemed an official ballot in precincts in which voting machines or electronic voting systems are used.

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 shall:

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) following the name of the person for whom you wish to vote."

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 follow the candidate's name on the same line.

8. Have printed thereon the following language: "All ballots, other than those used to vote absentee, must be stamped and initialed by appropriate election officials in order to be counted."

In precincts in which voting machines or electronic voting systems 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.

16.1-06-06. GENERAL ELECTION BALLOTS FOR PERSONS AUTHORIZED TO VOTE FOR FEDERAL OFFICES ONLY - PREPARED SEPARATELY - GENERAL LAW GOVERNS. In addition to the ballots prepared pursuant to section 16.1-06-05, ballots shall be prepared containing only the names of duly certified candidates for presidential electors for use by persons authorized to vote for those offices by law. The provisions of this title regarding the preparation, form, arrangement of names, delivering, and stamping of ballots shall govern in regard to the general election ballot prepared pursuant to this section. The ballots prepared pursuant to this section shall be delivered to electors who qualify only to vote for presidential electors pursuant to sections 16.1-01-04, 16.1-14-18, and 16.1-14-19.

16.1-06-08. NO-PARTY BALLOT AT GENERAL ELECTIONS - CONTENTS - DELIVERED TO ELECTOR. There shall be a separate no-party ballot at the general election upon which shall be placed the names of all candidates who have been nominated on the no-party primary ballot at the primary election. Such ballots shall be in the same form as the no-party primary ballot and shall be delivered to each elector by the proper election official. In precincts in which voting machines or electronic voting systems are used, the list of offices and candidates shall be entitled "no-party ballot" in a manner to

clearly indicate the separation of the no-party list of offices and candidates from the party list of offices and candidates.

16.1-06-09. CONSTITUTIONAL AMENDMENTS AND INITIATED AND REFERRED MEASURES - PLACED ON SEPARATE BALLOT - MANNER OF STATING QUESTION - EXPLANATION OF EFFECT OF VOTE - ORDER OF LISTING. Constitutional amendments or measures, initiated measures, and referred measures, duly certified to the county auditor by the secretary of state, or any other question or measure to be voted on, except the election of public officers at any primary, general, or special election including officers subject to a recall petition, shall be printed on a separate ballot by ballot title only and in the manner specified by the secretary of state and shall be deposited in a box separate from that provided to receive the ballots for public officers. The ballot title shall be written by the secretary of state and approved by the attorney general. The size of type to be used on such ballots shall be specified by the secretary of state. Immediately preceding the ballot title of the constitutional amendment or measure, initiated measure, or referred measure on the printed ballot, the secretary of state shall cause to be printed a short, concise statement in boldface type, which statement shall fairly represent the substance of the constitutional amendment or measure, initiated measure, or referred measure. The attorney general shall approve all such statements written by the secretary of state. Immediately subsequent to the foregoing statement, the secretary of state shall cause to be printed another short, concise statement of the effect of an affirmative or negative vote on the constitutional amendment or measure, initiated measure, or referred measure in terms of whether the proposal will or will not enact, amend, or repeal a portion or portions of the Constitution or laws of the state of North Dakota if an affirmative or negative vote should prevail. This explanatory statement shall be drafted by the secretary of state and shall be approved by the attorney general. The words "Yes" and "No" shall be printed on the ballot at the close of the statement regarding the effect of an affirmative or negative vote, in separate lines with a square formed of black lines after each statement in which the voter may indicate by a cross or other mark how he desires to vote on the question. Where two or more amendments or questions are to be voted on, they shall be printed on the same ballot. In precincts in which voting machines or electronic voting systems are used, the ballot title, in the case of amendments or measures submitted by the people, or the title of the legislative bill or resolution, which shall serve as the ballot title, in the case of proposed amendments submitted by the legislative assembly, shall be set forth in full. Provided, however, in such cases where the ballot title or the title of the legislative bill or resolution is of such length to make it physically impossible to fit such titles upon voting machines or electronic voting systems, the attorney general shall reduce such titles to a length which will allow the placing of such titles upon voting machines or electronic voting systems, but shall fully express the purpose of such amendments or questions, and the reduced version of the titles shall be used on the voting machines or electronic voting systems.

The measures to be submitted to the electors shall be grouped and classified as constitutional measures, initiated statutes, or referred statutes and shall be placed within such groups or classifications by the secretary of state in the order received, for the purpose of placing them on the ballot. Measures submitted by the legislative assembly shall be placed first on the ballot within their classification in the order approved by the legislative assembly. Constitutional measures shall be placed first on the ballot, initiated statutes second, and referred statutes third. After all the measures have been placed within the appropriate group or classification, all measures shall be numbered consecutively, without regard to the various groups or classifications.

16.1-06-10. VOTING MACHINES AUTHORIZED. The use of voting machines, in accordance with the provisions of this chapter, is hereby authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which such election precinct is located, that such use is advisable or necessary in that precinct. Thereafter, the machines shall be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies, the machines may then be used in any state, county, city, or district election in that precinct or other voting area of which that precinct is a part.

16.1-06-11. ELECTRONIC VOTING SYSTEMS AUTHORIZED. The use of electronic voting systems in accordance with the provisions of this chapter, is hereby authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which such election precinct is located, that such use is advisable or necessary in that precinct. Thereafter, the system or systems shall be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies, the system or systems may then be used in any state, county, city, or district election in that precinct or other voting area of which that precinct is a part.

16.1-06-12. DEFINITIONS. As used in this title with regard to electronic voting systems:

1. "Automatic tabulating equipment" means an apparatus which automatically tabulates and counts votes recorded on ballot cards.

2. "Ballot card" means a tabulating card on which votes may be recorded.

3. "Ballot envelope" means the envelope in which the ballot card is enclosed and upon which the names of write-in candidates may be written.

4. "Ballot label" means the booklet or guide containing the names of offices, candidates, and questions to be voted on, which is used in conjunction with the voting device and voting card.

5. "Counting center" means the location or locations designated by the county auditor for the automatic tabulating and counting of ballots.

6. "Electronic voting system" means a system employing a voting device in conjunction with ballot labels or ballot cards and automatic tabulating equipment for the recording, tabulating, and counting of votes in an election.

7. "Voting device" means a device in which ballot cards are used in connection with a punch device for the piercing of ballots by the voter, a device for marking ballots with ink or other substance, or any other method for recording votes on ballots in a manner that the votes may be tabulated and counted by automatic tabulating equipment.

16.1-06-13. REQUIREMENTS FOR VOTING MACHINES. Any voting machine used in an election in this state shall:

1. Provide facilities for voting for nominated candidates, for persons not in nomination, and upon questions or measures submitted to the voters.

2. Permit each voter to vote for as many persons for any office as he is entitled to vote for, and shall allow each voter to vote in primary elections for candidates for nomination by the political party of his choice, but it shall preclude each voter from voting for more persons for any office than he is entitled to vote for, from voting more than once for the same candidate or upon the same measure or question submitted to the voters, or voting the ballot of more than one political party in any primary election.

3. Permit each voter to change his vote for any candidate, or upon any measure or question submitted to the voters, up to the time he begins the final operation to register his vote.

4. Permit and require voting in absolute secrecy, and shall be so constructed and controlled that no person can see or know for whom any other elector has voted or is voting, save a voter whom he has assisted or is assisting in voting, as prescribed by law, and that no person may see

or know the number of votes registered for any candidate or tamper with any of the registering mechanism.

5. Have a counter, or other device, the register of which is visible at all times from the outside of the machine, which shall show during any period of voting the total number of voters who have operated the machine during said period of voting and have a protective counter, or other device, which shall record the cumulative total number of movements of the operating mechanism.

6. Be provided with a lock or locks, by the use of which, immediately after the polls are closed, or the operation of the machine for an election is completed, all movement of the registering mechanism is absolutely prevented.

7. Be so constructed that when properly operated it shall register or record correctly and accurately every vote cast.

8. Be so constructed that a voter may readily learn the method of operating it.

16.1-06-14. REQUIREMENTS FOR ELECTRONIC VOTING SYSTEMS. Any electronic voting system used in an election in this state shall:

1. Provide facilities for voting for nominated candidates, for persons not in nomination, and upon questions or measures submitted to the voters.

2. Permit each voter to vote for as many persons for any office as he is entitled to vote for, and shall allow each voter to vote in primary elections for candidates for nomination by the political party of his choice, but it shall preclude each voter from voting for more persons for any office than he is entitled to vote for, from voting more than once for the same candidate or upon the same measure or question submitted to the voters, or voting the ballot of more than one political party in any primary election.

3. Permit each voter, insofar as is possible, by the replacement of spoiled ballots, to change his vote for any candidate, or upon any measure or question submitted to the voters, up to the time he begins the final operation to register his vote.

4. Permit and require voting in absolute secrecy, and shall be so constructed and controlled that no person can see or know for whom any other elector has voted or is voting, save a voter whom he has assisted or is assisting in voting, as prescribed by law, and that no person may see or know the number of votes registered for any candidate or tamper with any mechanism.

5. Have a counter, or other device, the register of which is visible at all times from the outside of the system, which shall show during any period of tabulation the total number of votes tabulated during the period of tabulation and have a protective counter, or other device, which shall record the cumulative total number of movements of the tabulating equipment.

6. Be provided with a procedure, by the use of which, immediately after the polls are closed, all voting is absolutely prevented.

7. Be so constructed that when properly operated it shall register or record correctly and accurately every vote cast.

8. Be so constructed that a voter may readily learn the method of operating it.

9. Permit voting by ballot card.

10. Permit voting for presidential electors by making only one mark or punch.

11. Permit write-in voting and absentee voting.

12. Permit the rotation of names of candidates on ballots as required by this title.

16.1-06-15. MANDATORY TESTING OF ELECTRONIC VOTING SYSTEMS BEFORE ELECTION AND BEFORE AND AFTER TABULATION OF BALLOTS. All electronic voting systems used in this state shall be tested to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing shall be conducted prior to each election at which the system will be used, and before and after the counting of the ballots at each election. The testing shall be done by the county auditor or his designee, and after each test, the testing materials, programs, and preaudited ballots shall be sealed and retained in the same manner as paper ballots after an election. The test shall be conducted by processing a preaudited group of ballot cards on which are recorded a predetermined number of valid votes for each candidate and measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes shall be assigned to each candidate for an office, and for and against each measure. If an error is detected, the cause of it shall be ascertained and corrected, and an errorless count shall be secured and filed as provided in this section. The test that is conducted before the election shall be conducted at least one week before the election, and the district chairman of each political party having a candidate on the ballot shall be sent notice of the test by the county auditor by certified mail at least one week before the test.

The notice shall state the time, place, and date of the test or tests, and that the district chairman or his designee may attend.

16.1-06-16. COUNTY AUDITOR TO PROVIDE AND DISTRIBUTE BALLOTS - OTHER ELECTION SUPPLIES DELIVERED AT SAME TIME. For each election precinct in his county, the county auditor shall provide the number of ballots he deems necessary. At least fifteen days before any election, each county auditor shall:

1. Have the ballots printed and the same may be inspected by any person at the auditor's office.

2. Deliver to the inspector in each precinct the number of ballots and blank forms of pollbooks, blanks for election returns with the proper captions, forms of oaths and certificates, and tally sheets necessary to carry out the provisions of this title.

16.1-06-17. COUNTY AUDITOR TO PROVIDE BALLOTS AND OTHER ELECTRONIC VOTING SYSTEM SUPPLIES. At the same time as other election supplies are provided and distributed, the county auditor shall provide to each precinct in the county using an electronic voting system:

1. A sufficient number of voting devices and ballots.

2. Four facsimile diagrams of the entire face of the voting device as it will appear on election day.

3. Appropriate instruction material for the use of the voting devices.

4. All other materials required to carry on the election process through the use of electronic voting systems.

16.1-06-18. DELIVERY OF BALLOTS AND MANILA WRAPPERS - OFFICIAL STAMP DELIVERED. At the meeting provided for in section 16.1-05-03, the county auditors shall deliver, or cause to be delivered, by mail or other reliable method, to the inspector of elections in each precinct the official ballots, if available, together with suitable manila wrappers. Such ballots and manila wrappers shall be delivered in sealed packages marked plainly on the outside designating the number of ballots enclosed and the precinct for which they are intended. The county auditor also shall deliver or cause to be delivered to such inspector, or if that is impracticable, to one of the election judges of such precinct, a stamp with an inkpad for the purpose of stamping each ballot with the words "official ballot" and the name or number of the precinct, the name of the county, the date of the election, and providing for a blank line preceded by the word "initials" for the purpose of providing a space where the judge or inspector shall place his initials. He also shall deliver or cause to be delivered a manila wrapper and a suitable seal for the purpose of wrapping and sealing the stamp and inkpad at the close of the voting but prior to the

counting of the ballots. He also shall deliver or cause to be delivered a suitable seal, which has the name of the county inscribed thereon, for the purpose of sealing the wrapper containing the ballots as provided in section 16.1-15-08.

16.1-06-19. INSTRUCTIONS, ADVERTISEMENTS, AND BALLOTS POSTED IN POLLING PLACES. Each county auditor shall have cards printed, in large type, containing full instructions to electors on obtaining and preparing ballots and a copy of section 16.1-01-12. He shall furnish ten such cards to the election inspector in each election precinct who, prior to the opening of the polls, shall post at least one of the cards in each booth or compartment provided for the preparation of ballots and at least three of the cards in and about the polling place. Three of the official ballots without the official stamp thereon shall be posted conspicuously in the polling place on the morning of the election. The county auditor, at the time of delivering the ballots to the inspector of elections in each precinct, shall deliver at least five copies of the newspaper publication or other copy of the complete text of any constitutional amendment or initiated or referred measure to such inspector of elections. Not less than three of such newspaper publications or copies shall be posted conspicuously in the polling place on the morning of the election.

16.1-06-20. ELECTION INSPECTOR AND JUDGES TO DISPLAY MATERIAL AND PROVIDE INSTRUCTION. In addition to other duties provided by law, the election inspector in precincts using an electronic voting system shall post in a conspicuous manner at the voting place, the four facsimile diagrams of the voting devices used to vote with electronic voting systems and three copies of the official ballot used with electronic voting systems. The election inspector and judges shall provide adequate instruction on the use of the electronic voting device to each voter before he enters the voting booth.

16.1-06-21. POLLBOOKS DELIVERED BY COUNTY AUDITOR - CONTENTS - INSPECTOR OF ELECTIONS TO DELIVER. The county auditor of each county shall see that two copies of the new pollbook are delivered to the election inspector in each election precinct in the county. Each new pollbook shall contain:

1. A copy of the law prescribing the qualifications of electors.

2. A copy of the provisions of this title relating to the duties of inspectors, judges, and clerks of election.

3. A statement of the penalties imposed for offenses against the election laws.

4. Blanks for all entries required to be made therein.

The election inspector shall deliver the pollbooks, or cause them to be delivered, to the clerks of election in his precinct on election day prior to the opening of the polls.

16.1-06-22. COUNTY TO PROVIDE BALLOT BOXES. The board of county commissioners, at the expense of the county, shall provide suitable ballot boxes for each election precinct in the county.

16.1-06-23. SECRETARY OF STATE TO SEND BLANKS AND ENVELOPES TO COUNTY AUDITOR TO MAKE RETURNS. The secretary of state shall send blank forms and envelopes, for all returns of votes required to be made to his office, to each county auditor with such printed directions on the envelope as he deems necessary for the guidance of election officers in making returns according to law. The expense of furnishing such blanks and envelopes shall be paid by the state.

16.1-06-24. VOTING MACHINES - VIOLATIONS - PENALTY. Any person who violates any of the provisions of this chapter or who tampers with or injures any voting machine to be used or being used in any election, or who prevents the correct operation of any such machine, or any unauthorized person who makes or has in his possession a key to a voting machine to be used or being used in an election shall be guilty of a class A misdemeanor.

16.1-06-25. ELECTRONIC VOTING SYSTEMS - VIOLATIONS - PENALTY. Any person who violates any of the provisions of this chapter relating to electronic voting systems, who tampers with or injures any electronic voting system or device to be used or being used in any election, or who prevents the correct operation of any such system or device to be used or being used in any election shall be guilty of a class A misdemeanor.

SECTION 5. Chapter 16.1-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-07-01. ABSENT VOTER - WHO MAY VOTE.

1. Any qualified elector of this state who, at any general, special, or primary state election, at any county election, or at any city or school district election, is absent from the city, township, or consolidated voting precinct in which he is an elector, is in the armed forces of the United States, is in the merchant marine of the United States, is physically disabled, or is a United States citizen living outside the United States who resided in this state immediately prior to his departure from the United States, may vote an absent voter's ballot at that election.

2. A qualified elector who is a citizen of the United States and lives outside the United States may vote absentee in this state pursuant to this chapter if he:

   a. Does not maintain a domicile;

b. Is not registered to vote;

c. Is not voting in any other state, territory, or possession of the United States; and

d. Possesses a valid passport or card of identity and registration issued under the authority of the secretary of state of the United States.

Such an elector may vote only in federal elections, which means any election held solely or in part for the purpose of electing or nominating any candidate for the office of president, vice president, presidential elector, member of the United States senate, or member of the United States house of representatives.

16.1-07-02. ELECTOR MAY VOTE BEFORE LEAVING - NO VOTING IN PERSON UPON RETURN. Any qualified elector of this state who is present in his city, township, or consolidated voting precinct after the official ballots have been printed, and who has reason to believe that he will be absent on election day as provided in section 16.1-07-01, may vote before he leaves in the same manner as an absent voter. Any elector who casts his vote by means of an absentee ballot shall not thereafter vote in person at the same election, even if he returns to his city, township, or consolidated voting precinct on or before election day.

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 or fourteen days, as the case may be, before the election day, or where certification of candidates does not take place before the thirty-day or fourteen-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.

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 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.

16.1-07-05. TIME FOR MAKING APPLICATION FOR BALLOT. At any time within forty 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.

16.1-07-06. APPLICATION FORM. Application for an absent voter's ballot shall be made on a blank furnished by the proper officer of the county, city, or school district of which the applicant is an elector, or on any blank containing the required information and in substantially the following form:

> I, ----------, a duly qualified elector of the township of ----------, or of the ---------- precinct of the ---------- ward and residing at ---------- in the city of ---------- of the county of ---------- of the state of North Dakota, to my best knowledge and belief entitled to vote in such precinct at the next election, hereby make application for an official absent voter's ballot to be voted by me at such election. I understand that it is a criminal offense to make a false statement in order to obtain an absentee ballot.
>
> I have resided in my precinct for at least thirty days.
> My phone number is ----------.
> Dated this -------- day of ----------, 19--.
>
> ----------
> (signature of applicant)
> ----------
> (mailing address)

16.1-07-07. DELIVERING APPLICATION BLANK FOR BALLOT. The officers specified in section 16.1-07-05, upon request, shall mail an application blank for an absent voter's ballot to the voter, or they may deliver the application blank to the voter upon a personal application made at the officer's office.

16.1-07-09. CANVASSING OF MAILED ABSENT VOTERS' BALLOTS RECEIVED LATE. In the case of congressional, state, county, city,

or school district elections, if an envelope postmarked prior to the date of election and containing an absent voter's ballot is received by the officer too late to be forwarded to the proper voting precinct in time to be tabulated, the same shall be tallied by the canvassing board of the county, the governing body of the city, or the school board of the school district, as the case may be, at such time as the returns are canvassed. Any envelope without a postmark or with an illegible postmark and containing an absentee voter's ballot must be received by mail by the proper officer within twenty-four hours after the closing of the polls on election day in order to be canvassed and counted. An absent voter may personally deliver the absent voter's ballot to the appropriate officer's office at any time prior to four p.m. on the day before the election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer forwarding such ballot shall print the date and hour of receipt on the envelope. Upon receipt, the canvassing board shall first determine that the elector was qualified to vote in that precinct and that the elector did not previously vote in that precinct on the date of the election before allowing such ballot to be tallied.

16.1-07-10. CARE AND CUSTODY OF BALLOT. Upon receipt of an envelope containing the absent voter's ballot, the proper officer forthwith shall enclose the same unopened, together with the written application of such absent voter, in a larger envelope which shall be sealed securely and shall be endorsed with the name of the proper voting precinct, the name and official title of the officer, and the words "This envelope contains an absent voter's ballot and must be opened only on election day at the polls while the same are open." Such officer shall keep the envelope safely in his office until it is delivered by him as provided in this chapter.

16.1-07-11. SUBMITTING BALLOT TO INSPECTOR OF ELECTIONS. If the envelope containing the absent voter's ballot is received by the county auditor, auditor or clerk of the city, or clerk of the school district, as the case may be, prior to his delivery of the sealed package containing the official ballots to the inspector of elections of the precinct in which such absent voter resides, such ballot, after having been enclosed with the application in an envelope as required by section 16.1-07-10, shall be enclosed in such package and delivered therewith to the inspector of the precinct. If the official ballots for the precinct have been delivered to the election inspector at the time of receipt by the proper officer of the absent voter's ballot, then the officer shall immediately mail the same postage prepaid to the election inspector, or the officer, or his deputy, may personally deliver it to the inspector. Any absent voter's ballot sent to the wrong precinct by the official whose duty it is to forward such ballots to the precincts, or any absent voter's ballot received by the inspector from the appropriate officer too late to be counted at the precinct, shall be returned to the official by the election inspector, and shall be tallied by the county canvassing board, the governing body of the city, or the school board, as the case may be, with other

absent voters' ballots received too late to be forwarded to the precinct.

16.1-07-12. OPENING BALLOT - VOTING OR REJECTING - DEPOSITING IN BALLOT BOX - PRESERVING. At any time between the opening and closing of the polls on election day, the election judges of the relevant precinct first shall open the outer envelope and compare the signature on such application for an absent voter's ballot with the signature on the statement provided for in section 16.1-07-08. If the judges find that the statement is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct and has not voted at the election, they shall open the absent voter's envelope in such manner as not to destroy the statement thereon. They shall take out the ballot or ballots contained therein without unfolding the same, or permitting the same to be opened or examined, and after endorsing the same as other ballots are endorsed, they shall deposit the ballot in the proper ballot box and show in the pollbook of the election that the elector has voted. If the statement is found to be insufficient, or that the signatures do not correspond, or that the applicant is not then a duly qualified elector of the precinct, the vote shall not be allowed, but without opening the absent voter's envelope, the election inspector or election judge shall mark across the face thereof "rejected as defective" or "rejected as not an elector", as the case may be. The subsequent death of an absentee voter after having voted by absentee ballot shall not constitute grounds for rejecting such ballot.

16.1-07-13. REGISTRATION OF ABSENT VOTERS' BALLOTS ON VOTING MACHINES OR ON ELECTRONIC SYSTEMS. At polling places using voting machines or electronic voting systems, absent voters' ballots, if any, shall be registered on the voting machines or electronic voting systems by the two election judges. The voting of absent voters' ballots on voting machines or voting systems shall be done in secrecy by the two election judges, acting jointly, during the voting day at times when the voting machines or voting systems are not in use by voters, or after the close of the voting day and before the machines are unlocked for tallying. The absentee electronic voting system ballots prepared pursuant to this section shall be deposited in the ballot boxes and counted as other ballots. If the electronic voting system in use so provides, the actual electronic voting system ballot may be used as the absentee ballot.

16.1-07-14. PENALTY. Any person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.

SECTION 6. Chapter 16.1-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-09-01. DECLARATION OF POLICY. The legislative assembly declares that public office is a public trust, and in order to continue the faith and confidence of the people of the state in that trust and in their government, the people have a right to be assured

that the interest of holders of or candidates for public office present no conflict with the public trust.

16.1-09-02. STATEMENT OF INTERESTS TO BE FILED. Every candidate for elective office shall file a statement of interests as required by this chapter. A candidate for a statewide elective office shall file the statement of interests with the secretary of state. A candidate for election as a member of the legislative assembly and for offices other than statewide shall file the statement of interests with the county auditor, or the city auditor if the candidate is running for city office, of the candidate's county or city of residence. Candidates for elective office who are required to file such statements shall do so at the time of filing a certificate of nomination, a certificate of endorsement, or a petition of nomination, pursuant to chapters 16.1-11, 16.1-12, or 40-21, as is appropriate, provided that any person who has filed a statement as the result of candidacy in a primary election need not refile prior to running in the following general election. Every person who is appointed by the governor to a state agency, board, bureau, commission, department, or occupational or professional licensing board shall file a statement of interests as required by this chapter with the secretary of state simultaneously with announcement of the appointment.

16.1-09-03. CONTENTS OF STATEMENT OF INTERESTS. The statement of interests required to be filed under this chapter shall apply to the candidate or appointee and his spouse and shall include:

1. An identification of the principal source of income, defined in the state income tax return as "principal occupation", of both the candidate or appointee and his spouse.

2. The name of each business or trust, not the principal source of income, in which the person making the statement, and that person's spouse, have a financial interest.

3. A list of the associations or institutions with which the person making the statement, and that person's spouse, are closely associated, or for which they serve as a director or officer, and which may be affected by legislative action, in the case of a statement submitted by a legislative candidate, or action by the candidate or appointee in his capacity as an officeholder.

4. The identity by name of all business offices, business directorships, and fiduciary relationships the person making the statement, and that person's spouse, have held in the preceding calendar year.

16.1-09-04. POWERS AND DUTIES OF THE SECRETARY OF STATE. The secretary of state shall:

1. Prescribe the forms for statements of interests required to be filed under this chapter and furnish such forms, on request, to persons subject to this chapter.

2. Prepare and publish guidelines setting forth recommended uniform methods of reporting for use by persons required to file statements under this chapter.

3. Adopt such rules and regulations, in the manner prescribed by chapter 28-32, as may be appropriate to effectuate the purposes of this chapter.

16.1-09-05. POWERS AND DUTIES OF THE SECRETARY OF STATE AND COUNTY AND CITY AUDITORS. The secretary of state, or the county or city auditor, where appropriate shall:

1. Accept and file any statement submitted pursuant to this chapter.

2. Make statements filed available for public inspection and copying during regular office hours. A reasonable fee may be charged to cover the cost of copying. Proceeds from any fees charged shall be deposited in the general fund of the appropriate governmental entity.

3. Preserve statements filed under this chapter for the term of office to which the person making disclosure is elected or appointed or until a new statement is filed, and preserve statements filed pursuant to this chapter by those candidates who are not elected or appointed for a period of one year after the date of receipt.

16.1-09-06. PROCEDURE FOR ENFORCEMENT - INVESTIGATION BY ATTORNEY GENERAL OR STATE'S ATTORNEY. Upon a complaint, signed under penalty of perjury, by any person, or upon the motion of the attorney general or a state's attorney, the attorney general or state's attorney shall investigate any alleged violation of this chapter. The investigation and its proceedings shall be confidential until a determination has been reached by the investigating officer that enough incriminating evidence exists to bring an action and such action is commenced in the appropriate district court.

16.1-09-07. EFFECT OF INTENTIONAL VIOLATION OF CHAPTER - PENALTY. Any person who intentionally violates a provision of this chapter shall be guilty of a class B misdemeanor and his appointment, nomination, or election, as the case may be, shall be declared void. Any vacancy that may result from the intentional violation of this chapter shall be filled in the manner provided by law. This section shall not remove from office a person who is already in office and who has entered upon the discharge of his duties where such office is subject to the impeachment provisions of the North Dakota Constitution.

SECTION 7. Chapter 16.1-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-10-01. CORRUPT PRACTICE - WHAT CONSTITUTES. A person shall be guilty of corrupt practice within the meaning of this chapter, if he willfully engages in any of the following:

1. Expends any money for election purposes contrary to the provisions of this chapter.

2. Engages in any of the practices prohibited by section 12.1-14-02 or 12.1-14-03.

3. Is guilty of the use of state services or property for political purposes.

16.1-10-02. USE OF STATE SERVICES OR PROPERTY FOR POLITICAL PURPOSES.

1. No person shall use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, or commission thereof, for any political purpose.

2. The following definitions shall be used for the purposes of this section:

   a. "Property" includes, but is not limited to, motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section shall be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.

   b. "Services" includes, but is not limited to, the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.

   c. "Political purpose" means any activity directly undertaken by a candidate for any office in support of his own election to such office; or aid and assistance to any candidate, political party, political committee, or organization, but shall not include activities undertaken in the performance of a duty of state office.

16.1-10-03. POLITICAL BADGE, BUTTON, OR INSIGNIA AT ELECTIONS. No person shall, on the day of an election, buy, sell, give, or provide any political badge, button, or any insignia to be worn at or about the polls on that day. No such political badge, button, or insignia shall be worn at or about the polls on any election day.

16.1-10-04. PUBLICATION OF FALSE INFORMATION IN POLITICAL ADVERTISEMENTS - PENALTY. No person shall knowingly sponsor any political advertisement or news release containing deliberately calculated falsehoods, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, or constitutional amendment, and whether such publication shall be by radio, television, newspaper, pamphlet, folder, display cards, signs, posters or billboard advertisements, or by any other public means. Any person who shall violate the provisions of this section shall be guilty of a class A misdemeanor.

16.1-10-05. PAYING OWNER, EDITOR, PUBLISHER, OR AGENT OF NEWSPAPER TO ADVOCATE OR OPPOSE CANDIDATE EDITORIALLY PROHIBITED. No person shall pay or give anything of value to the owner, editor, publisher, or agent of any newspaper or other periodical, or radio or television station, to induce him to advocate editorially or to oppose any candidate for nomination or election, and no such owner, editor, publisher, or agent shall accept such inducement.

16.1-10-06. ELECTIONEERING ON ELECTION DAY - PENALTY. Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, shall be guilty of an infraction. The display upon motor vehicles of adhesive signs which are not readily removable and which promote the candidacy of any individual, any political party, or a vote upon any measure, and political advertisements promoting the candidacy of any individual, political party, or a vote upon any measure which are displayed on fixed permanent billboards, shall not, however, be deemed a violation of this section.

16.1-10-07. CANDIDATE GUILTY OF CORRUPT PRACTICE TO VACATE NOMINATION OF OFFICE. If any person is found guilty of any corrupt practice he shall be punished by being deprived of his government job, or his nomination or election shall be declared void, as the case may be. This section shall not remove from office a person who is already in office and who has entered upon the discharge of his duties where such office is subject to the impeachment provisions of the Constitution of North Dakota.

16.1-10-08. PENALTY FOR VIOLATION OF CHAPTER. Any person violating any provision of this chapter, for which another penalty is not specifically provided, shall be guilty of a class A misdemeanor.

SECTION 8. Chapter 16.1-11 of the North Dakota Century Code is hereby created and enacted 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 nor less than fifty-five days, and before four p.m. of the fifty-fifth 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 day prior to the primary election.

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, superintendent of public instruction, or tax commissioner.

16.1-11-09. FORM OF CERTIFICATE OF ENDORSEMENT. A certificate of endorsement filed with the proper officer as provided in this Act shall be in substantially the following form:

CERTIFICATE OF ENDORSEMENT

I, ----------, do certify that I am the state (district) chairman of the ---------- political party of the ---------- legislative district (if appropriate) of the state of North Dakota and that ---------- (insert name of endorsee), residing at ----------, was duly endorsed for nomination to the office of ---------- on the ---------- day of ----------, by the ---------- political party of the ---------- legislative district (if appropriate), duly convened and organized in accordance with the bylaws of the ---------- political party and the laws of this state, and do hereby request ---------- name be printed upon the ballot as a candidate for nomination to the office of ---------- at the forthcoming primary election to be held on ---------- of this year.

Dated this ---------- day of ---------.

(signature of state or district chairman)

16.1-11-10. APPLICANT'S NAME PLACED UPON BALLOT - AFFIDAVIT TO ACCOMPANY PETITION. Upon receipt by the secretary of state of the petition or certificate of endorsement provided for in section 16.1-11-06 accompanied by the following affidavit, he shall place the applicant's name upon the primary election ballot in the columns of his party as hereinafter provided. The affidavit shall be substantially as follows:

State of North Dakota)
) ss.
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 candidate for nomination to the office of ---------- to be chosen at the primary election to be held on the ----------, 19-----, and I do hereby request that my name be printed upon the primary election ballot as provided by law, as a candidate of the ---------- party for said office.

Subscribed and sworn to before me, this --------- day of ----------, 19---.

Notary Public, North Dakota

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 days and before four p.m. of the fifty-fifth 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 forty-sixth day prior to the primary election.

16.1-11-12. COUNTY AUDITOR TO PLACE APPLICANT'S NAME ON BALLOT. Upon receipt of the petition or certificate of endorsement provided for in section 16.1-11-11 by the county auditor and when accompanied by an affidavit as provided in section 16.1-11-10, the county auditor shall place the name of the applicant upon the primary election ballot in the party or appropriate column, as the case may be.

16.1-11-13. FILING PETITION OR CERTIFICATE OF ENDORSEMENT WHEN LEGISLATIVE DISTRICT COMPOSED OF MORE THAN ONE COUNTY. When a legislative district is composed of more than one county, the certificate of endorsement or the petition provided for in section 16.1-11-11 shall be filed with the county auditor of the county where the candidate resides, and that county auditor shall certify to the county auditors of the other counties comprising the legislative district the names of the candidates filing the petitions or certificates.

16.1-11-14. APPLICATION BY OTHER PERSONS TO PLACE NAME ON BALLOT - PETITION - AFFIDAVIT. An application to have a name placed on the primary election ballot for nomination for any office designated in this chapter may be made by five qualified electors by presenting the petition required in section 16.1-11-06 or 16.1-11-11 to the proper official, and subscribing and filing an affidavit in substantially the following form:

State of North Dakota)
) ss.
County of ----------)

A ----------, B ----------, C ----------, D ----------, and E ----------, being duly sworn, each for himself, deposes and says that he is a qualified elector in the state of North Dakota, that he hereby makes application to have the name of ---------- printed on the primary

election ballot of the ---------- party for the office ----------, to be voted for at the primary election to be held on the ---------- day of ----------, 19---; that said ---------- is, to the best of his knowledge, information, and belief, a ---------- and eligible to hold the office of ---------- under the Constitution.

Subscribed and sworn to before me this ---------- day of ----------, 19---.

Notary Public, North Dakota

However, an affidavit relating to a candidate on the no-party ballot shall not contain any reference to party affiliation. When the application is received by the proper officer, he shall place the name on the primary election ballot as a party or no-party candidate, as the case may be. The petition and affidavit provided for in this section shall not be filed without the written consent of the person to be nominated endorsed thereon.

16.1-11-15. NOMINATING PETITION NOT TO BE CIRCULATED MORE THAN NINETY DAYS PRIOR TO FILING TIME. No petition provided for in this chapter shall be circulated or signed more than ninety days previous to the time when any petition must be filed under the provisions of this chapter. Any signatures to a petition secured more than ninety days before that time shall not be counted.

16.1-11-16. FORM OF PETITION. A petition required in this chapter may be one continuous list of names under the proper political title or principle or there may be a number of petitions using the same title, containing the aggregate of names required.

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 days before the primary election and before four p.m. on the fifty-fifth day. If the forms are mailed, they shall be in the possession of the designated officer before four p.m. on the day due.

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 subsections 1, 2, or 3 of this section may be filled not later than fifty-five days prior to the election, and vacancies to be filled

according to the provisions of subsection 4 of this section may be filled not later than fifty-five days prior to the election.

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 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 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 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 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.

16.1-11-20. CERTIFIED LIST OF NOMINEES TRANSMITTED TO COUNTY AUDITOR BY SECRETARY OF STATE. At least fifty 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.

16.1-11-21. COUNTY AUDITOR TO PUBLISH SAMPLE PRIMARY ELECTION BALLOT AND NOTICE OF TIME AND PLACE OF ELECTION. The county auditor shall publish in the official county newspaper, and if no newspaper is published in the county then in a newspaper published in an adjoining county in the state, the following:

1. A copy of the sample ballot of the primary election, as arranged by order and direction of the county auditor. The form of the sample ballot shall conform in all respects to the form prescribed for the sample primary ballot by the legal publications handbook published pursuant to subsection 5 of section 46-01-02. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in his county. Sample ballots with inverted columns must be printed twice in each issue of the newspaper and in such manner as to assure that the column of each political party shall be displayed once in each issue in an upright position. Absent voters' ballots shall not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county shall be listed in a separate box or category by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district.

2. The date of the primary election.

3. The hours during which the polls will be open.

4. The statement that the primary election balloting will be held in the regular polling place in each precinct.

The notice shall be published in the official county newspaper once each week for two consecutive weeks prior to the primary election.

16.1-11-22. PRIMARY ELECTION BALLOT - FORM - VOTERS TO VOTE FOR CANDIDATES OF ONLY ONE PARTY. At the primary election there shall be only one ballot for all parties or principles. The ballot shall be in the following form:

1. The ballot shall be entitled the "consolidated primary election ballot", and the title shall be printed at both ends of the ballot so there is an upright title no matter which way the ballot is held.

2. Each party or principle having candidates at the primary election shall have a separate column on the ballot; the columns shall be separated by a solid six-point rule.

3. At the head of each column shall be printed the name of the political party or principle which it represents.

4. In each column below the party or principle title shall be printed: "You may vote for the candidates of only one party at the primary election. If you vote for candidates of more than one party, your ballot will be rejected."

5. Immediately below the warning against voting for candidates of more than one party shall be printed: "Put

a crossmark (X) opposite the name of the candidate for whom you wish to vote."

6. The offices specified in section 16.1-11-26 shall be arranged in each column with the name of each office in the center of each party column at the head of the names of the aspirants for the office.

7. Immediately under the name of each office shall be printed: "Vote for ---------- name (or names) only."

8. At the right of the name of each aspirant and in a column shall be printed a square for making a crossmark. No squares shall be printed at the head of the ballot.

9. The political party or principle which cast the largest vote for governor at the most recent primary election at which the office of governor was voted upon shall have the left-hand column, and the party or principle casting the next largest vote shall have the next column, and so on.

The judges and the inspector of elections shall inform each elector at the primary, before voting, that if he votes for candidates of more than one party his ballot will be rejected.

16.1-11-24. NO-PARTY PRIMARY BALLOT - CONTENTS. There shall be a separate ballot at all primary elections which shall be entitled "no-party primary ballot". The names of aspirants for nomination to each office shall be arranged on the no-party primary ballot in separate groups in their order. In precincts in which voting machines are used, the list of offices and candidates shall be entitled "no-party primary ballot" in a manner to indicate clearly the separation of the no-party list of offices and candidates from the party list of offices and candidates. The names of all candidates for any of the offices mentioned in section 16.1-11-08 shall be placed thereon without party designation. Immediately under the name of each office shall be placed the language, "Vote for ---------- name (or names) only." The number inserted shall be the number to be elected to the office at the next succeeding general election.

16.1-11-25. PREPARATION, PRINTING, DISTRIBUTING, CANVASSING, AND RETURNING OF NO-PARTY BALLOT. The no-party ballot shall be prepared, printed, distributed, canvassed, and returned in the same manner provided for other primary election ballots.

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

16.1-11-27. ARRANGEMENT OF NAMES ON BALLOTS AND VOTING MACHINES.

1. On sample ballots, the names of candidates for each office shall be arranged alphabetically according to surnames.

2. On the official ballot used at the election, including electronic voting system ballots, the names of candidates under headings designating each office to be voted for shall be alternated in the following manner:

   a. The ballot shall first be arranged with the names in the order in which they are submitted for use on the sample ballots by the secretary of state for the state and district offices, and prepared by the county auditor for the state, district, and county offices.

   b. In printing each set of official ballots for the various election precincts, the position of the names shall be changed in each office division as many times as there are candidates in the office division in which there are the most names. The same number of ballots shall be printed after each change of position.

   c. In making the changes of position, the printer shall take the candidate's name at the head of each office division and place it at the bottom of that division,

moving the column up so the name that was second before the change is first after the change.

3. In precincts employing voting machines, the position of names which require alternating under the provisions of this section shall be alternated as follows:

   a. The names shall be alternated on voting machines so the name appearing first in one precinct will be last in the next precinct, and the name that appeared second shall be first in the next precinct, and so on until each name has been moved up or over one space accordingly. This process shall be continued from one precinct to another and for as many names as are involved. There shall be a different alternation sequence for each of the following, based on the geographical area by which the office is filled:

      (1) Offices to be filled by the electors of the state, the entire county, or any district which includes the entire county.

      (2) Offices to be filled by the electors of districts smaller than the county, with a different rotation for each of those districts.

   b. The precincts shall be arranged according to the total votes cast for governor at the last general election in which the office of governor was filled, starting with the precinct having the highest total votes cast and ending with the precinct having the lowest total votes cast in that election.

   c. The initial location of the names in the precinct having the highest total votes shall be determined by lot by the city or county auditor or responsible election official.

   d. If there are more than three candidates for any office, and it is not possible to place all of the names on one line, the names shall be placed in two or more lines having an equal or nearly equal number of names on each line; provided that in no event shall only one name appear on any line.

16.1-11-28. PILING, CUTTING, AND BLOCKING BALLOTS. After the ballots are printed as provided in section 16.1-11-27, and before being cut, they shall be kept in separate piles for each change of position, and then shall be repiled by taking one from each pile and placing it upon the other pile to be cut, so that every other ballot in the pile of printed sheets shall have names in different positions. After the piles are made in this manner, they shall be cut and placed in blocks as provided by the general election laws.

16.1-11-29. PREPARATION OF BALLOT. Unless otherwise provided in this chapter, the primary election ballot shall be prepared as provided in chapter 16.1-06.

16.1-11-31. TALLY BOOKS OR SHEETS PROVIDED FOR ELECTION PRECINCTS - FORM AND CONTENTS. Two tally books or two sets of tally sheets shall be provided for each voting precinct. The books or sheets shall contain a column for each political party or principle having candidates to be voted for at the voting precinct. Two tally books or two sets of tally sheets for candidates on the no-party ballot shall be provided for each voting precinct. The books or sheets shall be furnished by the county auditor at the same time and in the same manner as the pollbooks and ballots are furnished. The names of the candidates shall be placed on the tally books or sheets in the order in which they appear on the official sample ballot, and, as appropriate, shall have the proper party or no-party designation at the head thereof.

16.1-11-32. POLL LISTS KEPT BY CLERKS OF ELECTIONS. The clerks of primary elections shall keep two lists of the names of all persons voting at each primary election. Each clerk shall return one list and one tally sheet, which shall be a part of the records and filed with other election returns. Only two complete lists of voters shall be kept whether or not a special election is held simultaneously with the primary election.

16.1-11-33. JUDGES OF ELECTION TO MAKE STATEMENT OF PRIMARY ELECTION - CONTENTS. The judges of a primary election in each precinct shall make a separate statement, on blanks provided for that purpose, for each political party or principle, containing the names of all persons voted for at the primary election, the number of votes cast for each candidate, and for what office. The statement shall be subscribed by the election judges and shall be filed with the returns in the office of the county auditor.

16.1-11-35. NOMINATIONS BY STICKERS. On both the party and the no-party ballot, a candidate may be nominated by having his name written on the ballot, or by a printed sticker being placed in a blank line left for that purpose underneath the group of candidates in each official position. Not more than one name shall be written or printed on any sticker.

16.1-11-36. VOTE REQUIRED AT PRIMARY ELECTION FOR NOMINATION. No person shall be deemed nominated as a candidate for any office at any primary election unless he receives a number of votes equal to the number of signatures required, or which would have been required had he not had his name placed on the ballot through a certificate of endorsement, on a petition to have a candidate's name for that office placed on the primary ballot.

16.1-11-37. VOTE REQUIRED FOR NOMINATION ON NO-PARTY BALLOT - PARTISAN NOMINATIONS PROHIBITED. The number of persons to be nominated as candidates for any one no-party office shall be that number of persons who receive the highest number of votes and who

total twice the number of available positions for the office, if that many persons are candidates for nomination. Provided, however, that no person shall be deemed nominated as a candidate for any no-party office at any primary election unless the number of votes received by him equals the number of signatures required to be obtained on a petition to have a candidate's name for the office placed on the primary ballot. No partisan nominations shall be made for any of the offices mentioned in section 16.1-11-08.

16.1-11-38. TIE VOTE DETERMINATION. In case of a tie vote the nominee or nominees shall be determined by lot, in the presence of the candidates upon at least five days' notice to each candidate, by the canvassing board or boards concerned, at a time and place designated by the board.

16.1-11-39. PERSONS NOMINATED IN ACCORDANCE WITH PROVISIONS OF CHAPTER ELIGIBLE AS CANDIDATES IN GENERAL ELECTION. All persons nominated in accordance with the provisions of this chapter shall be eligible as candidates to be voted for at the ensuing general election.

16.1-11-40. PRIMARY ELECTION AND BALLOT GOVERNED BY GENERAL ELECTION PROVISIONS. Except as otherwise provided in this chapter, the primary election ballot shall be arranged, and the primary election shall be provided for, conducted, and the expenses thereof paid as in the case of a general election.

SECTION 9. Chapter 16.1-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-12-01. CERTIFICATE OF NOMINATION - PARTY AND INDEPENDENT. A certificate of nomination shall be either:

1. The certificate of nomination required to be executed by the state or a county canvassing board pursuant to sections 16.1-15-40 and 16.1-15-21, respectively, for party nominations.

2. The certificate of nomination by petition for independent nominations provided for by this chapter.

16.1-12-02. CERTIFICATES OF NOMINATION BY PETITION - FORM AND CONTENTS. Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. The names of nominees so nominated shall appear on the ballot in a single column for independent candidates. Each certificate of nomination by petition shall contain:

1. The name of the nominee.

2. The office the nominee desires to fill.

3. The post-office address of the nominee.

4. A statement in not more than five words of the party or principle which the nominee represents, but the statement shall not indicate an affiliation with or the support of any political party organized in accordance with this title.

5. Signatures of qualified electors, as defined in this title, who reside in the state, district, or political subdivision. The signatures need not be appended to one paper, and each person signing shall add his mailing address and the date of signing. The signatures on the petition shall be in the following number:

   a. If the nomination is for an office to be filled by the electors of the entire state, there shall be not less than one thousand signatures.

   b. If the nomination is for an office to be filled by the electors of a district less than the entire state, the number of signatures shall be ten percent of the number of votes cast in the district for governor at the last preceding general election, but in no case shall more than three hundred signatures be required.

6. If the petition is for the office of governor or lieutenant governor, it shall contain the names and other required information of candidates for both those offices.

16.1-12-03. CERTIFICATE OF NOMINATION TO CONTAIN ONLY ONE NAME - PERSON TO PARTICIPATE IN ONLY ONE NOMINATION. No certificate of nomination provided for by this chapter, except in the case of presidential electors, shall contain the name of more than one nominee for each office to be filled. No person shall participate directly or indirectly in the nomination of more than one person for each office to be filled, and no person shall accept a nomination to more than one office. No political party shall be entitled to more than one set of nominees on the official ballot.

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 electors of the entire state.

   b. Certificates of nominations for nominees for offices to be filled by the 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 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 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 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.

16.1-12-05. SECRETARY OF STATE TO CERTIFY NOMINATIONS TO COUNTY AUDITOR - DUTY OF COUNTY AUDITOR. Not less than fifty 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.

16.1-12-06. PERSON NOMINATED BY MORE THAN ONE PARTY - COLUMN IN WHICH NAME PLACED. When one person has been nominated for the same office by more than one body of electors qualified to make nominations for public office, the nominee shall file with the proper officer designated in this Act, on or before the last day fixed by law for filing certificates of nomination for the office, a signed statement designating the column on the official ballot in which the nominee desires his name to appear. The column so

designated must be the column allotted to one of the bodies of electors by whom the person was nominated. In the absence of a timely written designation as provided by this section, the appropriate officer shall place the person's name in the column allotted to the body of electors from which was first received notice of the person's nomination.

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 days, and before four p.m. on the fiftieth 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 fiftieth day before the election.

16.1-12-08. VACANCY OCCURRING ON BALLOT BEFORE ELECTION DAY BUT AFTER BALLOTS ARE PRINTED - STICKERS USED. If a vacancy occurs before election day and after the printing of the ballots, and any person is nominated according to the provisions of this title to fill the vacancy, the officer whose duty it is to have the ballots printed and distributed shall have printed on a requisite number of stickers the name of the substitute candidate and no other name. Stickers shall be printed on the same color paper as the ballots to which they will be affixed. The officer shall send the stickers by a reliable method to the judges of election in the various precincts affected by the vacancy. The judges of election whose duty it is to distribute the ballots shall affix the stickers in the proper place on each ballot before it is given to the elector and shall cross out or otherwise obliterate the name of the original nominee causing the vacancy.

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 days prior to the general election and before four p.m. on the fifty-fifth day, a written petition as provided in section 16.1-11-03, 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 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 fifty-five days prior to the

general election and before four p.m. of the fifty-fifth 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 fifty-fifth 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 10. Chapter 16.1-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-13-01. DATE OF GENERAL ELECTION. The general election shall be held in all the election districts of this state on the first Tuesday after the first Monday in November of each even-numbered year.

16.1-13-02. OFFICERS TO BE ELECTED AT GENERAL ELECTION. All elective state, district, and county officers, and the United States senators, and the members of the United States house of representatives, shall be elected at the general election next preceding the expiration of the term of each such officer. In a year when a president and vice president of the United States are to be chosen, a number of presidential electors equal to the number of senators and representatives to which this state is entitled in the Congress of the United States shall be elected at such general election.

16.1-13-03. SECRETARY OF STATE TO GIVE NOTICE TO COUNTY AUDITOR OF OFFICERS TO BE ELECTED. Not later than sixty 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.

16.1-13-04. CANDIDATES' NAMES PLACED ON OFFICIAL GENERAL ELECTION BALLOT. The names of all candidates of each political party or principle or no-party designation, who are shown to have been nominated for the several offices in accordance with the certificates of nomination filed in his office, shall be placed by the secretary of state on the official ballot to be voted for at the next general election following.

16.1-13-05. NOTICE OF ELECTION - CONTENTS - PUBLICATION WITH SAMPLE BALLOT. Notice of all general elections shall be published by the county auditor in the official county newspaper at the same time as, and as a part of, the publication of the sample ballot preceding such election. The notice shall be substantially as follows:

> Notice is hereby given that on Tuesday, the ---------- day of November, 19---, at the polling places in the various precincts in the county of ----------, an election will be held for the election of state, district, and county officers, which election will be opened at -------- a.m. and will continue open until -------- p.m. of that day with the following exceptions:
>
> ----------
> ----------
>
> Dated this ---------- day of ----------, 19---
>
> Signed ----------
> County Auditor

The county auditor shall publish a copy of the sample ballot of the general election once each week for two consecutive weeks prior to the election in the official county newspaper. If no newspaper is published in the county, the publication shall be in a newspaper published in an adjoining county in the state. The form of the sample ballot as ordered and arranged by the county auditor shall conform in all respects to the form prescribed by the legal publications handbook, published pursuant to subsection 5 of section 46-01-02, for the sample general election ballot. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in his county. Absentee voter ballots shall not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county shall be listed in a separate box or category by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district.

16.1-13-06. DEFEATED PRIMARY CANDIDATE INELIGIBLE TO HAVE NAME PRINTED ON GENERAL BALLOT. A person who was a candidate for nomination by any party at any primary election in any year and who was defeated for the nomination shall not have his or her name

printed upon the official ballot at the ensuing general election for the same office.

16.1-13-07. PREPARATION, PRINTING, DISTRIBUTING, CANVASSING, AND RETURNING OF NO-PARTY BALLOT. The no-party ballot shall be prepared, printed, distributed, canvassed, and returned in the same manner provided for other general election ballots.

16.1-13-09. RESIGNATION OF MEMBERS OF LEGISLATIVE ASSEMBLY AFTER CERTIFICATE OF ELECTION. Any person who receives a certificate of election as a member of the legislative assembly may resign such office although he may not have entered upon the execution of the duties thereof nor taken the requisite oath of office.

16.1-13-10. VACANCY EXISTING IN OFFICE OF MEMBER OF LEGISLATIVE ASSEMBLY - SPECIAL ELECTION TO FILL. Whenever a vacancy in the office of a member of the legislative assembly occurs, the county auditor of the county in which such former member resides or resided shall notify the governor of the vacancy. The county auditor need not notify the governor of the resignation of a member of the legislative assembly when the resignation was made pursuant to section 44-02-02. Upon receiving such notification, the governor, if there is a session of the legislative assembly between the time such vacancy occurs and the time of the holding of the next general election, shall issue a writ of election directed to the auditor of each affected county commanding him to notify the several boards of election in the county or district in which the vacancy exists to hold a special election to fill such vacancy at a time designated by the governor. If there is no session of the legislative assembly between the time such vacancy occurs and the time of the holding of the next general election, the special election shall be held at the same time as the general election. If the term of office of the member whose office is vacated expires prior to the next session of the legislative assembly, no election shall be held to fill such vacancy.

16.1-13-11. VACANCY OCCURRING IN LEGISLATIVE ASSEMBLY DURING SESSION - DUTY OF GOVERNOR. If a vacancy occurs in the office of a member of the legislative assembly while it is in session, the governor, immediately upon receiving official notice thereof, shall proceed in the manner prescribed in section 16.1-13-10.

16.1-13-12. NOTICE OF SPECIAL ELECTION. A notice of a special election and the copy of the sample ballot shall be issued and published in substantially the form and manner prescribed by section 16.1-13-05.

16.1-13-13. CANVASSING AND RETURNING VOTES CAST AT ELECTIONS TO FILL VACANCIES. Votes cast at special elections shall be canvassed and returned as provided for primary and general elections, and the county auditor within eight days shall forward to the secretary of state the abstracts of the same.

16.1-13-14. SPECIAL ELECTION TO FILL VACANCIES - PARTY COMMITTEE TO CALL CONVENTION TO NOMINATE - INDIVIDUAL NOMINATIONS. If a special election is called to fill a vacancy in any office for which a party nomination may be made, the proper party committee shall call a convention to make a party nomination for such office, and the precinct committeemen of the district shall be duly convened and shall elect the required number of delegates to such convention. Individual nominations for special elections shall be made in accordance with the provisions of chapter 16.1-12.

16.1-13-15. NOTICE OF HOLDING CONVENTION FOR SPECIAL ELECTION - MANNER OF GIVING. Public notice of such a nominating convention shall be given at least six days before the holding of the convention by publication in the official newspaper in the county or counties in which the election will be held. Such nomination shall be made by delivering to and leaving with the officer charged with directing the printing of the ballots upon which the name is to be placed, within the time prescribed in this title, a certificate of nomination for each candidate.

16.1-13-16. BASIS OF REPRESENTATION AT CONVENTION - HOW DETERMINED. The basis of representation of delegates to a convention, unless otherwise provided by law, shall be fixed and determined by the authorized district or state committee of each political party entitled by law to make nominations for office by delegate convention.

16.1-13-17. CERTIFICATE OF NOMINATION BY CONVENTION - CONTENTS - DELIVERY. All nominations made by a convention as provided in this chapter shall be certified. The certificates of nomination shall be in writing and shall contain all of the following:

1. The name of each person nominated, his post-office address, and the office for which he is nominated.

2. A designation in not more than five words of the party or principle which the convention represents.

3. The signature, post-office address, and verification of the presiding officer and secretary of the convention.

The certificate as prescribed in this section shall be delivered by the secretary or president of the convention by registered or certified mail or in person, without charge, to the secretary of state or the county auditor, as the case may be.

16.1-13-18. TWO OR MORE ORGANIZATIONS FILING CERTIFICATES REPRESENTING SAME PARTY - SECRETARY OF STATE TO DETERMINE AUTHORIZED ORGANIZATION - REVIEW OF DETERMINATION. If two or more organizations claiming or purporting to represent the same political party shall file certificates of nomination under the same party designation, or if the certificates indicate that the nominations were made by any person or organization representing the same

political party, the secretary of state, within the time prescribed by law for certifying state nominations to the county auditor, shall determine from the best available sources of information which organization filing the certificates is the legally authorized representative of the party. The decision of the secretary of state in determining which organization is the legally authorized representative of the party shall be subject to review by the district court in a proper action instituted for such purpose.

16.1-13-19. ELECTION NOT TO BE HELD IN ROOM WHERE ALCOHOLIC BEVERAGES SOLD. No election shall be held in a room in which alcoholic beverages commonly are sold.

16.1-13-20. EXAMINATION OF BALLOT BOX BEFORE OPENING OF POLLS. Before declaring the polls open, the inspector and the election judges shall inspect the ballot box to assure that it is empty. The ballot box shall then be locked.

16.1-13-21. PRODUCING, OPENING, AND DELIVERING BALLOTS UPON OPENING OF POLLS. Upon the opening of the polls, the inspector of election in each precinct shall produce the sealed package of official ballots and publicly open them.

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 right to vote the elector should observe the stamping and initialing of the ballot. 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 splits his ballot or votes for candidates of more than one party his ballot will be rejected. Before delivering any ballot to an elector, the inspector or judge shall stamp once at the top of the back of the ballot the designation "official ballot" and the other words provided for in section 16.1-06-18, and also shall write his initials thereon. Failure to stamp and initial a ballot in the proper place on the ballot shall not invalidate such ballot, but a complete failure to stamp and initial a ballot shall invalidate the ballot.

16.1-13-23. PREPARATION OF BALLOT BY ELECTOR - FOLDING - DEPOSITING. Upon receipt of a ballot, the elector, forthwith and without leaving the polling place, shall retire alone to one of the voting booths or compartments to prepare his ballot by placing a crossmark (X) or other mark which clearly shows the intention of the elector within the square opposite the name of each person for whom he wishes to vote. In the case of a ballot containing a

constitutional amendment, an initiated or referred measure, or any other question to be submitted to a vote of the people, the elector shall place the crossmark (X) or other mark within the square opposite the word or words expressing his wish. After preparing the ballot, the elector shall fold it so the face of the ballot is concealed and so the endorsement of the inspector or election judge stamped thereon may be seen. The elector then shall hand the ballot to the judge, who, without opening the same or permitting it to be opened or examined except to ascertain whether it is a single ballot and whether it has been stamped and initialed, shall deposit it in the ballot box.

16.1-13-24. PREPARATION OF ELECTRONIC VOTING SYSTEM BALLOTS. Except as provided in this section, voting procedures for electronic voting systems shall be the same as for regular paper ballot voting. After marking the ballot envelope or punching the ballot card for electronic voting systems, the voter shall place the ballot inside the ballot envelope and return it to the election judge. The judge shall remove the stub and deposit the envelope with the ballot inside the ballot box. The ballot stub shall be deposited in an envelope provided for that purpose. Ballot cards from which the ballot stub has been detached by anyone except an election judge shall not be deposited in the ballot box, but shall be marked spoiled and placed with other spoiled ballots.

16.1-13-25. ELECTOR MAY WRITE OR PASTE NAME ON BALLOT - COUNTING. The provisions of this title shall not prevent any elector from writing or pasting on the ballot or ballot envelope the name of any person for whom he desires to vote, and such vote shall be counted the same as if printed on the ballot and marked by the elector.

16.1-13-26. NAME WRITTEN OR PASTED ON BALLOT EVIDENCE OF VOTE WITHOUT MARKING "X". If a name has been written or pasted opposite an office to be voted for, it shall be deemed sufficient evidence that the person depositing the ballot or ballot envelope intended to vote for the person whose name is written or pasted thereon, and not for the person whose name originally was printed on the ballot, whether or not the elector made a mark or cross opposite the written or pasted name.

16.1-13-27. DISABILITY OF ELECTOR. Any elector who declares to the judges of election that he or she cannot read the English language, or that because of blindness or other disability is unable to mark his or her ballot, upon request, shall receive the assistance of both election judges in the marking of his or her 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 he or she intends to vote, nor ask, nor receive the assistance of any person within the polling place to mark his or her ballot.

16.1-13-28. PENALTY FOR REQUESTING VOTER TO VOTE IN CERTAIN MANNER. Any person chosen to assist a voter who shall request the voter he is assisting to vote for or against any person, or any issue, shall be guilty of a class B misdemeanor.

16.1-13-29. ELECTION BOOTHS OR COMPARTMENTS - NUMBER REQUIRED - EXPENSE. The inspector of elections shall provide a sufficient number of voting booths or compartments in his polling place which shall be designed to enable the elector to mark his ballot screened from observation. The number of booths or compartments in precincts in which voting machines are not used shall not be less than one for each fifty electors or fraction thereof in the precinct. The expense of providing the booths or compartments shall be paid in the same manner as other election expenses. One voting machine or electronic voting system device shall be provided for each two hundred electors or fraction thereof in the precinct.

16.1-13-30. ONE PERSON TO OCCUPY BOOTH - TIME LIMIT IN BOOTH. Not more than one person shall be permitted to occupy any one voting booth or compartment at one time except when providing lawful assistance. No person shall remain in or occupy a booth or compartment longer than necessary to prepare his ballot.

16.1-13-31. REMOVAL OF BALLOT FROM POLLING PLACE BEFORE CLOSING OF POLLS - PROHIBITED. No person shall take or remove any ballot from the polling place before the close of the polls.

16.1-13-32. SECURING NEW BALLOT UPON SPOILING OF OTHERS. If any elector spoils a ballot, including an electronic voting system ballot, he may obtain others successively, one at a time, not exceeding three in all, upon returning each spoiled ballot. Each ballot returned shall be canceled immediately and, together with those not distributed to the electors, shall be preserved and secured in sealed packages and returned to the county auditor from whom received.

16.1-13-33. VOTING MACHINES - ELECTRONIC VOTING SYSTEMS - ELECTION LAWS APPLY. All provisions of law relating to the conduct of elections shall apply as closely as possible to elections at which voting machines or electronic voting systems are used.

SECTION 11. Chapter 16.1-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-14-01. CANVASSING VOTES FOR PRESIDENTIAL ELECTORS - TIE VOTE. The state canvassing board in examining and making a statement of the votes for, and in determining and certifying the persons chosen as, presidential electors shall proceed in the manner prescribed in this title for the canvass of votes for state officers. The secretary of state likewise shall file and record such statement and determination. In canvassing the returns for presidential electors, the group of electors having the greatest number of votes is to be declared elected. If two or more groups of electors are found to have an equal and the greatest number of

votes, the election of one group shall be determined by lot, with the drawing made by the governor in the presence of the other members of the state canvassing board.

16.1-14-02. SECRETARY OF STATE TO PREPARE CERTIFICATES OF ELECTION. The secretary of state shall prepare certificates of election for each presidential elector chosen at the election. Each certificate shall be signed by the governor and the secretary of state and the great seal of the state shall be affixed thereto. One certificate shall be delivered to each of the electors chosen.

16.1-14-03. PROCLAMATION OF RESULT BY GOVERNOR - PUBLISHING - CERTIFICATE OF ELECTION. Within ten days after the state canvassing board completes the canvass of the votes cast for presidential electors, as certified by the auditors of the respective counties, the governor shall declare by proclamation, to be printed in the official county newspaper printed and published at the seat of government, the names of the persons who have received the highest number of votes returned for such office. If the election of such persons has not been contested by notice of contest having been filed with the governor within ten days after the date of such proclamation, then such persons shall be deemed elected, and the governor shall transmit to each person so chosen a certificate of election.

16.1-14-04. MEETING OF PRESIDENTIAL ELECTORS. Presidential electors shall meet at one p.m. in the office of the governor in the state capitol on the first Monday after the second Wednesday in December next following their appointments by election for the purpose of casting their ballots as members of the electoral college. The secretary of state shall notify the electors of the date of the meeting.

16.1-14-05. FILLING OF VACANCY EXISTING IN OFFICE OF PRESIDENTIAL ELECTOR. If a vacancy exists in the office of an elector for any reason, the electors present at the meeting provided for in section 16.1-14-04 shall first proceed to fill such vacancy by ballot by a plurality of the votes. When all the electors appear, or the vacancies have been filled as provided in this section, they shall proceed to perform the duties required of them by the Constitution and laws of the United States.

16.1-14-06. COMPENSATION OF PRESIDENTIAL ELECTORS. The electors provided for in this chapter shall receive the same per diem and the same mileage as members of the legislative assembly.

16.1-14-07. BOARD FOR TRIAL OF CONTEST OF PRESIDENTIAL ELECTORS - HOW CONSTITUTED - OATH. The board for the trial of contests of elections for presidential electors shall consist of the chief justice of the supreme court, who shall be president of the board, and two judges of the district court designated by the governor. If the chief justice shall be unable to attend at such trial, the next senior judge on the supreme court shall preside in place of the chief justice. The secretary of state shall be the

clerk of the board, or in his absence or inability to act, the clerk of the supreme court shall be the clerk. Each member of the board, before entering upon the discharge of his duties, shall take an oath, before the secretary of state or some other officer qualified to administer oaths, that without fear, favor, affection, or hope of reward, he will, to the best of his knowledge and ability, administer justice according to law and the facts of the case.

16.1-14-08. CONTESTANT MAY APPLY TO BOARD. A group of electors appearing, by the proclamation of the governor, to have received not less than one-fifth of the votes cast at an election for presidential electors, may apply to the board provided for in section 16.1-14-07 for a declaration of election as presidential electors.

16.1-14-09. APPLICATION TO STATE GROUNDS OF CONTEST. The application provided for in section 16.1-14-08 shall be made by petition in writing to be filed in the office of the secretary of state within ten days from the date of the proclamation provided for in section 16.1-14-03. The petition, regardless of its mode of delivery, shall be in the possession of the secretary of state before four p.m. on the tenth day as provided in this section, and the secretary of state shall convene the board forthwith. The petition shall set forth the names of the persons whose election is contested and the ground for such contest. The petitioner, before any proceedings are had upon the petition, except the convening of the board, shall file a bond to this state in a sum and with such surety as the board shall order, conditioned for the payment of all costs incurred in the prosecution of such contest in the case the contestants shall not prevail.

16.1-14-10. NOTICE TO PERSONS CONTESTED. Upon the filing of the petition and bond as provided in section 16.1-14-09, the board for the trial of an election contest shall order written notice of the petition to be given to the governor and to the persons whose election is contested. Notice shall also be published in a newspaper as the board shall order. Notices provided for by this section shall contain a concise statement of the facts alleged in the petition and a designation of the time and place fixed by the board for the hearing, which shall be not less than three nor more than fifteen days from the filing of the petition.

16.1-14-11. APPEARANCE BY PARTIES TO CONTEST. At the time fixed for the hearing, the petitioners shall appear and produce their evidence, and the persons whose election is contested may appear and produce evidence in their behalf. Any party to the contest proceedings may appear in person or by attorney, and no other person shall be entitled to be made a party to the proceedings or to be heard personally or by counsel therein. If more than one petition is pending, the board, in its discretion, may order the contests to be heard together.

16.1-14-12. HEARING - HOW CONDUCTED. The board shall hear the contest and decide all questions of law and fact involved. The

burden of proof in each case shall be upon the petitioners, and the hearing shall be confined to the grounds stated in the petition, but the board in its discretion may allow the petition to be amended. No ex parte affidavits shall be competent evidence at the hearing. No person shall be excused from testifying or from producing papers or documents at the hearing on the ground that such testimony will tend to incriminate him, but no person so testifying shall be subject to any suit or prosecution, civil or criminal, for any matter or cause in respect to which he shall be examined or to which his testimony shall relate. The board shall have the same power to compel the attendance of witnesses as the district courts of this state possess, and nothing contained in this chapter shall be held to limit the power of the board to make such regulations as to the conduct of the proceedings as it may deem proper, not inconsistent with the provisions of this chapter. The board shall have all powers necessary to the complete performance of the duties and authority conferred upon it by this chapter.

16.1-14-13. CERTIFICATION OF DETERMINATION OF BOARD. The board shall determine in each case which of the parties to the proceedings are entitled to the office of elector, and shall cause its determination to be entered of record in a manner and form as it shall direct, and shall certify the same to the governor and secretary of state. The certified determination shall be final and conclusive that the persons stated therein are duly elected. The governor shall transmit to such persons certificates of their election, and every such certificate shall recite that it is issued pursuant to a determination under the provisions of this chapter.

16.1-14-14. FAILURE OF PETITIONERS TO APPEAR - EFFECT. If any petitioners fail to appear and prosecute their petition against the persons who have been made respondents thereto, according to the requirements of this chapter and of any rules made by the board, the board shall determine that they have failed, and shall cause the determination to be entered of record in such manner and form as it shall direct, and forthwith shall certify the determination to the governor and secretary of state. The determination shall be a final and conclusive bar to the claim of the petitioners against such respondents as fully and completely as if the claim had been heard and determined on its merits, and the governor shall issue certificates of election as provided in section 16.1-14-13.

16.1-14-15. COSTS - TAXATION. The costs of an election contest under the provisions of this chapter shall be taxed under the direction of the board. If two or more cases are heard together, the costs shall be apportioned as the board shall direct. In each case in which the petitioners do not prevail, the costs shall be paid by them, and in each case in which the petitioners prevail, the costs shall be paid by the state. If the costs are required to be paid by the state, the board shall certify the costs to the state auditor, who shall issue his warrant upon the state treasurer in payment of the same.

16.1-14-16. DETERMINATION OF FINAL HEARING. The final hearing and determination under the provisions of this chapter shall be by a majority of the board, but any single member may exercise any of the other powers given to the board by this chapter.

16.1-14-17. MILEAGE AND PER DIEM OF BOARD MEMBERS. The members of the board trying the presidential election contest shall be compensated in the same manner as state officers pursuant to sections 44-08-04 and 54-06-09.

16.1-14-18. ELIGIBILITY OF NEW RESIDENTS TO VOTE. Each citizen of the United States who, immediately prior to his removal to this state, was a citizen of another state and who has been a resident of the precinct for less than thirty days prior to a presidential election, is entitled to vote for presidential electors at that election, but for no other offices, if:

1. He otherwise possesses the substantive qualifications to vote in this state, except requirement of residence, and

2. He complies with the provisions of sections 16.1-14-18 to 16.1-14-28, both inclusive.

16.1-14-19. ELIGIBILITY OF FORMER RESIDENTS TO VOTE. Each citizen of the United States who was a qualified elector in this state immediately prior to establishing residence in another state and who has not qualified for voting purposes due to the residency requirement of that state, may vote in North Dakota for president and vice president only, by applying for a separate ballot at least one day before the election in accordance with sections 16.1-14-20, 16.1-14-23, 16.1-14-24, 16.1-14-25, 16.1-14-26, and 16.1-14-27, provided the statements relative to new residents contained therein shall, for this purpose, be changed by the county auditor and inspector of elections to comply with the provisions of this section.

16.1-14-20. APPLICATION FOR PRESIDENTIAL BALLOT BY NEW RESIDENTS. A person desiring to qualify to vote for presidential electors is not required to register but, not less than ten days in advance of the election, shall make an application in the form of an affidavit executed in duplicate in the presence of the county auditor substantially as follows:

State of North Dakota)
) ss.
County of ----------)

I, ----------, do solemnly swear that:

1. I am a citizen of the United States.

2. Before becoming a resident of this state, I resided at ---------- street, in the (town) (township) (city) of

----------, county of ---------- in the state of ----------.

3. On the day of the next presidential election, I shall be at least eighteen years of age. I have been a resident of this state since the ---------- day of ----------, 19---, now residing at ---------- street, in the (town) (township) (city) of ----------, county of ---------- in the state of North Dakota.

4. I have resided in ---------- precinct for less than thirty days. I believe I am entitled under the laws of this state to vote at the presidential election to be held on the ---------- day of November, 19---.

5. I hereby make application for a presidential election ballot. I have not voted and will not vote otherwise than by this ballot at that election.

Signed ----------
(Applicant)

Subscribed and sworn to before me this ---------- day of ----------, 19---.

Signed ----------
(Title and name of officer authorized to administer oaths)

16.1-14-21. MAILING DUPLICATE APPLICATION. The county auditor shall immediately mail to the appropriate official of the state in which the applicant last resided the duplicate of the application.

16.1-14-22. FILING AND INDEXING INFORMATION FROM OTHER STATES. The county auditor shall file each duplicate application or other official information received by him from another state indicating that a former resident of this state has made application to vote at a presidential election in another state and shall maintain an alphabetical index thereof, for a period of four months after the election.

16.1-14-23. DELIVERY OF BALLOT TO APPLICANT. If satisfied that the application is proper and that the applicant is qualified to vote at the presidential election, the county auditor shall deliver to the applicant a ballot for presidential electors no sooner than thirty days nor later than one day prior to the next presidential election.

16.1-14-24. VOTING BY NEW RESIDENTS.

1. The applicant, upon receiving the ballot for presidential electors, shall immediately mark the ballot in the presence of the county auditor but in a manner that the

official cannot know how the ballot is marked. He shall then fold the ballot in the county auditor's presence to conceal the markings, and deposit and seal it in an envelope furnished by the county auditor.

2. The voter shall enclose the envelope containing the ballot in a carrier envelope which shall be securely sealed. There shall be imprinted on the outside of the carrier envelope a statement substantially as follows:

CERTIFICATION OF NEW RESIDENT VOTER

I have qualified as a new resident voter in this state to vote for presidential electors. I have not applied nor do I intend to apply for an absent voter's ballot from the state from which I have removed. I have not voted and I will not vote otherwise than by this ballot.

Dated ----------
Witness ----------
County Auditor

(Signature of Voter)

The voter shall sign the certification upon the carrier envelope as set forth above, and shall then deliver the sealed carrier envelope to the county auditor, who shall keep the carrier envelope in his office until delivered by him to the inspector of elections of the precinct in which the applicant resides.

16.1-14-25. LIST OF APPLICANTS OPEN FOR PUBLIC INSPECTION. The county auditor shall keep open to public inspection a list of all persons who have applied to vote as new residents with their names, addresses, and application dates for a period of two years.

16.1-14-26. DELIVERY AND PROCESSING OF PRESIDENTIAL ELECTOR BALLOTS.

1. The county auditor shall deliver the ballots for new residents to the inspector of elections in the manner prescribed by law for absentee ballots. The ballots shall be processed in accordance therewith.

2. The inspector of elections shall record the new resident voter's name with a notation designating him as a new resident voting for presidential electors only.

16.1-14-27. APPLICATION OF OTHER STATUTES. Except as provided in sections 16.1-14-18 through 16.1-14-27, the provisions of law relating to absent voters' ballots apply also to the casting and counting of ballots of new residents, the furnishing of election supplies, ballots, canvassing of ballots, and making proper returns of the results of the election.

16.1-14-28. DEFINITION OF STATE. As used in sections 16.1-14-18 through 16.1-14-27 "state" includes the District of Columbia.

SECTION 12. Chapter 16.1-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-15-01. BALLOTS VOID AND NOT COUNTED - PART OF BALLOT MAY BE COUNTED. In the canvass of the votes at any election, a ballot shall be void and shall not be counted if:

1. It is not endorsed with the official stamp and initials as provided in this title; or

2. It is impossible to determine the elector's choice from the ballot or parts of a ballot.

If a ballot is marked so only a part of the voter's intention can be determined, the election judges shall count such part. If a voter votes for more than the number of persons to be elected to any office, his ballot shall be invalidated only insofar as his vote for such office is concerned, and the balance of his ballot, if otherwise proper, shall not be invalidated. However, at primary elections only, a ballot shall be void if the elector votes for candidates of more than one party.

16.1-15-02. BOARD OF ELECTION TO CANVASS VOTES - LOCATION - PUBLIC MAY ATTEND. After the polls are closed, the inspector of elections and the judges shall immediately place the stamp and inkpad in the manila wrapper provided by the county auditor and seal it with the seal provided by the county auditor and then they shall open the ballot boxes and count and compare the ballots with the poll clerks' lists. If the ballots compare and are equal in number with the names on the poll clerks' lists, the election board shall proceed immediately to canvass the votes. The canvass shall continue without adjournment until completed, and shall be open to the public. Except in unusual and compelling circumstances, the vote canvass shall occur at the polling place. If good and substantial reasons exist for the removal of the ballots and election records to another location for canvass, the other location shall be in the same precinct and the removal shall be approved by the election board. In no case shall the ballots be removed to another location for tally after the ballot boxes have been opened. Upon approval of a change of location by the election board as provided in this section, the approximate time and location of the canvass shall be prominently posted on the main entrance to the polling place, the ballots and records shall be moved in the presence of the election board, and the canvass as provided in this chapter shall proceed immediately upon arrival at the alternate location.

16.1-15-03. MANNER OF CANVASSING ELECTION. The canvass provided for in section 16.1-15-02 shall be conducted in the following manner: as each ballot is counted, the inspector and the

election judges shall examine the ballot to ascertain the persons voted for, and either the inspector or one of the judges shall announce the votes disclosed by the ballot, which shall be marked in the tally books by two poll clerks of different political parties. After all of the votes are counted, the election board shall compare the count as disclosed by the poll clerks' books with the total number of ballots cast, and if there are any mistakes in the books kept by the clerks, they shall be corrected to conform exactly to the number of ballots cast. As soon as the count is completed, the inspector shall announce publicly the result thereof, specifying the whole number of votes cast for each office and for each candidate, and the number of votes cast for and against each proposition voted upon at the election.

16.1-15-04. DUPLICATE REPORTS PREPARED BY ELECTION BOARD - TALLY OF VOTES SEPARATE FOR EACH POLITICAL PARTY. The election board shall prepare duplicate reports of the total votes cast for each candidate or measure. The figures shall agree with the poll clerks' books and the number of ballots. The ballots shall not be sealed, nor shall the election tally books or the duplicate reports be signed, by the election board or poll clerk until the figures and counts in the poll clerks' books and in the duplicate reports and the number of ballots cast all show the same totals. The tally of the votes shall be separate for each political designation or principle and shall be returned as such by the judges and inspector of elections, who shall give the full vote for each candidate.

16.1-15-05. OATH REQUIRED OF MEMBERS OF ELECTION BOARD UPON COMPLETION OF CANVASS - CONTENTS. At the conclusion of the canvass of the votes, each member of the election board shall sign an affidavit to the effect that the ballots have been counted and the votes canvassed as provided in this chapter, and that the returns as disclosed by the tally books of election kept by the poll clerks, and the duplicate reports, agree with the number of ballots cast and are true and correct of his own knowledge.

16.1-15-06. REPORTS AND POLLBOOKS SENT TO COUNTY AUDITOR - COMPENSATION FOR MAKING RETURNS - COUNTY AUDITOR TO FORWARD POLLBOOK TO CLERK OF UNITED STATES DISTRICT COURT AND TO THE CLERK OF THE NORTH DAKOTA DISTRICT COURT. By twelve noon of the day following an election except in cases of emergency or inclement weather, the inspector of elections, or one of the judges appointed by him, shall personally deliver the duplicate reports provided for in section 16.1-15-04 to the county auditor. The reports, carefully sealed under cover, accompanied by both of the pollbooks provided for in section 16.1-06-15, and the wrapped and sealed stamp and inkpad, with the oaths of the inspector and poll clerks affixed thereto, shall be delivered properly to the county auditor. The person making the return shall receive compensation therefor in accordance with section 16.1-05-05. However, no compensation and no mileage shall be paid if delivery of the ballots is not made by twelve noon on the day following the election. The compensation and mileage shall be paid out of the county treasury on a warrant of the county auditor, and shall be full compensation for returning all used or

voided ballots and for delivering the ballot boxes to the proper official. Within thirty days after receipt thereof following each presidential election, each county auditor shall forward one of the pollbooks to the clerk of the United States district court for the district encompassing that county for his official use. The county auditor shall request return of the pollbook thirty days after receipt thereof by the clerk of the United States district court. The county auditor shall provide the clerk of the North Dakota district court of said county with a pollbook to be used by the clerk for jury selection.

16.1-15-07. COUNTY AUDITOR NOT TO REFUSE ELECTION RETURNS IF DELIVERED IN UNDIRECTED MANNER - INFORMALITY IN HOLDING ELECTION. A county auditor shall not refuse any election returns because they may have been returned or delivered to him in a manner other than that directed by this chapter, nor shall he refuse to include any returns because of any informality in holding an election or in making returns thereof.

16.1-15-08. WRAPPING AND RETURNING OF BALLOTS TO COUNTY JUDGE. After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the inspector and election judges shall cause the ballots of each kind cast at the election to be smoothly spread upon a wrapper of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded to form a complete wrapper for the ballots. The ballots and wrappers shall then be folded tightly together and the wrapper shall be pasted or glued securely at the outer end to completely envelop and hold the ballots together. Ballots which are void shall be wrapped in a separate wrapper and shall be marked "void". Ballots which are spoiled shall be separately wrapped and marked "spoiled". In folding and sealing ballots, the various classes of ballots shall be kept separate. The judges shall fold all ballots counted by them, except those which are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper. Each wrapper shall be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers shall be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and together with the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, shall be returned either in person or by mail to the county judge. Ballots used with any electronic voting system shall be wrapped, sealed, and returned as provided in this section.

16.1-15-09. VOTING MACHINES - ELECTRONIC VOTING SYSTEMS - RETURNS. Election officers shall make returns of votes cast upon voting machines and on electronic voting systems 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. The county auditor shall designate the public place or places where electronic voting system ballots 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, and all such counting centers 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 is damaged or defective so that it cannot be properly counted by the automatic tabulating 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.

16.1-15-10. FAILURE OF AUTOMATIC TABULATING EQUIPMENT - COUNTING BY ALTERNATE METHOD. If the automatic tabulating equipment used as part of any electronic voting system fails to operate during the ballot count at any election, the ballots shall be counted by an alternate method.

16.1-15-11. LOCKING AND EXAMINATION OF VOTING MACHINES - TALLY OF VOTING MACHINE VOTES - CERTIFICATION TO COUNTY JUDGES. Voting machines shall remain locked for ten days next following use at an election and as much longer thereafter as necessary or advisable because of any existing or probable contest over the results of the election. They may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction. A complete record of the tally of votes from each voting machine shall be made by the inspector and the election judges at the time votes are tallied. This record shall agree in every respect with the pollbooks and the original reports of the total votes cast for each candidate or measure. The record shall then be certified by the inspector and the election judges, and one copy shall be delivered to the county judge at the same time as the ballots are delivered to him pursuant to section 16.1-15-08. The records may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction in the event of any existing or probable contest over the results of the election.

16.1-15-12. BALLOT BOXES DELIVERED TO OFFICERS FOR CUSTODY. In organized townships or in cities, the inspector of elections, if he is not himself the officer in question, shall deliver the ballot boxes to the chairman of the board of supervisors of the township, or to the executive officer of the city, in which the election precinct is situated, as the case may be. The officer shall keep

the boxes in safe custody until the next election or hand them over to his successor in office to be kept safely by him until such time. At the following general or primary election, the officers shall hand the ballot boxes over to the inspector of elections. In unorganized townships, the inspector of elections shall cause the ballot boxes to be delivered to the county auditor at the same time the ballots are returned to him.

16.1-15-13. COUNTY JUDGE TO KEEP BALLOTS FORTY-FIVE DAYS - EXCEPTION - USE OF BALLOTS AS EVIDENCE. Immediately upon receiving the ballots as provided in section 16.1-15-08, the county judge shall give receipt therefor to the election judges and shall place the ballots properly arranged in the order of the precinct number in boxes which shall be securely locked. The boxes shall be placed in a fireproof vault and shall be kept securely for forty-five days. They shall not be opened nor inspected, except upon court order in a contested election, when it is necessary to produce them at a trial for any offense committed at an election, or to permit election officials to complete their duties. Forty-five days after the election, upon determination by the county judge that no contest is pending, the ballots shall be destroyed. If any contest of the election of any officer voted for at the election or a prosecution under the provisions of this title is pending at the expiration of such time, the ballots shall not be destroyed until the contest or prosecution is finally determined. The ballots returned to the county judge as provided in this section shall be received in evidence without introducing further foundation.

16.1-15-14. FAILURE TO COMPLY WITH FORMALITIES NOT TO INVALIDATE ELECTION - EVIDENCE OF COMPLIANCE. Failure by election board officers to comply with any of the formalities required by this chapter as to the return of the ballots shall not invalidate any election nor cause any ballot otherwise regular to be disregarded. Any omission or irregularity in the manner of identifying or returning the ballots of any precinct may be obviated by proof under the ordinary rules of evidence.

16.1-15-15. COUNTY CANVASSING BOARD - COMPOSITION. The county canvassing board shall be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners, and a representative of the district committee of all legislative districts which wholly or partly fall within the boundaries of the county as appointed by the district chairmen of the two political parties which received the highest number of votes cast for governor at the most recent general election at which a governor was elected.

16.1-15-16. QUALIFICATIONS OF MEMBERS OF CANVASSING BOARD - REPLACEMENTS - QUORUM. No member of the county canvassing board who would not be eligible to serve as a member of the election board pursuant to subsection 2 of section 16.1-05-02 shall serve on the county canvassing board. If any of the members of the board other than the representatives of the two political parties are disqualified or cannot serve for any other reason, the county

commissioners who would be qualified to serve on the board shall appoint alternates to serve in the place of those members of the board who are disqualified. If any of the representatives of the district committees of the two parties are disqualified or cannot serve for any other reason, the district chairmen shall appoint an alternate from their respective district committees to act as a member of the county canvassing board. A majority of the members of the board or their duly appointed alternates shall constitute a quorum and may make the canvass provided for in this chapter and certify the results thereof.

16.1-15-17. TIME OF COUNTY CANVASSING BOARD MEETING - OATH REQUIRED - RECONSIDERATION OF CANVASS. As soon as the returns are received by the county auditor, but not later than ten days after each election, the county canvassing board shall meet and, after taking the oath of office, shall proceed to open and publicly canvass the returns. After the initial meeting of the board as provided in this section, any two or more members may call a meeting of the board and upon approval of a majority of the members, the board shall recanvass the results of the election or any portion thereof and may correct any previous canvass or certification or both in regard to the election. Any correction of any previous certification of election results as provided in this section shall be immediately dispatched to the secretary of state who shall call a meeting of the state canvassing board as provided in section 16.1-15-35 for the purpose of recanvassing and, if necessary, correcting any previous certification of the election results.

16.1-15-18. COMPENSATION AS MEMBERS OF BOARD. Each member of the county canvassing board who is not a paid official of the county, while serving as a member of the county canvassing board, shall receive compensation in accordance with section 16.1-05-05. The compensation and mileage shall be audited, allowed, and paid by the board of county commissioners in each county.

16.1-15-19. COUNTY CANVASSING BOARD TO DISREGARD TECHNICALITIES, MISSPELLING, AND ABBREVIATIONS - VOTES FROM UNESTABLISHED PRECINCTS DISREGARDED. In canvassing the election returns, the county canvassing board shall disregard technicalities, misspelling, and the use of initial letters or abbreviations of the name of any candidate for office, if it can be ascertained for whom the vote was intended. The board shall not count votes polled in any place except at established precincts.

16.1-15-20. COUNTY CANVASSING BOARD MAY SUBPOENA MEMBERS OF ELECTION BOARD TO CORRECT ERRORS - FAILURE TO OBEY SUBPOENA IS A CONTEMPT. When the returns of the election board officers are made to the county canvassing board, if any provision of law relative to the duties of the election board officers has not been complied with by said officers and the provision of law is capable of correction by the election board, the county canvassing board may issue its subpoenas to the election board officers of the precinct wherein the defect occurs. The subpoenas shall require the election board officers to appear forthwith before the county canvassing board to

correct any omission or mistake according to the facts. The amended or corrected returns then shall be acted upon by the board. If any election board officer, subpoenaed as provided in this section, shall neglect or refuse to obey the subpoena, the person so neglecting or refusing shall be arrested upon a bench warrant issued out of the office of the clerk of the district court in the county where the proceedings occur. The person arrested shall be brought before the county canvassing board and shall make the necessary correction. A refusal on the part of an election board officer to make a correction shall be deemed a contempt of the district court.

16.1-15-21. PRIMARY ELECTION STATEMENT PREPARED BY COUNTY CANVASSING BOARD - CONTENTS. The county canvassing board, upon canvassing the returns of a primary election, shall prepare a statement signed by the members of the board and filed in the office of the county auditor. The statement shall contain all of the following:

1. The names of all candidates voted for at the primary election, with the number of votes received by each and for what office. The statement shall be made separately for each political party or principle.

2. The names of the persons or candidates of each political party or principle who receive the highest number of votes for the respective offices. If more than one person is required to be elected to a given office at the next ensuing general election, there shall be included in the statement the names of so many of the candidates of the party receiving the next highest number of votes for that office as there are persons to be elected to the office at said ensuing general election. The statement shall be made separately for each political party.

3. The total number of ballots cast at the primary election.

A separate statement of the votes cast for United States senator, United States representative, state officers, judges of the supreme court, judges of the district courts, and members of the legislative assembly shall be transmitted to the secretary of state as provided in this chapter.

16.1-15-22. COUNTY AUDITOR TO TRANSMIT ABSTRACT OF VOTES TO SECRETARY OF STATE AFTER PRIMARY ELECTION. The county auditor of each county, under his official seal, shall return to the secretary of state by registered or certified mail within fifteen days after the day of any primary election, a certified abstract, under separate political designation or principle, or no-party designation, as the case may be, of the total number of votes cast in his county and the votes cast for every candidate for nomination for United States senator, United States representative, state officers, judges of the supreme court, judges of the district court, and members of the legislative assembly. The county auditor also shall file with the secretary of state a certificate showing the

names and addresses of the persons nominated under the several political designations and principles in his county. The certified abstract and the certificate of nomination to be mailed under the provisions of this section shall be in the possession of the secretary of state before four p.m. on the eighth day after the primary election.

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 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.

16.1-15-24. ABSTRACTS OF VOTES OF GENERAL ELECTION MADE BY COUNTY CANVASSING BOARD - CONTENTS. The county canvassing board, when canvassing the returns of a general election, shall make abstracts of votes from the certified reports of the inspectors of elections in the following manner:

1. The abstract of votes for United States senator, United States representative, all state officers, judges of the district courts, all initiated or referred measures, and constitutional amendments, shall be on one sheet.

2. The abstract of votes for members of the legislative assembly shall be on one sheet.

3. The abstract of votes for county officers shall be on one sheet.

16.1-15-25. COUNTY AUDITOR TO FORWARD ABSTRACT OF VOTES OF GENERAL ELECTION TO SECRETARY OF STATE - CONTENTS - ABSTRACT FOR PRESIDENTIAL ELECTORS. Within fifteen days and before four p.m. on the fifteenth day following any general election, the county auditor of each county, under his official seal, shall return to the secretary of state a certified abstract of the votes cast in his county at such election for each candidate for state and congressional offices, judges of the district courts, candidates for the legislative assembly, and for amendments to the Constitution and other measures. In presidential years, the county auditor shall make a separate certified abstract of the votes cast for electors for president and vice president of the United States. The separate abstract for presidential electors shall be sealed, endorsed

"presidential election returns", and shall be transmitted by registered or certified mail to the secretary of state. At the time the county auditor transmits the certified abstract of the votes cast in his county, he shall file with the secretary of state a certificate showing the names and addresses of the persons who were elected to the various county offices in his county.

16.1-15-26. MEMORANDUM OF DATE OF RECEIVING RETURNS IN SECRETARY OF STATE'S OFFICE. A memorandum of the date of reception of all returns of votes in the secretary of state's office shall be made on the envelope containing the returns.

16.1-15-27. ABSTRACT OF VOTES - SECRETARY OF STATE TO RECORD - FAILURE OF COUNTY AUDITOR TO SEND - MESSENGER DISPATCHED. Upon receipt of the certified abstract of votes from the county auditors as provided in section 16.1-15-25, the secretary of state shall record the result of the election by counties and shall file and carefully preserve the certified statements received from the county auditors. If no certified statement is received by the secretary of state from the county auditor of any county prior to the time specified for the meeting of the state canvassing board, the secretary of state shall dispatch a special messenger to obtain the statement at the expense of the county. Upon demand, the county auditor shall make and deliver the required statement to the special messenger who shall deliver it to the secretary of state to be recorded and filed as provided in this section. The messenger shall receive the same mileage expense as other state officers and employees. The state treasurer shall present a bill for the amount audited against the county failing to send returns as provided in this section, and the bill shall be audited by the board of county commissioners of the county and paid by the county treasurer to the state treasurer.

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 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.

16.1-15-29. DETERMINING TIE VOTE IN COUNTY OFFICES. If the requisite number of county officers are not elected because two or more persons have equal and the highest number of votes for one and the same office, the county auditor shall give notice to the persons to appear at his office at a time appointed by him. The persons then shall publicly decide by lot which of them shall be declared elected. The county auditor shall prepare and deliver to the person elected an election certificate as provided in this chapter. If a

demand for a recount is timely made, this section shall apply only if that recount results in a tie vote. No person who has assented to the determination of an election according to this section may thereafter demand a recount of that election.

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, the county auditor, if the legislative district in question is within one county, shall, by certified mail, notify the persons with equal and the highest number of votes to appear in his office at a time fixed by him. The time fixed shall not be more than ten 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 lot 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. If a demand for a recount is timely made, this section shall apply only if that recount results in a tie vote. No person who has assented to the determination of an election according to this section may thereafter demand a recount of that election.

16.1-15-31. COUNTY AUDITOR TO MAKE CERTIFICATE FOR PAYMENT OF ELECTION OFFICIALS - PAYMENT. Upon receipt of the returns of any election, the county auditor shall prepare his certificate stating the compensation to which the inspectors, judges, and clerks of election shall be entitled for their services. He shall deliver the certificate to the board of county commissioners at its next session and the board shall order the compensation to be paid out of the county treasury.

16.1-15-32. COUNTY AUDITOR TO PUBLISH RETURNS OF ELECTION. The county auditor shall cause to be published in tabular form in the official county newspaper the vote by precincts for each officer and each proposition voted for at any primary, special, or general election. The publication shall be paid for at a rate not to exceed the rate paid for publishing the proceedings of the board of county commissioners.

16.1-15-33. STATE CANVASSING BOARD - MEMBERSHIP - OATH - QUORUM - COMPENSATION. The clerk of the supreme court, the secretary of state, the state treasurer, and the chairman, or his designee, of the state committee of the two political parties which cast the highest vote for governor at the last general election at which a governor was elected shall constitute the state canvassing board. The duties of the state canvassing board are ministerial, mandatory, and nondiscretionary, and consist of canvassing the results received from the various counties, computing the final

results, and certifying the results on the basis of the canvass. After taking the oath required of civil officers, the board shall proceed to canvass publicly the election returns made by the county auditors. Three members of the board shall constitute a quorum and may make the canvass provided for in this chapter and certify to the result thereof. If less than a quorum attend on the day appointed for a meeting of the board, the members attending may summon other state officers until there is a sufficient number to constitute a quorum. Any other state officer, upon being notified by the members of the board, shall attend without delay and act as a member of the board. Members of the board shall be compensated only for their expenses incurred in attending meetings in accordance with sections 44-08-04 and 54-06-09. The compensation shall be paid from the appropriation to the secretary of state.

16.1-15-34. MEMBER OF STATE CANVASSING BOARD - WHEN DISQUALIFIED. When a member of the state canvassing board is a candidate for any office for which he canvasses the votes, the governor shall designate some other state officer to act in his stead at the session of the board while the votes given for that member are being canvassed.

16.1-15-35. MEETING OF STATE CANVASSING BOARD. Not later than twenty-five days next following a primary, general, or special election, the state canvassing board shall meet at the office of the secretary of state for the purpose of canvassing and ascertaining the result of the election. The secretary of state shall notify the members of the board of the date of the meeting.

16.1-15-36. RETURNS TO BE CANVASSED BY STATE CANVASSING BOARD. The state canvassing board, in canvassing to ascertain the result of any election, shall canvass only the regular returns made by the county canvassing board as provided in this chapter.

16.1-15-37. EXAMINATION OF ABSTRACTS BY STATE CANVASSING BOARD - MESSENGER DISPATCHED TO COUNTY WHEN ERROR DISCOVERED. After the state canvassing board is formed, it shall examine the certified abstracts of the county canvassing boards and if it shall appear that:

1. Any material mistake has been made in the computation of votes cast for any person; or

2. The county canvassing board in any county has failed to canvass the votes or any part thereof cast in any precinct in its county,

the board may dispatch a messenger to the county auditor of the county, at the expense of the county, with the board's requirement in writing to the county auditor to certify the fact concerning the mistake or the reason why the votes were not canvassed. The county auditor, to whom the requirement is delivered, shall make a true and full answer thereto under his hand and official seal and shall

deliver the answer with all convenient dispatch to the secretary of state.

16.1-15-38. ADJOURNMENT OF STATE CANVASSING BOARD. The state canvassing board may adjourn from day to day, not exceeding three days in all, except that the board may adjourn for the time necessary to await the return of a messenger dispatched as provided in section 16.1-15-37.

16.1-15-39. DISAGREEMENTS IN CANVASSING RETURNS BY CANVASSING BOARD - DISREGARDING TECHNICALITIES, MISSPELLED WORDS, AND ABBREVIATIONS. In canvassing the returns, a majority of the members of the state canvassing board shall decide all matters of disagreement. The board shall disregard all technicalities, misspelling, the use of initial letters, and the abbreviations of the names of candidates, if it can be ascertained from the returns for whom the votes were intended.

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 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.

16.1-15-41. STATEMENTS OF GENERAL OR SPECIAL ELECTION PREPARED BY STATE CANVASSING BOARD - CONTENTS. Upon receiving the certified abstracts on file with the secretary of state, the state canvassing board shall proceed publicly to examine and make statements of the whole number of votes cast at any general or special election for all state or district offices. The statements shall show the names of the persons for whom the votes were cast for the offices and the whole number of votes for each, distinguishing the several districts and counties in which they were cast.

16.1-15-42. CERTIFICATE OF RESULT OF GENERAL OR SPECIAL ELECTION BY STATE CANVASSING BOARD - SECRETARY OF STATE TO RECEIVE. The statements provided for in section 16.1-15-41 shall be certified by the members of the state canvassing board, who shall subscribe their names to the statements. The board then shall determine what persons have been duly elected to the offices and shall prepare and subscribe on each statement a certificate of that determination and shall deliver the same to the secretary of state. The candidate or

candidates to be elected for each office receiving the highest number of votes shall be duly elected to the office. No person who was entitled to have his name appear on the primary election ballot, but whose name was not placed on the primary election ballot, shall be elected to a no-party office as a write-in candidate unless that person receives a number of votes equal to or more than the number of signatures which would have been required to have his name placed on the primary election ballot.

16.1-15-43. WHEN SPECIAL ELECTION ORDERED. If there is no choice for a district office, other than member of the legislative assembly, or a state office because any two or more persons have equal and the highest number of votes, the governor, by proclamation, shall order a new election.

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 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.

16.1-15-45. FORM OF CERTIFICATE OF ELECTION FOR STATE OFFICERS - SIGNATURES. A certificate of election shall be prepared by the secretary of state for each person elected to a state or a district office. The certificate, in substance, shall be in the following form:

> At an election held on the ---------- day of ----------, 19-----, ---------- was elected to the office of ---------- of this state for the term of ---------- years from the ---------- day of ---------- in the year ---------- (or, if to fill a vacancy, for the residue of the term ending on the ---------- day of ----------, 19----), and until his successor is duly elected and qualified. Given at Bismarck this ---------- day of ----------, 19-----.

The certificate shall be signed by the governor and the secretary of state, and shall have the great seal of the state affixed thereto, and shall be attested by at least one of the other members of the state canvassing board.

16.1-15-46. MEMBERS OF LEGISLATIVE ASSEMBLY TO RECEIVE CERTIFICATES OF ELECTION. At the time election certificates are

issued to state and district officers, the secretary of state shall issue certificates of election to all members of the legislative assembly.

16.1-15-47. CERTIFICATE OF ELECTION TO MEMBER OF CONGRESS - SIGNING - DELIVERING. The certificate of election to a member of Congress shall be signed by the governor with the great seal affixed and shall be countersigned by the secretary of state. The governor shall cause the certificate to be delivered to the person elected.

16.1-15-48. CANVASSING RETURNS OF CONSTITUTIONAL AMENDMENT OR OTHER PROPOSITION - CERTIFIED STATEMENT OF RESULT - CONTENTS. For the purpose of canvassing and ascertaining the result of the votes cast at any election upon any proposed amendment to the Constitution, or any other proposition submitted to a vote of the people, the state canvassing board shall proceed to examine the statements received by the secretary of state from the county auditors to ascertain and determine the result. The board shall certify a statement of the whole number of votes cast for and the whole number of votes cast against an amendment or proposition, and it shall determine whether the amendment or proposition has been approved and ratified by a majority of the electors voting thereon, and a certificate of that determination shall be prepared and subscribed on the statement.

16.1-15-49. CERTIFIED STATEMENT AND DETERMINATION OF RESULTS OF CONSTITUTIONAL AMENDMENTS AND PROPOSITIONS RECORDED BY SECRETARY OF STATE - PUBLISHING. The certified statement and determination provided for in section 16.1-15-48 shall be recorded by the secretary of state. If it appears that a constitutional amendment or other proposition has been approved, ratified, or adopted, the secretary of state shall arrange for the text of the amendment or proposition and a record of the votes cast for and against it to be published in the session laws published after the next succeeding session of the legislative assembly.

SECTION 13. Chapter 16.1-16 of the North Dakota Century Code is hereby created and enacted 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 electors of this state or one of its counties shall be conducted as follows:

1. The 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 less than two percent of the highest vote cast for a candidate of his party for the office sought.

b. Any person who 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. Any person who files a petition signed by at least five electors, when a question or measure submitted to the 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. The recount demand must be made within ten 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 shall be in writing, shall recite one of the conditions in subsection 1 as a basis for the recount, and shall be filed with:

a. The secretary of state when the recount is for a congressional, state, district, or legislative office or a question submitted to the electors of the entire state.

b. The county auditor when the recount is for a county office or a question submitted to the electors of a county.

3. When the secretary of state receives a timely recount demand and finds it to be in the proper form, he shall immediately notify all the county auditors to conduct a recount as provided in this section. The secretary of state shall fix the date of statewide recounts. The date shall be within ten days after receipt of the recount demand. The county auditor shall determine the validity of recount demands filed with him and shall fix the date for recounts limited to his county. The date shall be within ten days after receipt of the recount demand. 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.

4. Recounts shall be conducted by the county auditor who may employ up to four county electors 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 files a recount demand, 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.

5. The persons entitled to participate at the recount are:

   a. Each candidate involved in the recount, either personally or by a representative.

   b. An 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 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.

6. The county auditor shall certify the results of the recount no later than fifteen days after the filing of the recount demand. 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 electorate.

7. In congressional, statewide, district, or legislative recounts, the county auditor shall, no later than fifteen days after the filing of the recount demand, 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 electorate accordingly.

8. 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.

9. 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.

16.1-16-02. WHO MAY CONTEST ELECTION. A defeated candidate or ten qualified electors may contest the nomination or election of any person or the approval or rejection of any question or proposition submitted to a vote of the electorate, pursuant to chapters 16.1-04, 16.1-05, 16.1-06, 16.1-07, 16.1-08, 16.1-09, 16.1-10, and 16.1-11. In a county election to change the county seat or to change the boundaries of the county, the complaint shall be filed against the board of county commissioners, who shall appear and defend the contest action.

16.1-16-03. COMMENCEMENT OF ACTION - PARTIES - STATUS OF CONTESTEE. An action to contest an election shall be commenced by service of a summons and verified complaint. The party instituting the action shall be known as the contestant, and the party against whom the action is instituted shall be known as the contestee. In a contest of an election, the person holding the certificate of election shall take possession and discharge the duties of the office until the contest action is finally decided.

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 demanded, 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 answer within fourteen days after service of the contest summons and complaint.

16.1-16-05. GROUNDS FOR ELECTION CONTEST. An election contest may be commenced for any of the following causes:

1. If the contestee does not or cannot meet the qualifications to hold the office as required by law.

2. Because of illegal votes or erroneous or fraudulent voting, count, canvass, or recount of votes.

16.1-16-06. ELECTION CONTEST TO BE TRIED AS CIVIL ACTION - PRECEDENCE ON COURT CALENDAR. Unless otherwise specifically provided in this chapter, 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.

16.1-16-07. CONTEST INVOLVING IRREGULARITY OF BALLOTS - PRESERVATION OF BALLOTS. Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the county judge of any county where he desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the county judge to preserve all the paper ballots, electronic voting system ballots, and voting machine records until the contest has been finally determined.

16.1-16-08. JUDGMENT IN ELECTION CONTEST ACTION.

1. The judge in an election contest action shall pronounce judgment on which candidate was elected or nominated and whether any question or proposition was approved or rejected.

2. The appropriate officer shall issue a certificate to the person declared elected or nominated in accordance with the judgment. Any certificate of nomination or election previously issued that is in conflict with the judgment shall be annulled by the court's judgment.

3. If the court declares that the election resulted in a tie, the election shall be determined by law.

4. If the court declares that no one was elected or nominated and sets aside the election, the office shall be deemed vacant and any certificate of election or nomination previously issued shall be annulled. The vacancy shall be filled according to law. This subsection shall not apply

if an incumbent is in office and is entitled to serve until his successor is duly elected and qualified, in which event the incumbent may only be removed by impeachment.

5. In the discretion of the court, court costs may be awarded on the following bases:

   a. If the contest action is dismissed for insufficient evidence or want of prosecution, or if the court confirms the election results, judgment for costs shall be for the contestee and against the contestant.

   b. If an election is annulled for errors or malfeasance of any election official during any part of the election procedure, the costs shall be a charge against the state or political subdivision in which the election was held.

   c. When an election is annulled on any other ground or when the contestant is declared elected, judgment for costs shall be for the contestant and against the contestee.

6. Nothing in this chapter shall be construed to authorize a nomination or election to be set aside because of illegal votes unless either of the following is shown, that:

   a. The contestee had knowledge of or connived in the illegal votes.

   b. If the number of illegal votes is taken from the contestee, it would reduce the number of his legal votes below the number of votes cast for some other person for the same nomination or election, after deducting any illegal votes from the other person.

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 of election contest actions shall be conducted in the manner provided by law or rule for civil appeals from the district court. 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.

16.1-16-10. LEGISLATIVE CONTEST OF ELECTION. Legislative election contests shall 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 demanded.

16.1-16-11. ANSWER TO LEGISLATIVE STATEMENT OF CONTEST. The member whose election to the legislative assembly is contested shall serve his answer on the party contesting and file a copy of the answer with the secretary of state within ten days after the service of the statement of contest. Any allegations in the statement of contest that are not denied in the answer shall be deemed admitted.

16.1-16-12. DEPOSITIONS - SUBPOENAS - TIME LIMITS. Depositions taken to preserve testimony and gather evidence in legislative election contests shall be taken as provided by law or rule for taking depositions in civil actions in this state. Subpoenas may be issued to compel attendance and the production of books, papers, or records as provided by law or rule for the issuance of subpoenas in civil actions in this state. Any person refusing or neglecting to attend and testify or produce books, papers, or records in obedience to a subpoena, without good cause shown, shall be guilty of a class A misdemeanor. No depositions shall be taken by either party until the answer is served on the party contesting.

16.1-16-13. PRESERVATION OF BALLOTS. Either party to a legislative election contest may secure the preservation of ballots and records as provided in section 16.1-16-07.

16.1-16-14. TESTIMONY AND RECORDS FILED WITH SECRETARY OF STATE - SECRETARY OF STATE TO DELIVER TO PRESIDING OFFICER. The officer before whom any deposition is taken in a legislative election contest shall transmit the records of the testimony of witnesses, all books, papers, and records produced, a copy of the notice to take the deposition and proof of service thereof, and a copy of the subpoena, if one was issued, to the secretary of state. Those records shall be certified by the officer before whom the deposition was taken. The secretary of state shall deliver the statement of contest, the answer, and all records received by him pursuant to this section to the presiding officer of the house of the legislative assembly in which the election contest is pending, on or before the second day of the organizational session of the legislative assembly.

16.1-16-15. DETERMINATION OF CONTEST - CERTIFICATE OF ELECTION. The legislative election contest shall be heard and decided as provided by the legislative assembly. The secretary of state shall issue a certificate of election to the person declared elected, and any certificate of election previously issued in conflict with the decision in the contest shall be annulled.

16.1-16-16. FEES OF OFFICERS AND WITNESSES. All fees of officers and witnesses in a legislative election contest heard by a house of the legislative assembly shall be paid by the party at whose instance the service or attendance was performed. The fees charged and paid shall be in the same amount as the fees for similar services in civil actions in courts of record in this state.

16.1-16-17. PAYMENT FOR PROSECUTING OR DEFENDING LEGISLATIVE ELECTION CONTEST PROHIBITED. No payment shall be made by the legislative assembly to either party to a legislative election contest heard by a house of the legislative assembly for expenses incurred in prosecuting or defending the contest.

* SECTION 14. REPEAL. Chapters 16-01, 16-03, 16-05, 16-06, 16-07, 16-08, 16-09, 16-10, 16-13, 16-14, 16-15, 16-16, 16-21, and sections 16-04-02.1, 16-04-03, 16-04-05, 16-04-06, 16-04-08, 16-04-09, 16-04-10, 16-04-12, 16-04-15.1, 16-04-15.2, 16-04-18, 16-04-19, 16-04-25, 16-04-26, 16-04-27, 16-04-28, 16-04-29, 16-04-30, 16-04-31, 16-04-32, 16-04-33, 16-04-34, 16-04-35, 16-04-36, 16-11-01, 16-11-02, 16-11-03, 16-11-05.1, 16-11-09, 16-11-10, 16-11-11, 16-11-13, 16-11-14, 16-11-15, 16-11-16, 16-12-01, 16-12-02, 16-12-03, 16-12-04, 16-12-05, 16-12-06, 16-12-07, 16-12-08, 16-12-10, 16-12-11, 16-12-12, 16-12-13, 16-18-01, 16-18-02, 16-18-03, 16-18-04, 16-18-05, 16-18-06, 16-18-07, 16-18-08, 16-18-11, 16-18-15, 16-18-16, 16-18-20, 16-20-16, 16-20-17, 16-20-18, 16-20-22, and 16-20-23 of the North Dakota Century Code; chapters 16-21.1, 16-22, and sections 16-04-02, 16-04-04, 16-04-13, 16-04-16, 16-04-17, 16-04-21, 16-11-04, 16-12-09, 16-12-16, 16-18-12, 16-18-14, 16-20-01, 16-20-01.1, 16-20-17.1, 16-20-17.2, 16-20-17.3, 16-20-19, and 16-20-24 of the 1977 Pocket Supplement to the North Dakota Century Code; and sections 16-04-07, 16-11-07, 16-11-12, and 16-18-17 of the 1979 Special Supplement to the North Dakota Century Code are hereby repealed.

Approved April 6, 1981

* NOTE: Section 16-01-11 was amended by section 1 of House Bill No. 1231, chapter 229, and section 16-08-07 was amended by section 1 of House Bill No. 1209, chapter 231.

CHAPTER 242

SENATE BILL NO. 2378
(Melland)

CONSTITUTIONAL AMENDMENT INTENT STATEMENT

AN ACT to require a statement of intent to accompany proposed constitutional amendments; to amend and reenact sections 16-01-07 and 16-11-07 of the North Dakota Century Code, relating to the advertisement of constitutional amendments and other questions and the ballot placement of constitutional amendments and initiated and referred measures, or in the alternative, to amend and reenact sections 16.1-01-07 and 16.1-06-09 of the North Dakota Century Code, as created by House Bill No. 1225, as approved by the forty-seventh legislative assembly, relating to the advertisement of constitutional amendments and other questions and the ballot placement of constitutional amendment; and to declare an emergency.

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

SECTION 1. CONSTITUTIONAL AMENDMENTS - STATEMENT OF INTENT. Every resolution proposing a change in the Constitution of North Dakota shall contain a statement setting forth in clear and precise language the legislative purpose and intent of the proposed change; the statement shall fairly represent the substance and effect of the proposed change. The statement shall immediately precede the ballot title of the proposed constitutional amendment on the printed ballot, voting machines, or electronic voting systems.

SECTION 2. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly or for some other reason does not take effect, then section 16-01-07 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-01-07. 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 thirty days before election, certify the same to the auditor of each county in the

state, and the auditor of each county shall cause notice thereof to be included in the notice required by section 16-06-02 for the election. Questions to be submitted to the people of the county shall be advertised in the same manner.

The secretary of state shall, at the same time that he certifies notice to the county auditors of the submission of a constitutional amendment or an initiated or referred measure, certify the form of the ballot for such measures. Such form shall conform to the provisions of section 16-11-07 and section 1 of this Act 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 form of voting is used in the area. If both paper ballots and voting machines are used, both forms must be published as sample ballots to meet publication and notice requirements.

At the same time as the sample ballot is published, the complete text of any constitutional amendment, initiated measure, or referred measure shall be published in columns to enable the electors to become familiar with the total text of the proposed constitutional amendment or initiated or referred measure, in addition to the sample ballot listing ballot titles.

SECTION 3. AMENDMENT. If House Bill No. 1225 is not approved by the forty-seventh legislative assembly or for some other reason does not take effect, then section 16-11-07 of the 1979 Special Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-11-07. CONSTITUTIONAL AMENDMENTS AND INITIATED AND REFERRED MEASURES - PLACED ON SEPARATE BALLOT - MANNER OF STATING QUESTION - EXPLANATION OF EFFECT OF VOTE - ORDER OF LISTING. Constitutional amendments duly certified to the county auditor by the secretary of state, or any question to be voted for aside from the election of public officers, shall be printed on a separate ballot by ballot title only and in the manner specified by the secretary of state and shall be deposited in a box separate from that provided to receive the ballots for public officers. The size of type to be used on such ballots shall be specified by the secretary of state. Immediately preceding the ballot title of the ~~constitutional amendment or~~ initiated or referred measure on the printed ballot, the secretary of state shall cause to be printed a short, concise statement in boldface type, which statement shall fairly represent the substance of the ~~constitutional amendment or the~~ initiated or referred measure. The attorney general shall approve all such statements written by the secretary of state.

Immediately subsequent to the foregoing statement, the secretary of state shall cause to be printed another short, concise statement of the effect of an affirmative or negative vote on the constitutional amendment or initiated or referred measure in terms of whether the proposal will or will not enact, amend, or repeal a portion or portions of the constitution or laws of the state of North Dakota if an affirmative or negative vote should prevail. This explanatory statement shall be drafted by the secretary of state and shall be approved by the attorney general. The words "Yes" and "No" shall be printed on the ballot at the close of the statement regarding the effect of an affirmative or negative vote, in separate lines with a square formed of black lines after each statement in which the voter may indicate by a cross or other mark how he desires to vote on the question. Where two or more amendments or questions are to be voted on, they shall be printed on the same ballot. In precincts in which voting machines are used, the ballot title, in the case of amendments or measures submitted by the people, or the title of the legislative bill or resolution, which shall serve as the ballot title, in the case of proposed amendments submitted by the legislative assembly, shall be set forth in full. Provided, however, in such cases where the ballot title or the title of the legislative bill or resolution is of such length to make it physically impossible to fit such titles upon voting machines, the attorney general shall reduce such titles to a length which will allow the placing of such titles upon voting machines, but shall fully express the purpose of such amendments or questions, and such reduced version of the titles shall be used on the voting machines.

The measures to be submitted to the electors shall be grouped and classified as constitutional measures, initiated statutes, or referred statutes and shall be placed within such groups or classifications by the secretary of state in the order received, for the purpose of placing them on the ballot. Measures submitted by the legislative assembly shall be placed first on the ballot within their classification in the order approved by the legislative assembly. Constitutional measures shall be placed first on the ballot, initiated statutes second, and referred statutes third. After all the measures have been placed within the appropriate group or classification, all measures shall be numbered consecutively, without regard to the various groups or classifications.

SECTION 4. AMENDMENT. Section 16.1-01-07 of the North Dakota Century Code as created by section 1 of House Bill No. 1225, as approved by the forty-seventh legislative assembly, 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 thirty 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 section 16.1-06-09 and section 1 of this Act 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 5. AMENDMENT. Section 16.1-06-09 of the North Dakota Century Code as created by section 4 of House Bill No. 1225, as approved by the forty-seventh legislative assembly, is hereby amended and reenacted to read as follows:

16.1-06-09. CONSTITUTIONAL AMENDMENTS AND INITIATED AND REFERRED MEASURES - PLACED ON SEPARATE BALLOT - MANNER OF STATING QUESTION - EXPLANATION OF EFFECT OF VOTE - ORDER OF LISTING. Constitutional amendments or measures, initiated measures, and referred measures, duly certified to the county auditor by the secretary of state, or any other question or measure to be voted on, except the election of public officers at any primary, general, or special election including officers subject to a recall petition, shall be printed on a separate ballot by ballot title only and in the manner specified by the secretary of state and shall be deposited in a box separate from that provided to receive the ballots for public officers. The ballot title shall be written by the secretary of state and approved by the attorney general. The size of type to be used on such ballots shall be specified by the secretary of state. Immediately preceding the ballot title of the ~~constitutional amendment or measure,~~ initiated ~~measure,~~ or referred measure on the printed ballot, the secretary of state shall cause to be printed a short, concise statement in boldface type, which statement shall fairly represent the substance of the ~~constitutional amendment or measure,~~ initiated ~~measure,~~ or referred measure. The attorney general shall approve all such statements written by the

secretary of state. Immediately subsequent to the foregoing statement, the secretary of state shall cause to be printed another short, concise statement of the effect of an affirmative or negative vote on the constitutional amendment or measure, initiated measure, or referred measure in terms of whether the proposal will or will not enact, amend, or repeal a portion or portions of the constitution or laws of the state of North Dakota if an affirmative or negative vote should prevail. This explanatory statement shall be drafted by the secretary of state and shall be approved by the attorney general. The words "Yes" and "No" shall be printed on the ballot at the close of the statement regarding the effect of an affirmative or negative vote, in separate lines with a square formed of black lines after each statement in which the voter may indicate by a cross or other mark how he desires to vote on the question. Where two or more amendments or questions are to be voted on, they shall be printed on the same ballot. In precincts in which voting machines or electronic voting systems are used, the ballot title, in the case of amendments or measures submitted by the people, or the title of the legislative bill or resolution, which shall serve as the ballot title, in the case of proposed amendments submitted by the legislative assembly, shall be set forth in full. Provided, however, in such cases where the ballot title or the title of the legislative bill or resolution is of such length to make it physically impossible to fit such titles upon voting machines, the attorney general shall reduce such titles to a length which will allow the placing of such titles upon voting machines, but shall fully express the purpose of such amendments or questions, and the reduced version of the titles shall be used on the voting machines.

The measures to be submitted to the electors shall be grouped and classified as constitutional measures, initiated statutes, or referred statutes and shall be placed within such groups or classifications by the secretary of state in the order received, for the purpose of placing them on the ballot. Measures submitted by the legislative assembly shall be placed first on the ballot within their classification in the order approved by the legislative assembly. Constitutional measures shall be placed first on the ballot, initiated statutes second, and referred statutes third. After all the measures have been placed within the appropriate group or classification, all measures shall be numbered consecutively, without regard to the various groups or classifications.

SECTION 6. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 25, 1981

CHAPTER 243

SENATE BILL NO. 2161
(Senator Tennefos)
(Representative Kloubec)

CAMPAIGN CONTRIBUTION RESTRICTIONS

AN ACT to prohibit campaign contributions by corporations, cooperative corporations, and associations; to repeal sections 16-20-05, 16-20-08, 16-20-09, 16-20-10, and 16-20-12 of the North Dakota Century Code, relating to campaign contributions by corporations and cooperative corporations; 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 otherwise plainly requires:

1. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including, but not limited to, labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. Association shall not include corporations, cooperative corporations, political committees, or political parties.

2. "Candidate" means a person whose name is presented for nomination to public office at any primary election or convention, whether the person is actually nominated or not; a person whose name is printed as a candidate on an official ballot used at any election; or a person who seeks election through write-in votes.

3. "Contribution" means a gift of money or property, subscription, loan, advance, or deposit of money, except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election, of any person to office. 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.

4. "Cooperative corporations" and "corporations" are as defined in the North Dakota Century Code.

5. "Expenditure" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or property, except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election, of any person to office. Expenditure also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.

6. "Patron" means a person who owns equity interest in the form of stock, shares, or membership, or maintains similar financial rights in a cooperative corporation.

7. "Person" means an individual, partnership, committee, association, corporation, cooperative corporation, or other organization or group of persons.

8. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes.

9. "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 or legislative districts and whose name appears on the election ballot as the candidate of such association, committee, or organization.

10. "Political purpose" or "political purposes" means any activity undertaken in support of or in opposition to the election or nomination of a candidate whether the activity is undertaken by a candidate, a political committee, a political party, or any person.

SECTION 2. CAMPAIGN CONTRIBUTIONS BY CORPORATIONS, COOPERATIVE CORPORATIONS, AND ASSOCIATIONS PROHIBITED - VIOLATION - PENALTY.

1. No corporation, cooperative corporation, or association shall make a direct contribution:

a. To aid any political party, political committee, or organization.

b. To aid any corporation or association organized or maintained for political purposes.

c. To aid any candidate for political office or for nomination to such office.

d. For any political purpose or the reimbursement or indemnification of any person for money or property so used.

e. For the influencing of any measure before the legislative assembly, except in accordance with chapter 54-05.1.

2. Nothing in this section shall be construed to prohibit the establishment, administration, and solicitation of contributions to a separate and segregated fund to be utilized for political purposes by a corporation, cooperative corporation, or association. It shall be unlawful for:

a. The person or persons controlling such a fund to make contributions or expenditures utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of them; or utilizing money from dues, fees, treasury funds, or other money required as a condition of membership in an association, or as a condition of employment; or utilizing money obtained in any commercial transaction. Moneys from fees, dues, treasury funds, or money obtained in a commercial transaction may, however, be used to pay costs of administration of the fund.

b. Any person soliciting an employee, stockholder, patron, or member for a contribution to such a fund to fail to inform the employee or member of the political purposes of the fund at the time of the solicitation, or of the general political philosophy intended to be advanced through committee activities.

c. Any person soliciting an employee or member for a contribution to such a fund to fail to inform the employee or member, at the time of the solicitation, of his right to refuse to contribute without any reprisal.

d. Any contribution to be accepted without keeping an accurate record of the contributor and amount contributed, and of amounts expended for political purposes.

e. Any contribution to be accepted from any person who is not an employee, stockholder, patron, or member of the corporation, cooperative corporation, or association maintaining the political committee.

3. All political committees formed for the purpose of administering the segregated fund provided for herein shall file a statement listing all contributions received in excess of one hundred dollars in the aggregate for the calendar year covered by the statement, showing the name and mailing address of each contributor of an amount in excess of one hundred dollars in the aggregate for the calendar year covered by the statement, and a listing of all disbursements made for political purposes, no later than October fifteenth of each calendar year with the office of secretary of state.

a. The form of all statements required by this Act shall be as prescribed by the secretary of state.

b. The secretary of state may arrange an audit of any statement filed pursuant to this Act. The secretary of state shall arrange an audit of any statement that the attorney general requests to be audited. The results of the audit shall be reported to the attorney general.

c. Records and statements shall be preserved by the secretary of state for a period of four years from the date of filing. The records and statements are public records and shall be open to public inspection.

4. No person shall make a payment of his own money or of another person's money to any other person for a political purpose in any name other than that of the person who supplies such money, and no person knowingly shall receive such payment nor enter nor cause the same to be entered in his account or record in any name other than that of the person by whom it actually was furnished.

5. If an officer, employee, agent, attorney, or other representative of a corporation, cooperative corporation, or association makes any contribution prohibited by this section out of corporate, cooperative corporation, or association funds or otherwise violates the provisions of this section, it shall be prima facie evidence of a violation by the corporation, cooperative corporation, or association.

6. A violation of the provisions of this section may be prosecuted in the county where the contribution is made, or in any county in which it has been paid or distributed.

7. It shall be a class A misdemeanor for an officer, director, stockholder, attorney, agent, or representative of any corporation, cooperative corporation, or association to violate any of the provisions of this section, or to counsel or consent to any violation. Any person who solicits or knowingly receives any contribution in violation of the provisions of this section shall be guilty of a class A misdemeanor.

8. Any officer, director, stockholder, attorney, agent, or representative who makes, counsels, or consents to the making of a contribution in violation of this section shall be liable to the company, corporation, or association for the amount so contributed.

SECTION 3. PERSON NOT EXCUSED FROM TESTIFYING AS TO VIOLATION - PROSECUTION OR PENALTY WAIVED UPON TESTIFYING. No person shall be excused from attending and testifying or producing any books, papers, or other documents before any court upon any investigation, proceeding, or trial for a violation of any of the provisions of this Act, upon the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him. No person shall be prosecuted nor subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him in any criminal investigation or proceeding.

SECTION 4. EXPENDITURES FOR OTHER PURPOSES. Nothing in this Act shall be construed to prohibit the exercise by corporations, cooperative corporations, and associations of the right to make expenditures and contributions for the purpose of promoting passage or defeat of initiated or referred measures, or for promoting any general political philosophy or belief deemed in the best interest of the employees, stockholders, patrons, or members of the corporation, cooperative corporation, or association other than a "political purpose" as defined by this Act.

* SECTION 5. REPEAL. Section 16-20-08 of the 1979 Special Supplement to the North Dakota Century Code, 16-20-09 of the 1977 Pocket Supplement to the North Dakota Century Code, and sections 16-20-05, 16-20-10, and 16-20-12 of the North Dakota Century Code are hereby repealed.

Approved April 1, 1981

* NOTE: Section 16-20-05 was also repealed by section 1 of House Bill No. 1262, chapter 235.

CHAPTER 244

HOUSE BILL NO. 1218
(Black)

CAMPAIGN CONTRIBUTION STATEMENTS

AN ACT to provide candidate accountability by requiring the filing of statements of campaign contributions by candidates, political parties, and political committees, the audit of such statements; 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 otherwise plainly requires:

1. "Candidate" means a person whose name is presented for nomination to public office at any primary election whether the person is actually nominated or not; a person whose name is printed as a candidate on an official ballot used at any election; or a person who seeks election through write-in votes.

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. 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 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 3 of this Act.

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. PREELECTION STATEMENT REQUIRED OF CANDIDATES - CONTENTS - ADDITIONAL STATEMENTS. Any candidate for a public office at any general, primary, or special election shall make and file a statement in accordance with this section. The statement shall be filed on the thirtieth day prior to any election and be complete through the thirty-third day prior to the election and shall contain a detailed statement of all contributions received from an individual or a political committee which exceed one hundred dollars in amount.

The statement shall include the name and mailing address of all contributors listed. Within fifteen days after the election, each candidate, or his committee, shall file an additional statement in the same form to be complete through ten days after the election. Within thirty days of the close of the calendar year, each candidate, or his committee shall file an additional statement in the same form for the remainder of the calendar year. All reports filed pursuant to this section shall be consecutive and, taken together, shall cover the entire year's receipts. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period shall be aggregated for the purposes of the statements required by this Act.

The form of all statements required by this Act shall be as prescribed by the secretary of state. Statements of a legislative candidate shall be filed in the office of the county auditor of the candidate's county of residence. Statements of state office candidates and any other required statements shall be filed in the office of the secretary of state.

No candidate shall be required to file any statement required by this Act if he has not received any contributions in excess of one hundred dollars.

SECTION 3. CONTRIBUTIONS STATEMENT REQUIRED OF POLITICAL PARTIES. Any political party which receives contributions in excess of one hundred dollars and which contributes money to a candidate in excess of one hundred dollars shall, within thirty days of the close of the calendar year, do one of the following:

1. File a statement listing the total amount contributed to or expended on behalf of a candidate or candidates.

2. File a statement containing a detailed list of all contributions received from an individual or political committee which exceed one hundred dollars in amount. The statement shall include the name and mailing address of all contributors listed.

SECTION 4. SUPPLEMENTAL STATEMENT REQUIRED ON LARGE CONTRIBUTIONS RECEIVED AFTER ORIGINAL STATEMENT - FILING TIME. If any candidate shall receive any contribution of five hundred dollars or more within the nine days immediately prior to any election from any individual contributor, that candidate shall make and file a supplemental statement in the same form as required by section 2, 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.

SECTION 5. ANNUAL AUDIT BY SECRETARY OF STATE - RANDOM AND REQUESTED AUDITS - REPORTS. The secretary of state may arrange an audit of any statement filed pursuant to this Act. The secretary of state shall arrange an audit of any statement that the attorney general requests to be audited. The results of the audit shall be reported to the attorney general.

SECTION 6. REQUIREMENTS. A statement required by this Act to be filed with the secretary of state or county auditor shall be:

1. Verified by the oath or affirmation of the person filing the statement, taken before any officer authorized to administer oaths.

2. Deemed properly filed when deposited in an established post office within the prescribed time, postage affixed, and directed to the secretary of state or county auditor,

but in the event it is not received, a duplicate of the statement shall be promptly filed upon notice by the secretary of state or county auditor of its nonreceipt.

3. Preserved by the secretary of state or county auditor for a period of four years from the date of filing. The statement is to be considered a part of the public records of his office and shall be open to public inspection.

SECTION 7. PENALTY. Any person who shall willfully violate any provision of this Act shall be guilty of an infraction.

Approved April 6, 1981

CHAPTER 245

HOUSE BILL NO. 1253
(Representatives Swiontek, Boyum, Meiers)
(Senators Stenehjem, Holmberg)

PRESIDENTIAL DELEGATE OBLIGATIONS

AN ACT to amend and reenact section 3 of chapter 276 of the 1979 Session Laws of North Dakota, relating to the obligations of delegates to the party national convention.

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

SECTION 1. AMENDMENT. Section 3 of chapter 276 of the 1979 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 3. PRESIDENTIAL PREFERENCE PRIMARY AN ADDITIONAL ELECTION - OBLIGATIONS OF DELEGATES. The presidential preference primary provided for by this Act shall be in addition to all other elections held on the date of the primary. The delegates selected by political parties shall be bound to cast their first ballots at the party national convention in such a manner that each candidate at the party's presidential preference primary receives a proportion of the total votes cast by the delegates equal to the proportion received by that candidate of the total votes cast for all candidates for president of that party at the primary. In computing the number of delegates a candidate may be entitled to on the first ballot, if party rules do not allow apportionment of a delegate and such an apportionment appears necessary because no candidate received more than five-tenths of a delegate, then that delegate shall be assigned to the candidate receiving the highest number of votes in the primary election. If a candidate withdraws before the first ballot voting begins, delegates obligated to vote for that candidate on the first ballot would be released from that obligation.

Approved March 11, 1981

FIRES

CHAPTER 246

SENATE BILL NO. 2328
(Stenehjem)

STATE FIRE MARSHAL DEPARTMENT SUPERVISION

AN ACT to amend and reenact section 18-01-01 of the North Dakota Century Code, relating to the appointment of the fire marshal.

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

SECTION 1. AMENDMENT. Section 18-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-01-01. APPOINTMENT OF FIRE MARSHAL - APPOINTMENT AND SALARIES OF DEPUTIES - EMPLOYMENT OF ASSISTANTS. The attorney general shall appoint the state fire marshal~~, and fix his salary within the legislative appropriation therefor~~ and supervise the operation of the state fire marshal department. The state fire marshal shall ~~have the management, control and supervision of~~ manage the fire marshal department and shall perform the duties imposed on the state fire marshal by the provisions of this chapter.

The state fire marshal shall appoint ~~and fix the salaries of~~ such deputies and other employees as he deems necessary to carry out the provisions of this chapter within the limits of legislative appropriations therefor.

Before entering upon their duties, the state fire marshal and each deputy appointed under this section shall give a bond to the state of North Dakota in the penal sum of five thousand dollars, conditioned for the faithful discharge of his duties and he shall take and subscribe the constitutional oath of office and file the same in the office of the secretary of state.

The fire marshal department shall be operated in conjunction with the bureau of criminal ~~identification and apprehension, but shall have a separate budget appropriated by the legislative assembly from the general fund~~ investigation. The budget for the fire marshal department shall be submitted as part of the attorney general's budget.

Approved March 11, 1981

CHAPTER 247

HOUSE BILL NO. 1343
(Marsden)

RURAL FIRE PROTECTION PROGRAM

AN ACT to amend and reenact section 18-02-07 of the North Dakota Century Code, relating to aid, contracts, and cooperation between the state forester and other entities; and to provide an appropriation.

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

SECTION 1. AMENDMENT. Section 18-02-07 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-02-07. COOPERATION OF FORESTER AND OTHER AGENCIES. The state forester may cooperate and contract jointly or severally with departments and agencies of this or other states, with federal agencies, with counties, townships, or other political subdivisions, including, but not limited to, rural fire protection districts, rural fire departments, municipal, and other corporations or with individuals to the best interest of the people and the state, in forest surveys, research in forestry, forest protection, including assisting fire departments in protection of forests and other resources and in assisting landowners to secure adoption of better forestry practice. ~~He~~ The state forester is specifically authorized to:

1. Cooperate and contract with the United States or any appropriate agency thereof to receive and use federal aid and matching funds which the state and its subdivisions may become eligible to receive.

2. Apply for, receive, and expend federal grants-in-aid and matching funds for ~~forest-and~~ fire protection services.

3. Purchase ~~forest--and~~ or otherwise acquire fire protection equipment to lease or sell to rural fire ~~protection districts~~ departments and generally to aid rural fire departments and rural fire protection districts.

SECTION 2. 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/or other income, the sums as hereinafter provided, or so much thereof as may be necessary, to the state forester, for the biennium beginning July 1, 1981, and ending June 30, 1983, for defraying expenses of the rural forest and fire protection program as follows:

Salaries and wages	$ 22,000
Operating expenses	52,400
Equipment	500
Grants, benefits, and claims	400,000
Total all funds	$474,900
Less estimated income	274,900
Total general fund appropriation	$200,000

SECTION 3. INTENT. No part of the general fund appropriation provided in section 2 of this Act shall be used for any nonreimbursable expenditure.

Approved March 26, 1981

CHAPTER 248

HOUSE BILL NO. 1267
(Marsden)

RURAL FIRE PROTECTION DISTRICT LEVY

AN ACT to amend and reenact sections 18-10-07 and 18-10-14 of the North Dakota Century Code, relating to rural fire district mill levies.

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

SECTION 1. AMENDMENT. Section 18-10-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-10-07. FIRE PROTECTION POLICY TO BE DETERMINED. The board of directors shall have the power and duty to determine upon a general fire protection policy for the district and shall annually estimate the probable expense for carrying out such contemplated program. Such estimate shall be certified by the president and secretary to the proper county auditor or county auditors, on or before June thirtieth of each year, who shall levy a tax ~~not to exceed five mills~~ upon the taxable property within said district for the maintenance of the fire protection district for the fiscal year as provided by law. ~~Said~~ The tax shall not exceed five mills, except upon resolution adopted by the board of directors after receipt of a petition by not less than twenty percent of the electors residing within the district, the levy may be made in an amount not to exceed ten mills. No signature on the petition shall be considered valid if made more than ninety days prior to receipt of the petition. The tax shall be:

1. Collected as other taxes are collected in the county;

2. Turned over to the secretary-treasurer of the rural fire protection district, who shall have a surety bond in the amount of at least five thousand dollars;

3. Placed to the credit of the rural fire protection district so authorizing the same by its secretary-treasurer in a state or national bank; and

4. Paid out upon warrants drawn upon the fund by authority of the board of directors of the district, bearing the signature of the secretary-treasurer and the countersignature of the president of the rural fire protection district.

In no case shall the amount of tax levy exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual estimate of expense including the amount of principal and interest upon the indebtedness of the district for the ensuing year.

SECTION 2. AMENDMENT. Section 18-10-14 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-10-14. RATE OF TAX FIXED. The rate of tax for functions pursuant to this chapter shall not exceed for the purchase of rural firefighting equipment in rural fire districts which may be organized upon petition of sixty percent of the freeholders, comprising an area of one or more townships, or for the purpose of assisting and contributing to the purchase and upkeep of firefighting equipment in adjoining cities not more than five mills per dollar valuation upon the property in ~~such~~ the rural fire district except, upon resolution adopted by the board of directors upon receipt of a petition by not less than twenty percent of the electors residing within the district, the levy may be increased up to ten mills. The provisions of this section shall not limit the authority of the district to issue bonds and levy taxes for their payment in accordance with chapter 21-03.

Approved March 31, 1981

FOOD AND DRUGS

CHAPTER 249

HOUSE BILL NO. 1202
(Committee on Industry, Business, and Labor)
(At the request of the State Board of Pharmacy)

DRUG LICENSE OR PERMIT FEE

AN ACT to amend and reenact subsection 15 of section 19-02.1-02 of the North Dakota Century Code, relating to prohibited acts of manufacture and sale of drugs at wholesale or retail without license and payment of license fee.

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

SECTION 1. AMENDMENT. Subsection 15 of section 19-02.1-02 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15. The manufacture of drugs, or the supplying of drugs at wholesale or retail, unless a license or permit to do so has first been obtained from the ~~state~~ board of pharmacy after application to the ~~state~~ board of pharmacy and the payment of a ~~licensing~~ fee ~~of not to exceed three dollars~~ set by the board of pharmacy.

Approved February 20, 1981

CHAPTER 250

HOUSE BILL NO. 1400
(Hoffner, Wagner)

CODE IMPRINT ON SOLID DOSAGE DRUGS

AN ACT to amend and reenact section 19-02.1-14.1 of the North Dakota Century Code, relating to definitions, identification, and dispensing of prescription drugs; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 19-02.1-14.1 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-14.1. DEFINITIONS - LABEL OF PRESCRIPTION DRUGS - SELECTING AND DISPENSING GENERIC NAME DRUGS - IDENTIFICATION OF PRESCRIPTION DRUGS.

1. As used in this section, unless the subject matter or context otherwise requires:

   a. "Brand name" means the registered trademark name given to a drug or medicine by its manufacturer, labeler, or distributor.

   b. ~~"Generic--name"-means-the-established-name-or-official chemical-name-of-the-drug,-drug-product,-or--medicine.~~ "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, or marks or monograms unique to the manufacturer or distributor of the drug, or both.

   c. ~~"Therapeutically-equivalent"-means-a-generic-name-drug product--that--would--elicit--the---same---therapeutic response--from--the--same--person-as-a-brand-name-drug product.~~ "Distributor" means a person who distributes for resale a drug in solid dosage form under his own label even though he is not the actual manufacturer of the drug.

d. "Generic name" means the established name or official chemical name of the drug, drug product, or medicine.

e. "Prescription drug" means any drug defined by section 503(b) of the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.".

f. "Solid dosage form" means capsules or tablets intended for oral use.

g. "Therapeutically equivalent" means a generic name drug product that would elicit the same therapeutic response from the same person as a brand name drug product.

2. Drugs or medicines dispensed pursuant to a prescription shall bear a label permanently affixed to the immediate container in which the drug or medicine is dispensed and which is received by the purchaser. The label shall bear the brand name or the generic name and strength of the drug or medicine, except when the physician or other health care provider authorized by law to prescribe drugs or medicine has notified the pharmacist that the appearance of the name on the label would be alarming to or detrimental to the well-being of the purchaser of the prescription.

3. The form for a written prescription shall have two signature lines at opposite ends of the bottom of the form. Under the line on the right side shall be clearly printed the words "dispense as written". Under the line on the left side shall be clearly printed the words "substitution permitted". The physician shall communicate his instructions to the pharmacist by signing the appropriate line. If an oral prescription for a brand name drug product is given to a pharmacist, the practitioner shall instruct the pharmacist as to whether the drug must be dispensed as prescribed or whether a therapeutically equivalent generic name drug product may be substituted in its place. The pharmacist shall note the instructions on the file copy of the prescription. The pharmacist shall not substitute a generic name drug product unless its price to the purchaser is less than the price of the prescribed drug product. In addition, a pharmacist shall not substitute drug products in the following dosage forms: enteric coated tablets, controlled release products, injectable suspensions other than antibiotics, suppositories containing active ingredients for which systemic absorption is necessary for therapeutic activity, and different delivery systems for aerosol and nebulizer drugs. In the event that any drug listed above is, subsequent to the effective date of this

subsection, determined to be therapeutically equivalent, then the previously mentioned substitution ban shall be automatically removed for that drug. The pharmacist shall inform the person receiving the drug when a prescription for a brand name drug product does not require that the prescribed drug be dispensed and of the person's right to refuse a generic name drug product selected by the pharmacist. The pharmacy file copy of every prescription shall include the brand name, if any, or the name of the manufacturer, packer, or distributor of the generic name drug dispensed. A pharmacist who selects and dispenses a therapeutically equivalent generic name drug product shall assume no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its generic name.

4. In the case of a prescription for which a maximum allowable cost program for purposes of reimbursement has been established under title XIX of the Federal Social Security Act, the following shall also apply:

   a. If the practitioner has signed the appropriate line of a prescription instructing the pharmacist to dispense as written, the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting. The pharmacist may dispense a therapeutically equivalent generic name drug product if this handwritten instruction does not appear on the prescription.

   b. If the pharmacist is instructed orally to dispense a brand name drug as prescribed, the pharmacist shall reduce the prescription to writing and shall note the instructions on the file copy of the prescription. The prescription shall then be signed by the practitioner on the appropriate line and the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting.

5. A pharmacist may not select and dispense a ~~generic name~~ different drug product for a prescribed drug product unless it has been manufactured with the following minimum manufacturing standards and practices by a manufacturer who:

   a. Marks capsules and tablets with identification code or monogram.

   b. Labels products with their expiration date.

   c. Provides reasonable services to accept return goods that have reached their expiration date.

d. Provides the pharmacist with information from which it can be determined whether a drug product is therapeutically equivalent.

e. Maintains recall capabilities for unsafe or defective drugs.

6. No prescription drug in solid dosage form may be manufactured or distributed in this state unless it is clearly marked or imprinted with a code imprint identifying the drug and the manufacturer or distributor of the drug.

7. All manufacturers and distributors of prescription drugs in solid dosage form shall provide to the department, upon request, a listing of all such prescription drugs identifying by code imprint the manufacturer and the specific type of drug. The listing shall at all times be kept current by all manufacturers and distributors subject to the provisions of this section.

8. The department may grant exemptions from the requirements of this section upon application by any drug manufacturer or distributor which shows size, physical characteristics, or other unique characteristics of a drug that render the use of a code imprint on the drug impractical or impossible. Any exemption granted by the department shall be included by the manufacturer or distributor in the listing required by this section. The listing shall describe the physical characteristics and type of drug to which the exemption relates.

9. All prescription drugs in solid dosage form that are possessed, distributed, sold, or offered for sale in violation of the provisions of this section shall be deemed misbranded and shall be seized by the department.

SECTION 2. EFFECTIVE DATE. This Act shall become effective on January 1, 1982.

Approved March 16, 1981

GAME AND FISH

CHAPTER 251

SENATE BILL NO. 2184
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

FUR-BEARERS AND GUN DOGS

AN ACT to amend and reenact subsections 9 and 36 of section 20.1-01-02 and section 20.1-07-03 of the North Dakota Century Code, relating to the definition of fur-bearers and gun dogs and the protection of fur-bearers during closed seasons.

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

SECTION 1. AMENDMENT. Subsections 9 and 36 of section 20.1-01-02 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

9. "Fur-bearers" shall include mink, muskrats, weasels, wolverines, otters, martens, fishers, ~~and~~ kit or swift foxes~~----Beavers~~, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, and red or gray foxes ~~shall--be considered--fur-bearers--if-so-designated-by-gubernatorial proclamation~~.

36. "Gun dogs" shall include any dog ~~bred~~ used to hunt~~,-seent,-point,-flush,-or-retrieve-game-birds~~ protected wildlife.

SECTION 2. AMENDMENT. Section 20.1-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-07-03. FUR-BEARING ANIMALS WHICH ARE PROTECTED NOT TO BE TAKEN OR DISTURBED DURING CLOSED SEASONS. No person shall hunt, shoot, trap, or take, in this state, any ~~mink,-muskrats,-or-weasels~~ fur-bearer, except during the open or lawful season thereon as established under sections 20.1-07-04 or 20.1-08-02. ~~The-governor may,-by--proclamation,--place--beavers,--raccoons,--badgers,--foxes, wolves,--and-coyotes-on-the-protected-list-of-fur-bearing-animals-at any-time,-and-may-keep-such-fur-bearers-on-the-protected-list-for-as long--as--he-may-deem-reasonable-and-necessary.--If-such-fur-bearers are--placed--on--the--protective--list,---the---governor---may,---by proclamation,--prescribe--the--area,--manner,-and-number-that-may-be hunted,-trapped,-shot,-or-taken.~~

Approved March 31, 1981

CHAPTER 252

HOUSE BILL NO. 1367
(L. Hanson)

CRANE HUNTING FROM MOTOR-DRIVEN VEHICLE

AN ACT to amend and reenact section 20.1-01-07 of the North Dakota Century Code, relating to the hunting of cranes from motor vehicles.

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

SECTION 1. AMENDMENT. Section 20.1-01-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-07. HUNTING BIG GAME OR SMALL GAME OTHER THAN WATERFOWL OR CRANES WITH MOTOR VEHICLES PROHIBITED - EXCEPTION - MOTOR VEHICLE USE IN TRANSPORTING BIG GAME RESTRICTED. Except as provided in subsection 11 of section 20.1-02-05, no person, while hunting big game or small game, other than waterfowl or cranes, statewide, may use a motor-driven vehicle on any other than an established road or trail, unless he has reduced a big game animal to possession and cannot easily retrieve said big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, provided that after such retrieval, such motor-driven vehicle is again returned to the established road or trail along the same route it originally departed. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting big game or small game, statewide, may drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any such game with the use or aid of any motor-driven vehicle. No person, while hunting big game or small game, other than waterfowl or cranes, statewide, may drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail.

Approved March 2, 1981

CHAPTER 253

HOUSE BILL NO. 1191
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

RACCOON TAKING WITH FLASHLIGHT AND HANDGUN

AN ACT to amend and reenact section 20.1-01-09 and subsection 3 of section 20.1-05-04 of the North Dakota Century Code, relating to the taking of raccoon with the use of a flashlight and use of artificial lights in the taking of big game.

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

SECTION 1. AMENDMENT. Section 20.1-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-09. TYPES OF GUNS LAWFULLY USABLE IN TAKING RACCOON WITH FLASHLIGHT. In the killing, shooting, pursuit, taking or in attempting to take raccoon with the use of a flashlight of not over two cells in the aggregate of ~~three~~ four volts, it is illegal to use a rifle or handgun capable of firing a shell larger than a twenty-two caliber [5.59 millimeter] long rifle shell, or a shotgun larger than four-ten gauge [10.41 millimeters].

SECTION 2. AMENDMENT. Subsection 3 of section 20.1-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 ~~three~~ four volts to take raccoon.

Approved March 2, 1981

CHAPTER 254

HOUSE BILL NO. 1193
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

TRAP TAMPERING

AN ACT to create and enact a new section to chapter 20.1-01 of the North Dakota Century Code, relating to tampering with and disturbing state wildlife traps; and to provide a penalty.

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:

TAMPERING WITH TRAPS UNLAWFUL. No person shall in any manner willfully destroy, molest, disturb, or tamper with any net, trap, crib, or other contrivance being used by the department for the purpose of catching or holding wildlife. No unauthorized person shall remove any wildlife from any net, trap, crib, or other contrivance being used by the department. Any person violating this section shall be guilty of a class B misdemeanor.

Approved March 11, 1981

CHAPTER 255

SENATE BILL NO. 2188
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

PERMIT TO SHOOT WILDLIFE FROM VEHICLE

AN ACT to amend and reenact subsection 11 of section 20.1-02-05 of the North Dakota Century Code, relating to special permits issued by the game and fish commissioner for the shooting of game from a stationary motor vehicle.

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

SECTION 1. AMENDMENT. Subsection 11 of section 20.1-02-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. Issue, at his discretion, special permits to shoot ~~game~~ wildlife from a stationary motor vehicle upon application from individuals who are physically unable to walk for purposes of hunting or taking ~~game~~ wildlife. The application shall be accompanied by a physician's statement verifying the person's condition. Permits issued under this subsection shall allow the permittee to drive, or to be driven, on to any land for the purposes of hunting ~~big--game~~ wildlife, except that neither any other passenger within the vehicle nor the driver, if someone other than the permittee, shall be a hunter, unless such other person is also a permittee. Provided, however, that such land is privately owned and if the permittee is not going to drive or be driven along an established road or trail, the permittee shall first obtain the consent of the owner or tenant to hunt on such land in the manner provided in this title.

Approved March 16, 1981

CHAPTER 256

HOUSE BILL NO. 1281
(Murphy)

POLICE POWERS OF GAME AND FISH PERSONNEL

AN ACT to amend and reenact section 20.1-02-15 of the North Dakota Century Code, relating to the police powers of the game and fish commissioner and his appointees.

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

SECTION 1. AMENDMENT. Section 20.1-02-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-02-15. POLICE POWERS OF COMMISSIONER, DEPUTY COMMISSIONER, AND BONDED APPOINTEES OF COMMISSIONER. The commissioner, deputy commissioner, and any bonded appointees of the commissioner shall have the power:

1. Of a peace officer for the purpose of enforcing this title and any other state laws, rules, or regulations relating to big game, small game, fur-bearers, fish, and other wildlife.

2. To make arrests upon view and without warrant for any violation, committed in his presence, of this title and any other state laws, rules, or regulations relating to big game, small game, fur-bearers, fish, and other wildlife.

~~3.--To--enter--and-inspect-any-hotel,-restaurant,-cold-storage warehouse,-plant,-icehouse,-or-any-building-used--for--the storage--of--dressed--meat,--game,-or-fish-to-determine-if game-or-fish,-or-parts-thereof,-are-kept-or-stored-therein contrary-to-this-title.~~

~~4.--To---open,---enter,--and--examine,--without--warrant,--all buildings,---camps,---tents,---vessels,---boats,---wagons, automobiles,--or--other-vehicles,-cars,-crates,-boxes,-and other-receptacles-and-places-when-he-has-reason-to-believe that--game--or-fish,-or-parts-thereof,-or-green-furs-which have-been-taken-or-are-held-or-possessed-contrary-to--this~~

~~title may be found. The right to enter and search without a warrant, however, shall not apply to the dwelling house or living quarters of any person or of a sealed railroad car.~~

~~5. To open and examine any package in the possession of a common carrier which he suspects or has reason to believe contains game or fish, or parts thereof, taken, held, or falsely labeled contrary to this title. Every such common carrier, and every agent, servant, or employee thereof, shall permit any such officer to open and examine any such package. Any package so opened and not confiscated shall be restored to its original condition by the officer making the examination.~~

~~6. To enter, without warrant, upon the premises of any dealer or trader in green furs to inspect any warehouses, storerooms, or other storage places, and may call for and inspect records of buying, shipping, or selling of green furs. The right to enter and search without a warrant, however, shall not apply to the dwelling house or the living quarters of any person or of a sealed railroad car.~~

~~7. To seize and hold, subject to court order, any green furs obtained illegally.~~

~~8. To inspect all premises used for the purpose of propagating and domesticating game birds or protected animals.~~

3. To regulate dealers in green furs, propagation or possession of live protected wildlife, taxidermists, shooting preserves, guides and outfitters, commercial fishing operations, private fish hatcheries and commercial bait vendors. In the regulation of these licensed activities, the premises used to conduct the business and records required by law shall be open for inspection at reasonable hours by game and fish law enforcement officers.

Approved March 5, 1981

CHAPTER 257

HOUSE BILL NO. 1147
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

REWARD UPON CONVICTION OF VIOLATOR

AN ACT to amend and reenact section 20.1-02-16 of the North Dakota Century Code, relating to rewards upon conviction of game and fish violators.

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

SECTION 1. AMENDMENT. Section 20.1-02-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-02-16. COMMISSIONER MAY PAY REWARDS IN CONNECTION WITH THE CONVICTION OF VIOLATORS - AMOUNTS - EXCEPTIONS. The commissioner, out of legislative reward appropriation, may pay complainants, upon the arrest and conviction of any person violating this title, a reward ~~in the amount of~~ not to exceed:

1. ~~Twenty-five~~ One hundred dollars if the offense involves a violation relating to big game ~~or to beavers~~.

2. ~~Ten~~ Fifty dollars if the offense involves a violation relating to game birds, fish, fur-bearers, or protected animals not mentioned in subsection 1.

This section shall not apply when the complaint is made or required information is furnished by an officer, employee, or game warden who is regularly employed and who receives a salary from the department, or by a sheriff or other peace officer who receives a regular salary.

Approved March 3, 1981

CHAPTER 258

HOUSE BILL NO. 1609
(Berg, Mattson, Mertens, Nicholas)

FEDERAL LAND ACQUISITION AUTHORITY

AN ACT to suspend federal authority to acquire certain interests in land; to amend and reenact subsection 1 of section 20.1-02-18.2 of the North Dakota Century Code, relating to the federal acquisition of land in North Dakota; and declaring an emergency.

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

SECTION 1. AMENDMENT. Subsection 1 of section 20.1-02-18.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Negotiate the time period of the lease, easement, or servitude being sought. ~~A lease, easement, or servitude shall terminate upon the death of a landowner or upon change of ownership.~~

SECTION 2. SUSPENSION OF FEDERAL AUTHORITY TO ACQUIRE INTERESTS IN LAND. Notwithstanding the provisions of section 20.1-02-18, or any other provision of law, the United States shall not acquire by any means any land or interests in land for migratory bird reservations, and the governor shall not approve the acquisition of any land or interests in land with moneys from the migratory bird conservation fund until December 31, 1983, or until the date a management plan for such land is approved by both the legislative assembly and the governor, whichever date is first. The management plan shall be jointly prepared by the secretary of the interior and the governor and shall address the extent and general locations of all proposed acquisitions with moneys from the migratory bird conservation fund, the management of all such lands whether already acquired or to be acquired, and the relationship of such acquisitions to mitigation acquisitions for federally financed or permitted projects.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 16, 1981

CHAPTER 259

HOUSE BILL NO. 1395
(Representative Berg)
(Senators Moore, Wright)

NONRESIDENT WATERFOWL HUNTING LICENSE

AN ACT to amend and reenact section 20.1-03-07.1 of the North Dakota Century Code, relating to authorization for nonresidents to hunt waterfowl in specified hunting zones, and removing time limits on nonresident waterfowl hunting licenses.

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

SECTION 1. AMENDMENT. Section 20.1-03-07.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-07.1. NONRESIDENT WATERFOWL HUNTING LICENSE REQUIRED. A nonresident shall not hunt waterfowl unless he first obtains a nonresident waterfowl hunting license, in addition to a nonresident small game hunting license. The nonresident waterfowl hunting license shall entitle the nonresident to hunt waterfowl for any period of ~~ten~~ fourteen consecutive days or any two periods of ~~five~~ seven consecutive days each and in specified waterfowl hunting zones. A license authorizing two ~~five-~~ seven-day hunting periods may allow hunting in a different zone during each period. The governor, in his proclamation, shall specify various waterfowl hunting zones for which nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the manner in which they are to be issued. A nonresident shall be entitled to purchase only one nonresident waterfowl hunting license per year.

Approved March 26, 1981

CHAPTER 260

HOUSE BILL NO. 1190
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

LICENSE AND PERMIT FEES

AN ACT to amend and reenact section 20.1-03-12 and subsections 6 through 9 of section 20.1-03-12 of the North Dakota Century Code, relating to the schedule of fees for licenses and permits; 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 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-12. SCHEDULE OF FEES FOR LICENSES AND PERMITS. The various license and permit fees shall be as follows:

1. For a resident, age nineteen and over small game hunting license, ~~five~~ six dollars, and for a resident, under the age of nineteen small game hunting license, three dollars.

2. For a nonresident small game hunting license, ~~forty~~ fifty dollars.

3. For a resident big game hunting license, ~~ten~~ eighteen dollars.

4. For a nonresident big game hunting license, ~~sixty~~ one hundred dollars, and for a nonresident bow license, ~~thirty~~ one hundred dollars.

5. For a resident fur-bearer license, ~~five~~ seven dollars.

6. ~~Repealed by S.L. 1977, ch. 207, § 4.~~

~~7.~~ For a resident fishing license, five dollars, except that for a resident sixty-five years or over or a resident totally or permanently disabled, the license fee shall be one dollar.

~~8.~~ 7. For a nonresident fishing license, ten dollars.

~~9.~~ 8. For a nonresident short-term fishing license, two dollars.

~~10.~~ 9. For a resident husband and wife fishing license, eight dollars.

~~11.~~ 10. For a nonresident nongame hunting license, fifteen dollars.

~~12.~~ 11. For resident and nonresident special permits to hunt deer in certain restricted areas, one dollar.

~~13.~~ 12. For a wild turkey permit, ~~three~~ five dollars.

~~14.~~ 13. For an annual general game license, ~~one-dollar~~ three dollars.

~~15.~~ 14. For a permit to propagate ~~and~~, domesticate or possess protected ~~birds-and--animals~~ wildlife, ~~one--dollar~~ five dollars.

~~16.~~ 15. For a license to a nonresident buyer or shipper of green furs, or his agent, five hundred dollars.

~~17.~~ 16. For a license to a resident buyer or shipper of green furs, ~~five~~ eight dollars for each place of business maintained by him within this state.

~~18.~~ 17. For a license to a resident traveling agent, buyer, or shipper of green furs, ~~fifteen~~ twenty dollars.

~~19.~~ 18. For an annual license to practice taxidermy, ~~two~~ four dollars.

~~20.~~ 19. For a permit to ship, by a person having a resident hunting license, during the respective open seasons, not to exceed in any one season twenty-five game birds, to points within this state other than his home or to points outside of this state, ~~one-dollar~~ three dollars.

~~21.~~ 20. For a permit to make collections of protected birds and animals for scientific purposes, ~~twenty-five--cents~~ two dollars.

~~22.~~ 21. For a permit to ship live protected birds or animals to points either within or outside this state, ~~one-dollar~~ two dollars per permit. A permit shall be attached to each shipment.

~~23.~~ 22. For a motorboat certificate of number and license, ~~three dollars~~ the following license fees shall be used: Each motorboat under sixteen feet in length, and all canoes, regardless of length, powered by a motor, six dollars.

Each motorboat sixteen feet in length and over, excluding canoes, fifteen dollars. It is the intent of the legislative assembly that the increase in motorboat license fees, as provided in this section, be used for providing matching funds for construction and installation of boat launching facilities.

~~24.~~ 23. To operate watercraft used for hire, the following license fees shall apply for three years:

Class 1. Each craft capable of carrying two adults of average weight, ~~one-dollar~~ six dollars.
Class 2. Each craft capable of carrying three adults of average weight, ~~one-dollar~~ six dollars.
Class 3. Each craft capable of carrying four adults of average weight, ~~one-dollar~~ six dollars.
Class 4. Each craft capable of carrying five adults of average weight, ~~one-dollar~~ six dollars.
Class 5. Each craft capable of carrying up to eight adults of average weight, ~~one-dollar and-fifty-cents~~ nine dollars.
Class 6. Each craft capable of carrying up to ten adults of average weight, ~~two~~ twelve dollars.
Class 7. Each craft capable of carrying up to fifteen adults of average weight, ~~five~~ twenty-four dollars.
Class 8. Each craft capable of carrying sixteen or more adults of average weight, ~~ten~~ thirty dollars.

~~25.~~ 24. For the taking of undesirable fish from the waters of this state pursuant to section 20.1-06-05, ~~five~~ six dollars for each hoop-net or trap, ~~one-dollar~~ two dollars for each setline, and ~~five~~ six dollars for each seine of fifty feet [15.24 meters] or any fraction thereof.

~~26.~~ 25. For a license to erect, have, and maintain on the ice in this state a fishhouse used or to be used to protect one while ice fishing or a dark house used or to be used for spearfishing, five dollars for each unit.

~~27.~~ 26. For an annual license to peddle fish species abounding in waters of this state, ~~one-dollar~~ three dollars.

~~28.~~ 27. For an annual license to sell minnows or other live bait at wholesale, ~~twenty-five~~ thirty dollars.

~~29.~~ 28. For an annual license to sell minnows or other live bait at retail, ~~five~~ eight dollars.

~~30.~~ 29. For an annual license to operate a private fish hatchery, ~~twenty-five~~ thirty dollars.

~~31.~~ 30. For a resident commercial frog license, fifty dollars.

~~31.~~ 31. For a nonresident commercial frog license, two hundred dollars.

~~32.~~ 32. For a resident frog license, three dollars.

~~33.~~ 33. For a resident husband and wife frog license, five dollars.

~~32.~~ 34. For a shooting preserve operating permit:

a. One hundred dollars, if the shooting preserve consists of an area of six hundred forty acres [259 hectares] or less; or

b. One hundred dollars, if the shooting preserve consists of an area of more than six hundred forty acres [259 hectares], plus fifty cents per acre [.40 hectare] for each acre [.40 hectare] over six hundred forty acres [259 hectares].

~~33.~~ 35. For an annual license to guide, one hundred dollars.

~~34.~~ 36. For a nonresident waterfowl hunting license, ~~five~~ eight dollars.

The fees for these licenses and permits shall be deposited with the state treasurer and credited to the game and fish fund.

SECTION 2. AMENDMENT. Subsections 6 through 9 of section 20.1-03-12 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

~~7.~~ For a resident fishing license, ~~five~~ six dollars; except that for a resident sixty-five years or over or a resident totally or permanently disabled, the license fee shall be ~~one-dollar~~ two dollars.

~~8.~~ 7. For a nonresident fishing license, ~~ten~~ fifteen dollars.

~~9.~~ 8. For a nonresident short-term fishing license, ~~two~~ four dollars.

~~10.~~ 9. For a resident husband and wife fishing license, ~~eight~~ ten dollars.

SECTION 3. EFFECTIVE DATE. Section 2 of this Act shall become effective on May 1, 1982.

Approved April 1, 1981

CHAPTER 261

HOUSE BILL NO. 1520
(Representatives D. Olson, Hughes, Kent)
(Senator Nelson)

HABITAT RESTORATION STAMP

AN ACT to create and enact a new section to chapter 20.1-03 of the North Dakota Century Code, relating to the requirement of a habitat restoration stamp for resident and nonresident small game hunting licenses and for the use of stamp revenue for wildlife habitat and propagation restoration in the state.

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

SECTION 1. A new section to chapter 20.1-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

HABITAT RESTORATION STAMP REQUIRED - USE OF REVENUE - NO LAND PURCHASES ALLOWED. A habitat restoration stamp shall be required for every resident and nonresident small game hunting license for which a stamp fee of three dollars shall be charged. The habitat restoration stamp fee shall be in addition to the annual general game license and small game hunting license fees charged pursuant to section 20.1-03-12. No land shall be purchased with habitat restoration stamp moneys. The moneys generated by the habitat restoration stamp fee 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 be used for lease payments. Any moneys generated by the stamp fee and not expended during a biennium shall remain in the fund to 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 in any section of land may be leased for such purposes. Hunting shall not be prohibited on such lands.

Approved March 26, 1981

CHAPTER 262

HOUSE BILL NO. 1245
(Koski)

GAME BIRD PART USE FOR DECORATION

AN ACT to create and enact a new section to chapter 20.1-04 of the North Dakota Century Code, relating to the use of game bird parts for decorative purposes.

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

SECTION 1. A new section to chapter 20.1-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

GAME BIRD PARTS - DECORATIVE PURPOSES. Nothing in this title shall prohibit the use of any part of a legally taken game bird for decorative purposes or in the making of art works for private use or sale, except that any part of any legally taken migratory bird may not be sold or bartered except as provided under federal regulations.

Approved March 2, 1981

CHAPTER 263

HOUSE BILL NO. 1144
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

WILD TURKEY TAKING PROCLAMATION

AN ACT to amend and reenact section 20.1-04-07 of the North Dakota Century Code, relating to the taking of wild turkeys.

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

SECTION 1. AMENDMENT. Section 20.1-04-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-04-07. GOVERNOR'S PROCLAMATION CONCERNING THE TAKING OF WILD TURKEYS. The governor may, by proclamation, provide for a permit season to take wild turkeys in manner, number, places, and times deemed in the state's best interests. ~~In addition to payment of the appropriate permit fee, all applicants must have a resident small game hunting license.~~

Approved February 16, 1981

CHAPTER 264

HOUSE BILL NO. 1501
(Dotzenrod)

PROPANE EXPLODER USE

AN ACT providing for the regulation of propane exploders; and providing a penalty.

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

SECTION 1. USE OF PROPANE EXPLODERS. Any propane exploder or similar noisemaking device designed to ward off blackbirds which is located within one hundred sixty rods of an inhabited dwelling shall only be used during the period between sunrise and sunset.

SECTION 2. PENALTY. Any person who violates any provision of this Act is guilty of an infraction.

Approved March 16, 1981

CHAPTER 265

SENATE BILL NO. 2164
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

BIG GAME HUNTER ORANGE GARMENT VIOLATION PENALTY

AN ACT to amend and reenact section 20.1-05-06 of the North Dakota Century Code, relating to garments to be worn by big game hunters.

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

SECTION 1. AMENDMENT. Section 20.1-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-05-06. BIG GAME HUNTERS TO WEAR DAYLIGHT FLUORESCENT ORANGE GARMENTS - EXCEPTION. Every person, while hunting big game, shall wear a head covering and an outer garment above the waistline, both of daylight fluorescent orange color, totaling four hundred square inches [2580.64 square centimeters] or more of clothing, and both to be worn conspicuously on the person. This section shall not apply to any person hunting big game with bow and arrow during special bow hunting seasons. Any person violating this section shall be guilty of an infraction.

Approved March 6, 1981

CHAPTER 266

SENATE BILL NO. 2134
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

GOVERNOR'S PROCLAMATION CONCERNING FISHHOUSES

AN ACT to create and enact a new section to chapter 20.1-08 of the North Dakota Century Code, relating to removal of fishhouses by an order of proclamation issued by the governor; and to amend and reenact section 20.1-06-07 of the North Dakota Century Code, relating to the licensing and removal of fishhouses.

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

SECTION 1. AMENDMENT. Section 20.1-06-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-06-07. FISHHOUSES - LICENSE - REMOVAL. No person, except as provided in section 20.1-06-05, shall erect, have, or maintain on the ice in any waters of this state, a fishhouse used or to be used while ice fishing, or a dark house used or to be used for spearfishing, without first obtaining a separate license for each unit used. Licenses shall be issued by the commissioner, for the period of five winter fishing seasons, including the season commencing in the year of purchase. Fishhouse licenses are not transferable and must be relicensed for a five-year period by the new owner of the fishhouse. Licenses shall be subject to the rules the commissioner may adopt governing the construction, maintenance, and use of such units. The outside of each licensed unit shall have inscribed on it, in readily distinguishable characters at least six inches [15.24 centimeters] high, the license number and the owner's name. Each unit shall be removed from the ice ~~within five days after the close of the winter fishing season as~~ by that date established by the governor's proclamation. Failure to remove a unit shall be deemed an abandonment and the commissioner is authorized to remove or destroy abandoned units.

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 FISHHOUSES. The governor may by proclamation prescribe those areas where a fishhouse, used or to be used while ice fishing, or a dark house, used or to be used for spearfishing, shall be permitted. Such proclamation may set forth the dates during which fishhouses or dark houses may be used or that date by which fishhouses or dark houses shall be removed from the ice.

Approved March 9, 1981

CHAPTER 267

HOUSE BILL NO. 1201
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

ILLEGAL WATERCRAFT OPERATION PENALTY

AN ACT to create and enact a new subsection to section 20.1-13-03, a new subsection to section 20.1-13-05, and a new subsection to section 20.1-13-10 of the North Dakota Century Code, relating to motorboat identification numbers and licenses, equipment of vessels, and water skis and surfboards; to amend and reenact sections 20.1-13-02 and 20.1-13-04 of the North Dakota Century Code, relating to operation of unnumbered and unlicensed motorboats and licensing watercraft for hire; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 20.1-13-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-13-02. OPERATION OF UNNUMBERED AND UNLICENSED MOTORBOATS PROHIBITED. Every motorboat propelled by a motor on the waters of this state, shall be numbered and licensed as prescribed in this chapter. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and licensed in accordance with this chapter, with applicable federal law, or with a federally approved numbering system of another state, and unless:

1. The certificate of number awarded to such motorboat is in full force and effect.

2. The identifying number set forth in the certificate of number is displayed on each side of the bow of such motorboat.

Any person who violates any provision of this section is guilty of an infraction.

SECTION 2. A new subsection to section 20.1-13-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any person who violates any provision of this section is guilty of an infraction.

SECTION 3. AMENDMENT. Section 20.1-13-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-13-04. RULES AND REGULATIONS - LICENSING WATERCRAFT FOR HIRE - ANNUAL INSPECTION. The commissioner, to promote the public safety, shall adopt rules and regulations to license watercraft used for hire, or furnished with cottages let for hire, and to prescribe the safety equipment, construction, and manner of operation of such craft. The commissioner shall provide for annual inspection of all watercraft used for hire to determine if rules and regulations governing such watercraft have been complied with, and may issue licenses to operate such watercraft. It shall be the commissioner's duty to issue, along with each license, some evidence that the craft has been inspected and conforms to the standards governing such craft. No person shall operate watercraft used for hire or furnished with cottages let for hire without a current year's license. Any person who violates any provision of this section is guilty of an infraction.

SECTION 4. A new subsection to section 20.1-13-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any person who violates any provision of this section is guilty of an infraction.

SECTION 5. A new subsection to section 20.1-13-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any person who violates any provision of this section is guilty of an infraction.

Approved March 2, 1981

CHAPTER 268

HOUSE BILL NO. 1591
(Gerl, Berg)

MOTORBOAT OPERATION AND TOWING REQUIREMENTS

AN ACT to create and enact a new subsection to section 20.1-13-10 of the North Dakota Century Code, requiring an observer in a vessel towing a person on water skis or similar devices; to amend and reenact section 20.1-13-07 of the North Dakota Century Code, requiring certain minors to have an adult or boating course to operate a motorboat; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 20.1-13-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-13-07. PROHIBITED OPERATION.

1. No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

2. No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana.

3. No person under twelve years of age shall operate a motorboat propelled by over a ten horsepower motor unless the operator is accompanied by a person eighteen years of age or older.

4. No person of twelve through fifteen years of age shall operate a motorboat propelled by over a ten horsepower motor unless the operator is accompanied by a person eighteen years of age or older or the operator has taken and passed a boating course approved by the department.

SECTION 2. A new subsection to section 20.1-13-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

No person shall operate a vessel on any waters of this state towing a person or persons on water skis, a surfboard, or similar device unless there is another person in the towing vessel observing the person or persons being towed. However, this subsection shall not apply to members of any organization regularly staging water ski shows, tournaments, or exhibitions while engaged in the performance of such shows, tournaments, or exhibitions. The department shall adopt rules to allow such organizations to practice in preparation for such events, as prescribed in section 20.1-13-11.

SECTION 3. EFFECTIVE DATE. Subsection four of section 20.1-13-07 shall become effective after June 30, 1982.

Approved April 1, 1981

GOVERNMENTAL FINANCE

CHAPTER 269

SENATE BILL NO. 2122
(Committee on Industry, Business, and Labor)
(At the request of the Bank of North Dakota)

INTEREST RATE CEILING ON BONDS

AN ACT to amend and reenact sections 2-06-10, 15-55-02, 15-55-05.1, 18-10-08, 21-02-02, 21-02-13, 21-03-08, 23-11-19, 23-11-22, 23-24-10, 40-24-02, 40-24-19, 40-29-15, 40-31-09, 40-33-05, 40-34-03, 40-35-08, 40-35-09, 40-54-10, subsections 3 and 4 of section 40-58-10, subsections 1 and 2 of section 40-61-08, sections 54-17-25, 55-08-08, 61-02-48, 61-02-53, 61-08-07, 61-08-20, 61-12-38, 61-16-13, 61-16-28, 61-16-32, 61-21-50, and 61-21-53 of the North Dakota Century Code, relating to interest rate ceilings of bonds, warrants, and certificates of indebtedness issued by public entities and sold to the state of North Dakota or any of its agencies or instrumentalities, the denominations of certain warrants, and the sale of certain bonds under par value; and to repeal section 54-30-06 of the North Dakota Century Code, relating to interest rate of bonds; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 2-06-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-06-10. BONDS AND OTHER OBLIGATIONS. An authority shall have the power to borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including grants or contributions from the federal government or other sources, which bonds may be sold at not less than ninety-eight percent of par plus the interest accrued on the bonds to the date of the delivery thereof. ~~Such bonds shall be sold at public sale, except when such obligations do not exceed the total sum of one hundred thousand dollars, and~~ Bond issues sold at private sale shall bear interest at a rate or rates and be sold at a price resulting in an average ~~annual~~ net interest cost not exceeding ~~eight percentum~~ twelve percent per annum ~~on these issues which are sold at private sale~~. There ~~shall be~~ 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 bonds issued pursuant to

this chapter by an authority, or by a governing body exercising the powers thereof, shall be payable, as to principal and interest, solely from revenues of an airport or air navigation facility or facilities, and shall so state on their face, but if any such issue of bonds constitutes an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, each bond of the issue shall be an equally valid and binding special obligation of the authority or municipality, as the case may be, in accordance with its terms, in an amount proportionate to the total amount of the issue which is within such limitation or restriction. Neither the commissioners of an authority nor the governing body of a municipality nor any person executing such bonds shall be liable personally thereon by reason of the issuance thereof, except to the extent that the bonds, if constituting an indebtedness, exceed any applicable limitation or restriction.

In case any of the commissioners or officers of an authority or municipality whose signatures appear on any bonds or coupons ~~shall~~ cease to be such commissioners or officers after authorization but before the delivery of the bonds, the signature shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners or officers had remained in office until delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

Any bond reciting in substance that it has been issued by the authority or municipality pursuant to ~~the provisions of~~ this chapter and for a purpose or purposes authorized ~~to be accomplished~~ by this chapter shall be conclusively deemed, in any suit, action, or proceeding involving the validity or enforceability of the bond or the security therefor, to have been issued pursuant to ~~such provisions~~ this chapter and for such purpose or purposes.

Bonds issued by an authority or municipality pursuant to ~~the provisions of~~ this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon, and income therefrom, shall be exempt from all taxes.

For the security of any such bonds the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture authorized to be made as security for revenue bonds issued under chapter 40-35. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities. Whenever bonds are issued under this chapter and made payable from revenues of an airport involving municipalities with over ten thousand population, the governing body of the municipality ~~shall be required, in the event that~~, if at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, ~~to~~ shall levy a general tax upon all of the taxable property in the municipality for

the payment of ~~such~~ the deficiency ~~and~~. If at any time a deficiency is likely to occur within one year for the payment of principal and interest due on ~~such~~ the bonds, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of ~~such~~ the deficiency~~,--and--such~~. The taxes shall not be subject to any limitation of rate or amount applicable to other municipal taxes, provided that the initial resolution authorizing bonds for airport financing shall be published in the official paper, and any owner of taxable property within the city may within sixty days after such publication file with the city auditor a protest against the adoption of the resolution. If the governing body finds ~~such~~ the protests to have been signed by the owners of taxable property having an assessed valuation equal to twenty percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under ~~such~~ the initial resolution shall be barred.

SECTION 2. AMENDMENT. Section 15-55-02 of the 1977 Pocket Supplement to 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 ~~said~~ 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. ~~Such~~ 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 as may be provided by resolution or resolutions to be adopted by the ~~state~~ board ~~of--higher--education,---Such~~. The bonds may be sold in such manner and at such price or prices not less than ~~ninety-eight~~ ninety-five percent of par plus accrued interest to date of delivery, as may be considered by the board to be advisable. ~~Such bonds--shall-be-sold-at-public-sale,-except-when-such-obligations-do not-exceed-the-total-sum-of-one-hundred-thousand--dollars,--but--the~~ The average ~~annual~~ net interest cost to maturity for any ~~bonds issued-hereunder~~ bond issues sold at private sale shall not exceed

~~eight~~ twelve percent per annum ~~on-those-issues-which-are-sold-at private-sale~~. There ~~shall-be~~ 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. ~~Such~~ 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, ~~shall-be-construed-to-refer~~ refers to all the buildings or other campus improvements so acquired.

SECTION 3. AMENDMENT. Section 15-55-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-55-05.1. INTERIM FINANCING. The board may provide for interim financing pending completion of revenue producing projects at state institutions of higher learning and financing the cost thereof and may authorize the issuance and sale of special interim warrants for that essential governmental purpose, such warrants to be paid with interest from (1) the proceeds of definitive bonds issued in accordance with this chapter, (2) warrants issued to refund outstanding warrants, or (3) the combined net revenues to be derived from the operation of buildings and campus improvements for which bonds are outstanding with which the definitive bonds to be issued for such project will be on a parity. The board shall arrange for the proper preparation and sale of ~~such~~ the warrants and shall issue ~~such~~ the warrants in an aggregate principal amount not exceeding the sum of bonds authorized and necessary to finance completion of the project. ~~Such-interim~~ Interim warrants shall be subject to call and prepayment on thirty days' prior written notice to the place of payment at par and accrued interest to date of prepayment at the option of the board; shall mature not more than ~~two~~ three years from their date; and may bear such rate or rates of interest as the board may provide, not exceeding ~~seven~~ an average net interest cost of twelve percent per annum on issues sold at private sale. ~~Such-interim~~ There is no interest rate ceiling on warrant issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Interim warrants may be sold on the basis of ninety-five percent of par plus accrued interest to date of delivery~~,-as-may-be-considered-by-the--board--to be-proper,-but-interest-cost-to-maturity-for-any-such-warrants-shall~~

~~not-exceed-a-rate-of-seven-percent-per-annum.---Such--interim~~. All warrants for a particular project must mature within three years from the date of issuing the first warrants for the project. If warrants are issued to refund warrants, the refunded warrants shall be paid and canceled upon the issuance of the refunding warrants, or the proceeds at the sale of the refunding warrants, excepting the accrued interest received, shall be used to purchase direct obligations of the United States of America. Such obligations must mature at such time or times, with interest thereon or the proceeds received therefrom, to provide funds adequate to pay, when due or called for redemption prior to maturity, the warrants to be refunded together with the interest accrued thereon and any redemption premium due thereon. Such proceeds or obligations of the United States of America shall, with all other funds legally available for such purpose, be deposited in escrow with a banking corporation or national banking association located in and doing business in the state of North Dakota, with power to accept and execute trusts, or any successor thereto, which is also a member of the federal deposit insurance corporation and of the federal reserve system. The proceeds or obligations are to be held in an irrevocable trust solely for and until the payment and redemption of the warrant to be refunded. Any balance remaining in escrow after the payment and retirement of the warrants to be refunded shall be returned to the board to be used and held for use as revenues pledged for the payment of the definitive bonds. Interim warrants 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. ~~Such--interim~~ Interim warrants shall be eligible for investment of funds the same as definitive bonds are or would be eligible for investment under ~~the-provisions-of~~ section 15-55-08.

Such warrants shall not constitute a general obligation indebtedness of the state of North Dakota nor of the institution for which they are issued nor of the state board of higher education nor of the individual members, officers, or agents thereof; shall be payable solely ~~out-of-the-proceeds-of-definitive-bonds-to-be-issued for-the-project-under-the-provisions-of-this-chapter~~ as provided in this section; and the warrants issued and sold shall so state.

SECTION 4. AMENDMENT. Section 18-10-08 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-10-08. INDEBTEDNESS OF DISTRICT LIMITED. No district shall become indebted for an amount that may not be payable from ninety percent of twenty times the current annual maximum tax levy as authorized by section 18-10-07. Within the limits herein authorized, the district shall have power to borrow money and to issue appropriate evidence of indebtedness thereof. No evidence of indebtedness issued under ~~the-provisions-of~~ this chapter and sold at private sale shall bear interest at a rate or rates and be sold ~~privately~~ at a price resulting in an average ~~annual~~ net interest cost higher than ~~eight~~ twelve percent per annum. There ~~shall-be~~ 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. No evidence of indebtedness issued under ~~the provisions of~~ this chapter shall be sold for less than ninety-eight percent of par value plus accrued interest, if any interest has accrued as of the date of delivery thereof. ~~The provisions of this~~ This section shall not limit the authority of the district to incur indebtedness and issue bonds in accordance with chapter 21-03.

SECTION 5. AMENDMENT. Section 21-02-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-02. CERTIFICATES OF INDEBTEDNESS - BY WHOM ISSUED - TERM - INTEREST - TAX WHEN DEEMED LEVIED. Counties, cities, townships, school districts, park districts, irrigation districts, water conservation and flood control districts, Garrison Diversion Conservancy District, county park districts, or joint park districts shall have power to borrow in anticipation of revenues to be derived from proceeds to be received under currently existing contracts with the bureau of Indian affairs and from taxes already levied. The aggregate amount of such borrowings at any time shall not exceed the amount of uncollected taxes which have been levied during the year in which the borrowing is made, plus uncollected taxes remaining upon the tax lists of the four preceding years, exclusive of levies for the purpose of retiring bond issues and the interest thereon, plus funds to be received under currently existing bureau of Indian affairs contracts. For the purpose of borrowing, all such taxing districts may issue certificates of indebtedness. A certificate of indebtedness shall consist of an agreement on the part of the taxing district to pay a stated sum on a specified date, or on or before a specified date not more than twenty-four months in the future, together with interest thereon at a rate or rates resulting in an average annual net interest cost not exceeding ~~eight~~ twelve percent per annum if they are sold privately, which may be made payable semiannually. ~~Such~~ There is no interest rate ceiling on a certificate sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The certificate shall be signed on behalf of the district by its president or chairman and also by its auditor or secretary, and shall be payable out of funds derived from uncollected taxes levied for the current tax year and four previous years which have not been set aside for the payment of other certificates of indebtedness pursuant to sections 21-02-07, 21-02-08, and 21-02-09 and from funds received under bureau of Indian affairs contracts currently existing. However, a certificate of indebtedness shall be the general obligation of the issuing taxing district.

SECTION 6. AMENDMENT. Section 21-02-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-13. CERTIFICATES OF INDEBTEDNESS IN ANTICIPATION OF REVENUE TO BE RECEIVED FROM THE STATE. Any political subdivision which will receive a distribution of revenue pursuant to section

57-58-01 during any calendar year shall, in anticipation of such revenue, have power to borrow not more than the amount it will receive from that source during that year. For the purpose of borrowing, all such political subdivisions may issue certificates of indebtedness.

A certificate of indebtedness shall provide for payment by the political subdivision of a stated sum on ~~a specified date, or on~~ or before a specified date not more than six months in the future, together with interest thereon at a specified rate not exceeding ~~seven~~ twelve percent per annum if sold at private sale. There is no interest rate ceiling on a certificate sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. ~~Such~~ The certificate shall be payable out of the revenue received pursuant to section 57-58-01 but shall, however, be a general obligation of the issuing political subdivision.

For the purpose of administering the provisions of this section, all of the provisions of this chapter, to the extent consistent herewith, that relate to signing and issuance of certificates of indebtedness, the certificate of the county auditor on the certificates of indebtedness, the registration of certificates of indebtedness, certifying the amount to be received from the state by a political subdivision for the year, setting aside the amount to be received for payment of the certificates, order of payment of such certificates, except for municipalities over four thousand in population, and advertising for bids shall govern the administration of the provisions of this section.

SECTION 7. AMENDMENT. Section 21-03-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-08. MAXIMUM INTEREST RATE, MATURITY, AND DENOMINATIONS. No bonds issued under the provisions of this chapter shall bear interest at a rate or rates and be sold privately at a price resulting in an average ~~annual~~ net interest cost higher than ~~eight~~ twelve percent per annum. There ~~shall be~~ 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. No bonds issued under ~~the provisions of~~ this chapter shall run for a longer period than twenty years from their date. ~~Bonds issued under the provisions of this chapter shall be in denominations of one hundred dollars each, or some multiple thereof. Such~~ The bonds shall not bear a date earlier than the date of the election authorizing their issuance, if such election is required, nor earlier than the date of the adoption of the resolution of the governing body determining to issue bonds for which no election is required.

SECTION 8. AMENDMENT. Section 23-11-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-11-19. BONDS - ISSUED PURSUANT TO RESOLUTION - GENERAL PROVISIONS. Bonds of an authority shall be issued pursuant to a

resolution of the commissioners thereof. ~~Such~~ The resolution shall specify:

1. Whether ~~such~~ the bonds shall be issued in one or more series.
2. The date or dates which the bonds shall bear.
3. The time or times at which the bonds shall mature.
4. The interest rate or rates ~~resulting in an average annual net interest cost, not exceeding eight percent per annum, on those issues which are sold at private sale, which the bonds shall bear~~.
5. The denomination or denominations in which the bonds shall be issued.
6. The form, either coupon or registered, in which the bonds shall be issued.
7. The conversion or registration privileges, if any, which the bonds shall carry.
8. The rank or priority which shall exist between various issues of bonds and various kinds of bonds issued.
9. The manner in which the bonds shall be executed.
10. The medium in which the bonds shall be payable.
11. The place or places at which the bonds shall be payable.
12. The terms of redemption, and whether with or without premium, to which the bonds shall be subject.

The conditions specified in the resolution may be printed in any trust indenture or mortgage given by the authority to secure any bonds issued by it.

SECTION 9. AMENDMENT. Section 23-11-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-11-22. SALE OF BONDS. ~~Except as hereinafter provided, bonds~~ Bonds issued by an authority ~~shall~~ may be sold at a private sale without notice or at public sale held after a notice has been published at least five days prior to the sale in a newspaper having a general circulation in the city or county, as the case may be, ~~and in a financial newspaper published in the city of New York or in the city of Chicago~~. Bond issues sold at private sale shall bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum. There ~~shall be~~ is no interest rate ceiling on issues sold at public sale. ~~Such bonds may be sold to the federal government, however, at~~

~~private-sale-without-public-advertisement.--Such-bonds-may--also--be sold-at-a-private-sale-when-such-obligations-do-not-exceed-the-total sum-of-one-hundred-thousand-dollars~~ or to the state of North Dakota or any of its agencies or instrumentalities. The bonds shall not be sold for less than ninety-eight percent of par.

SECTION 10. AMENDMENT. Section 23-24-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-24-10. DISTRICT MAY ISSUE WARRANTS IN ANTICIPATION OF TAXES LEVIED TO PAY CURRENT EXPENSES. After a vector control district has been established and a board of commissioners has been appointed and organized, the board of commissioners may, in order to pay current district expenses including per diem compensation and expenses of commissioners and wages and salaries of officers or employees, by resolution authorize and issue district warrants in anticipation of impending collection and receipt of taxes levied. ~~Such~~ The warrants shall bear such rate of interest as the board may determine, not ~~exceeding, however, eight~~ to exceed twelve percent per annum. There is no interest rate ceiling on warrant issues sold to the state of North Dakota or any of its agencies or instrumentalities. The district treasurer shall keep a register in which to enter each warrant issued showing the date and amount of each warrant, the date of payment, and the amount paid in redemption thereof. All warrants shall be paid in order of their presentation for payment to the district treasurer. ~~Such~~ The warrants shall be drawn to the claimant or bearer in the same manner as a county warrant and shall be signed by the chairman of the board of commissioners and countersigned by the treasurer of the district. The total amount of ~~such~~ warrants issued in any year to pay current district expenses shall not exceed eighty percent of the district's tax levy for such year.

* SECTION 11. AMENDMENT. Section 40-24-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-02. SPECIAL ASSESSMENTS WHEN DUE AND PAYABLE - INTEREST. All special assessments levied under ~~the--provisions--of~~ this title may be paid without interest within ten days after they have been approved by the governing body and thereafter shall bear interest at a rate of not exceeding ~~eight-percent-per-annum-or-not exceeding~~ one and one-half percentage points above the average net annual interest rate on any warrants or bonds for the payment of which they are pledged, ~~whichever-is-higher,~~ on the total amount thereof remaining from time to time unpaid.

SECTION 12. AMENDMENT. Section 40-24-19 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-19. WARRANTS - ISSUANCE - WHEN PAYABLE - AMOUNTS - TEMPORARY WARRANTS - INTEREST - INTEREST COUPONS - NEGOTIABILITY - ELIGIBILITY AS INVESTMENTS. The municipality, at any time after

* NOTE: Section 40-24-02 was also amended by section 1 of House Bill No. 1254, chapter 416.

making a contract or otherwise providing in accordance with section 40-22-27 for the construction of any improvement to be financed in whole or in part by assessments, under authority of any chapter of this title, or prior thereto but after the period for filing protests against the making of such improvement has expired and the protests filed, if any, have been heard and determined to be insufficient, and in anticipation of the levy and collection of such assessments and of any taxes or revenues derived from service charges pledged to pay for such improvement, may issue warrants on the fund created for such improvement. The municipality shall be responsible to the holders of such warrants for the proper advertisement and award of a contract or contracts or provision by other means for the completion of the improvement, for the acquisition of all land, easements, licenses, and permits required for such completion, and for the valid and final levy of special assessments upon all properties within the improvement district to be benefited by the improvement, in an aggregate principal amount equal to the total cost of the improvement as finally ascertained, less the portions thereof, if any, determined to be paid from taxes, service charges, and any other source~~;--and-the~~. The issuance of ~~such~~ the warrants shall ~~import~~ constitute a representation and covenant binding upon the municipality, that the aggregate benefits to be derived from the making of the improvement by the properties to be assessed therefor, are not less than the aggregate amount of the special assessments so required to be levied. The warrants shall be issued and shall mature in such amounts as in the judgment of the governing body will be provided for, at or before the maturity dates specified, by the taxes and assessments to be levied and spread and the revenues pledged therefor~~;--except--that--in~~. In lieu of issuing definitive warrants on any such fund, the governing body may by resolution authorize the issuance and sale of temporary warrants maturing in not to exceed three years from the date of issue of the first such warrant, to be repaid with interest from the proceeds of definitive warrants maturing as hereinabove required, which the governing body shall issue and sell at or before the maturing date of said temporary warrants, in the amount required, with moneys theretofore received in such fund, to pay the total cost of the improvement and all temporary warrants theretofore issued on the fund, with interest then accrued thereon. ~~Such~~ The warrants shall bear interest at a rate or rates and shall be sold at a price, not less than ninety-eight percent of par, resulting in an average ~~annual~~ net interest cost not to exceed ~~eight~~ twelve percent per annum payable annually or semiannually, except that there ~~shall--be~~ is no interest rate ceiling on an issue sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The definitive warrants may bear interest at a rate or rates higher or lower than those borne by the temporary warrants, as determined by the governing body in effecting the sale thereof. In the sale of temporary warrants, the municipality may by resolution of the governing body agree to issue to the holder or holders thereof definitive warrants upon specified terms as to interest, maturity, redemption provisions, and all other pertinent details, in the event that the municipality is unable to sell definitive warrants to others upon more favorable terms. Coupons

representing the interest for each year or lesser period may be attached to the warrants, whether definitive or temporary. All such warrants shall be negotiable within the meaning of and for all the purposes specified in title 41, and, to the same extent as general obligation bonds of the issuing municipality, shall be valid investments of the funds of any guardian, trustee, and other fiduciary of any kind or nature, any insurance company, bank, or other financial institution, any charitable, educational, or eleemosynary institution, and any public corporation or official, municipality, school district, or other political subdivision, including bond sinking funds, special improvement funds, municipal utility funds, and funds of the state of North Dakota and its instrumentalities and agencies.

SECTION 13. AMENDMENT. Section 40-29-15 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-29-15. WARRANTS - PAYABLE - INTEREST - INTEREST COUPONS - CONTENTS - SIGNED - DENOMINATIONS - USES. All sidewalk assessment warrants shall be payable as specified and in such amounts as in the judgment of the governing body will be provided by the taxes and assessments. ~~Such~~ The warrants shall bear interest at a rate ~~of not more than eight percent per annum and interest shall be payable annually. They may have coupons attached representing each year's interest~~ or rates and be sold at a price resulting in an average net interest cost not to exceed twelve percent per annum if sold at private sale. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The warrants shall state on their face the purpose for which they were issued and from what fund they are payable, and shall be signed by the executive officer, and countersigned by the city auditor under the seal of the municipality, ~~and shall be in denominations of not to exceed one thousand dollars each~~. The warrants may be used in making payment on contracts for making the improvements or may be sold for cash at not less than ninety-eight percent of the par value thereof and the proceeds credited to the special fund and used to pay for such improvements.

SECTION 14. AMENDMENT. Section 40-31-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-31-09. WARRANTS - PAYABLE - INTEREST COUPONS - CONTENTS - DENOMINATIONS - USES. All curbing assessment warrants shall be payable as specified and in such amounts as in the judgment of the governing body will be provided by the taxes and assessments. ~~Such~~ The warrants shall bear interest at a rate or rates and be sold at a price resulting in an average net interest cost of not more than ~~eight~~ twelve percent per annum, ~~payable annually, and~~ on those issues sold at private sale. However, there is no interest rate ceiling on warrant issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The

warrants may have coupons attached representing each year's interest. The warrants shall state upon their face the purpose for which they were issued and the fund from which they are payable and shall be signed by the executive officer of the city, and countersigned by the city auditor under the seal of the city, ~~and be in denominations of not more than one thousand dollars each. Such.~~ The warrants may be used in making payments on contracts for making the improvements or may be sold for cash at not less than ninety-eight percent of the par value thereof and the proceeds credited to the special fund and used to pay for such improvements.

* SECTION 15. AMENDMENT. Section 40-33-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-33-05. PAYMENT OF COST OF PLANT, SYSTEM, OR LINE BY SPECIAL ASSESSMENT WARRANTS - REGULATIONS GOVERNING. If the governing body of the municipality deems it advisable to pay the whole or any part of the cost of a municipal utility by special assessment warrants, it shall create a special assessment district by ordinance, and such district shall include, as nearly as may be determined, all of the property in the municipality which will be benefited by the improvement, and such district may include the entire municipality or a portion thereof. The governing body thereafter shall adopt a resolution of necessity and hold a hearing thereon, estimate the amount of the cost of the improvement, let a contract or contracts therefor, create a fund for the district, issue and sell the warrants of the municipality drawn on the fund, complete the work of the improvement, and assess the property benefited thereby in the form and upon the notice and in the manner specified by the provisions of chapters 40-22 through 40-26 insofar as such provisions are applicable to an improvement being made under this chapter. The special assessments levied shall be payable in equal annual installments extending over a period of not more than twenty years and shall bear interest at a rate of not more than ~~seven percent annually~~ one and one-half percentage points above the average net interest rate on any warrants for the payment of which they are pledged on the total amount of the assessments remaining unpaid from time to time.

SECTION 16. AMENDMENT. Section 40-34-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-34-03. MORTGAGES AND MORTGAGE BONDS - ISSUANCE OVER DEBT LIMIT - NOT GENERAL OBLIGATIONS - VOTE REQUIRED TO ISSUE - CONDITIONS. Municipalities may issue mortgage bonds beyond the general limits of the bonded indebtedness prescribed by law for the purpose of defraying the cost, or a part thereof, of a sewage disposal plant and system or of a garbage disposal plant in accordance with the provisions of section 40-34-02. ~~Such~~ The bonds shall not impose any general liability upon the issuing municipality but shall be paid only out of the revenues received from the service charges as provided in this chapter or from the sale of the property under foreclosure of the mortgage or deed of trust. ~~Such bonds~~

* NOTE: Section 40-33-05 was also amended by section 3 of House Bill No. 1254, chapter 416.

~~shall-be-sold-at-public-sale,-except-when-such--obligations--do--not exceed--the--total--sum--of--one-hundred-thousand-dollars.--Such~~ The bonds shall be sold for not less than ninety-eight percent of par and shall bear interest at a rate or rates resulting in an average annual net interest cost of not more than ~~eight~~ twelve percent per annum on those issues which are sold at private sale. There ~~shall be~~ 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. No ~~such~~ bonds shall be issued, however, except upon the affirmative vote of three-fifths or more of the members of the governing body of the issuing municipality, and the form, recitals, maturities, rate of interest, and whether the bonds shall be payable annually or semiannually, shall be determined by the same vote. A municipality is authorized to execute and deliver any mortgage or deed of trust contemplated under ~~the-provisions-of~~ this chapter.

SECTION 17. AMENDMENT. Section 40-35-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-35-08. PROVISIONS GOVERNING REVENUE BONDS. The resolution or ordinance authorizing the issuance of revenue bonds under this chapter, or ordinances or resolutions adopted subsequent to the adoption of the original resolution or ordinance, shall prescribe:

1. The rate or rates of interest, payable semiannually, ~~resulting-in-an--average--annual--net--interest--cost--not exceeding--eight--percent--per-annum-on-those-issues-which are-sold-at-private-sale,-which-such-bonds-shall-bear~~.

2. Whether the bonds shall be in one or more series.

3. The date or dates which such bonds shall bear.

4. The time or times, not exceeding forty years from their respective dates, when such bonds shall mature.

5. The medium in which such bonds shall be payable.

6. The place or places where such bonds shall be payable.

7. Whether or not such bonds shall carry registration privileges, and what such privileges, if any, shall be.

8. The terms of redemption, if any, to which such bonds shall be subject.

9. The manner in which such bonds shall be executed.

10. The terms, covenants, and conditions which such bonds shall contain~~,-and~~.

11. The form, either coupon or registered, in which such bonds shall be issued.

SECTION 18. AMENDMENT. Section 40-35-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-35-09. SALE OF REVENUE BONDS - WHEN PRIVATE SALE AUTHORIZED - PUBLIC SALE AND NOTICE THEREOF. Revenue bonds shall be sold at not less than ninety-eight percent of par. ~~Such~~ The bonds may be sold at private sale ~~to the United States or any agency, instrumentality, or corporation thereof, or to the state of North Dakota or any agency or instrumentality thereof. Unless the bonds are sold to the United States, to an agency, instrumentality, or corporation thereof, to the state of North Dakota, or to an agency or instrumentality thereof, or unless such obligations do not exceed the total sum of fifty thousand dollars, such bonds shall be sold~~ without notice or at public sale after notice of ~~such~~ the sale has been published once at least five days prior to ~~such~~ the sale in a newspaper circulating in the municipality, ~~and in a financial newspaper published in Chicago, Illinois, in New York, New York, in Minneapolis, Minnesota, or in San Francisco, California~~. Bonds sold at private sale shall bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum. There ~~shall be~~ is no interest rate ceiling on issues sold at public sale. ~~Provided, that if the principal amount of the series or issue of bonds to be sold does not exceed fifty thousand dollars, it shall not be necessary to publish a notice of sale of the bonds, and as~~ or to the state of North Dakota or any of its agencies or instrumentalities. As to any series or issue of bonds for which a notice of sale was published but for which no bids were received or all bids received were rejected, the governing body may, without readvertising the bonds for sale, negotiate the sale of all of the bonds to any person upon terms complying with those specified in the notice of sale theretofore published and, if bids were rejected, more favorable to the municipality than those specified in the rejected bid.

SECTION 19. AMENDMENT. Section 40-54-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-54-10. GRAVEL ASSESSMENT WARRANTS - HOW PAID - INTEREST - CONTENTS. All gravel assessment warrants shall be payable as specified and in such amounts as in the judgment of the governing body will be provided by such special assessments. ~~Such~~ The warrants shall bear interest at a rate ~~of not more than eight~~ or rates and be sold at a price resulting in average net interest cost not exceeding twelve percent per annum, ~~and interest shall be payable annually. They~~ if sold privately. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The warrants may have coupons attached representing each ~~year's~~ interest payment. The warrants shall state on their face the purpose for

which they were issued, and from what fund they are payable, and shall be signed by the executive officer and countersigned by the city auditor under the seal of the municipality~~, and shall be in denominations of not to exceed one thousand dollars each. Such~~. The warrants shall be used in making payment on the contract for the furnishing of gravel, or may be sold for cash at not less than ninety-eight percent of the par value thereof, and proceeds credited to the special fund and used to pay for ~~such~~ the gravel project.

SECTION 20. AMENDMENT. Subsections 3 and 4 of section 40-58-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, resulting in an average annual net interest cost not exceeding ~~eight~~ twelve percentum per annum on those issues which are sold at private sale. Such bonds shall be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

4. ~~Such~~ The bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the area of operation and in such other medium of publication as the municipality may determine or may be exchanged for other bonds on the basis of par, provided that ~~such~~ the bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the authorized principal amount of ~~such~~ the bonds is sold to the federal government, the balance may be sold at private sale at not less than par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government. ~~Such~~ The bonds may also be sold at private sale if such obligations do not exceed the total sum of one hundred thousand dollars. There ~~shall be~~ is no interest rate ceiling on issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities.

SECTION 21. AMENDMENT. Subsections 1 and 2 of section 40-61-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An authority ~~shall have the power and is hereby authorized~~ may from time to time ~~to~~ issue its negotiable bonds for any purpose mentioned in section 40-61-03, including the acquisition, construction, reconstruction, and repair of personal and real property of all kinds deemed by the board to be necessary or desirable to carry out such purpose, as well as to pay such expenses as may be deemed by the board necessary or desirable to the financing ~~thereof~~ and placing the project or projects in operation. An authority ~~shall have power~~ may from time to time and whenever it deems refunding expedient, ~~to~~ refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose hereinabove described. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase or payment of the bonds to be refunded. In computing the total amount of bonds of an authority which may at any time be outstanding the amount of the outstanding bonds to be refunded from the proceeds of the sale of new bonds or by exchange for new bonds shall be excluded. Except as may otherwise be expressly provided by an authority, the bonds of every issue shall be payable out of any moneys or revenues of an authority, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues. Notwithstanding the fact that the bonds may be payable from a special fund, if they are otherwise of such form and character as to be negotiable instruments under ~~article--eight--of--the--Uniform--Commercial--Code~~ chapter 41-08, the bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of ~~article eight of the Uniform--Commercial--Code~~ chapter 41-08, subject only to the provisions of the bonds for registration.

2. The bonds shall be authorized by resolution of the board and shall bear such date or dates, mature at such time or times, not exceeding thirty years from their respective dates, bear interest at such rate or rates, resulting in an average annual net interest cost not exceeding ~~eight~~ twelve percent per annum payable annually or semiannually on those issues which are sold at private sale, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the authority shall determine. There ~~shall be~~ 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.

SECTION 22. AMENDMENT. Section 54-17-25 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-17-25. BONDS AUTHORIZED. Whenever the North Dakota industrial commission ~~shall decide~~ decides that it is in the public interest to diminish the investment of state funds in United States government 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, ~~then~~ the ~~North Dakota industrial~~ commission may by plenary resolution duly adopted in accordance with the provisions hereof authorize preparation, sale, and issuance of ~~special coupon~~ revenue bonds of North Dakota in such amounts and at such times and in such form as the commission shall determine to be for the public good. ~~Such~~ The bonds shall be a paramount charge upon a sufficient designated portion of the resources of the student loan trust, subject only to necessary administrative expenses of the trust duly appropriated out of the interest earning resources thereof. The bonds may bear such rate or rates of interest as the commission may provide~~, not exceeding a net interest cost of eight percent per annum. There shall be no interest rates ceiling on those issues sold at public sale. Such~~. 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 resources generated from collection of payments on and earnings and proceeds of United States government guaranteed student loans, and shall so recite. They shall not be indebtedness of the state of North Dakota or of any agency, board, department, or officer or agent thereof.

SECTION 23. AMENDMENT. Section 55-08-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-08. STATE PARK REVENUE BONDS. For the purpose of paying all or part of the cost of acquisition, construction, reconstruction, improvement, betterment or extension of park properties for state parks, state campgrounds, state recreation areas and reserves, as described in subsection 2 of section 55-08-07, ~~subsection 2~~, which may, from time to time, be authorized by the legislative assembly ~~of the state of North Dakota~~, the money may be borrowed on the credit of the revenues to be received in the state park fund. Such borrowing shall be authorized by a board consisting of the governor, the state treasurer, and the director of ~~state~~ parks and recreation, by resolution or resolutions duly adopted by the vote of a majority of all members of such board. In anticipation of the collections of such revenues, negotiable bonds may be issued in such amount as, in the opinion of the board, may be

necessary for such purpose, within the limits of the authority granted by the legislative assembly in each instance, and the board may provide for the payment of such bonds and the rights of the holders thereof as provided in this chapter. The bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their date, may be in such denomination or denominations, may be in such form, either coupon or fully registered or registered as to ownership or principal, 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, ~~resulting in an average annual net interest cost not exceeding eight percent per annum on those issues which are sold at private sale,~~ as may be provided by resolution or resolutions to be adopted by the board, subject to the further provisions of this section. ~~Such~~ The bonds may be sold in such manner and at such price or prices, not less than ninety-eight percent of par plus accrued interest to date of delivery, as may be considered by the board to be advisable. ~~There shall be no interest rate ceiling on those issues sold at public sale. Such~~ The bonds shall have all of the qualities and incidents of negotiable paper, and such bonds and the income therefrom shall be exempt from any taxes, except inheritance, estate, and transfer taxes. The board may in its discretion authorize one series of bonds hereunder for more than one project, at more than one state park, state campground, state recreation area or reserve. It may also issue series of bonds hereunder for the refunding of outstanding bonds issued hereunder when such action is desirable in its judgment and is consistent with the terms of the resolution or resolutions authorizing the outstanding bonds.

SECTION 24. AMENDMENT. Section 61-02-48 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-48. COMMISSION TO DETERMINE INTEREST RATE, FORM, DENOMINATION, AND EXECUTION OF BONDS. The commission shall determine the rate of interest bonds issued under ~~the provisions of~~ this chapter shall bear, the time or times of payment of such interest, the form of the bonds and the interest coupons to be attached thereto, and the manner of executing the bonds and coupons, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereon, which may be at any bank or trust company within or without this state. ~~Such~~ The bonds ~~shall be sold at public sale, except when such obligations do not exceed the total sum of one hundred thousand dollars, and~~ shall be sold at a price resulting in an average ~~annual~~ net interest cost not exceeding ~~eight~~ twelve percent per annum on those issues which are sold at private sale. There ~~shall be~~ is no interest rate ceiling on those issues sold at public sale.

SECTION 25. AMENDMENT. Section 61-02-53 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-53. ISSUANCE AND SALE OF BONDS - PROCEEDS FROM SALE - USE. The bonds authorized under ~~the provisions of~~ this chapter may be issued and sold from time to time, and in such amounts as may be determined by the commission. The commission may, subject to the provisions of section 61-02-48, sell the bonds in such manner and for such price as it may determine to be for the best interests of the state, but no such sale shall be made for less than ninety-eight percent of the par value of each bond. The proceeds of ~~such~~ the bonds shall be used solely for the payment of the cost of the works or the cost of acquiring lands and preparing or developing such lands for irrigation, as the case may be, and shall be paid out in such manner and under such restrictions as the commission may provide.

SECTION 26. AMENDMENT. Section 61-08-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-08-07. BONDS PAYABLE TO WHOM - INTEREST COUPONS - RATE OF INTEREST - NUMBERING. Every bond provided for in this chapter shall be a negotiable instrument payable to "bearer" or to the "bearer or registered owner", with interest coupons attached, payable annually or semiannually, at a rate or rates resulting in an average annual net interest cost which shall not exceed ~~eight~~ twelve percent per annum on those issues which are sold at private sale. There ~~shall be~~ 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. Each bond shall specify the time and place of payment of the principal and shall be numbered consecutively with the other bonds of the same issue, which shall begin with number one, or with any other number, as the board may direct~~, and shall continue upward~~.

SECTION 27. AMENDMENT. Section 61-08-20 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-08-20. INTEREST ON WARRANTS - SIGNATURES - CONTENTS. District improvement warrants shall bear interest at such rate or rates as the board may determine, not to exceed ~~eight~~ an average net interest cost of twelve percent per annum if sold at private sale, and may have coupons attached representing each year's interest or each half-year's interest. ~~Such~~ There is no interest rate ceiling on warrant issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The warrants shall be signed by the chairman and countersigned by the secretary, ~~shall be in denominations of not more than one thousand dollars each,~~ and shall be numbered consecutively with the other warrants issued for the same purpose. Each warrant, on the face thereof, shall state the purpose for which

issued. Such warrants shall be payable in lawful money of the United States.

SECTION 28. AMENDMENT. Section 61-12-38 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-12-38. INTEREST RATE OF BONDS. Flood irrigation bonds issued as provided in this chapter shall bear interest at a rate or rates resulting in an average ~~annual~~ net interest cost not exceeding ~~eight~~ twelve percent on those issues which are sold at private sale. There ~~shall be~~ 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. Interest and principal may be payable under the amortization plan over a period of not to exceed twenty years, or the principal may be divided into such amounts and made payable at such periods, not exceeding twenty years, as the board of county commissioners may determine.

* SECTION 29. AMENDMENT. Section 61-16-13 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-13. DISTRICT MAY ISSUE WARRANTS IN ANTICIPATION OF TAXES LEVIED TO PAY CURRENT EXPENSES. After a water conservation and flood control district has been established and a board of commissioners has been appointed and organized, the board of commissioners may, in order to pay current district expenses including per diem, compensation, and expenses of commissioners and wages or salaries of officers and employees, by resolution authorize and issue district warrants in anticipation of and pending collection and receipt of taxes levied. ~~Such~~ The warrants shall bear such rate of interest as the board may determine, not exceeding~~, however, eight~~ twelve percent per annum on those issues sold at private sale. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The district treasurer shall keep a register in which to enter each warrant issued, showing the date and amount of each warrant, the date of payment, and the amount paid in redemption thereof. All warrants shall be paid in order of their presentation for payment to the district treasurer. ~~Such~~ The warrants shall be drawn to the claimant or bearer in the same manner as a county warrant, and shall be signed by the chairman of the board of commissioners and countersigned by the treasurer of the district. The total amount of ~~such~~ warrants issued in any year to pay current district expenses shall not exceed eighty percent of the district's tax levy for such year.

** SECTION 30. AMENDMENT. Section 61-16-28 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-28. CERTIFICATION OF ASSESSMENTS TO COUNTY AUDITOR. When a district board of commissioners has by resolution levied, or

* NOTE: Section 61-16-13 was repealed by section 11 of House Bill No. 1077, chapter 632.

** NOTE: Section 61-16-28 was repealed by section 11 of House Bill No. 1077, chapter 632.

caused to be levied, special assessments to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments shall bear, which rate shall not exceed ~~eight percent per annum and shall not be less than~~ one and one-half percentage points above the warrant rate. Interest on unpaid special assessments shall commence on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which shall be due and payable not more than thirty years after date of the warrants to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces more than one county, to the county auditor of each county in which district lands subject to such special assessments are situated, the total amount levied against such lands in his county and the proportion or percentage of such amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district shall also file with the county auditor of each county in which district lands lie a statement showing the cost of the project, the part thereof, if any, which will be paid out of the general taxes, and the part to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the board of commissioners shall prorate the costs of maintaining projects in the same proportion as were the original costs of construction or, in the event a reassessment of benefits has been adopted, the costs shall be prorated in accordance with the reassessment of benefits as authorized by section 61-16-26.1.

* SECTION 31. AMENDMENT. Section 61-16-32 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-32. WARRANTS - ISSUANCE - WHEN PAYABLE - AMOUNTS - INTEREST - INTEREST COUPONS. A water management district may, at any time after entering into a contract for a project to be financed in whole or in part by special assessments, issue temporary and definitive warrants on the project fund, created for that purpose, in the manner and subject to the limitations prescribed in section 40-24-19, and may pledge to the payment of warrants issued to finance a sewer or water project the net revenues derived from the imposition of service charges to be imposed and collected with respect thereto as provided in section 40-22-16 payable at specified times, except that the first maturity date of any such warrant shall not be less than two years from the date of issuance. The warrants shall be issued in such amounts as in the judgment of the district's board of commissioners will be necessary for such project. ~~Such~~ The warrants shall bear interest at a rate ~~of not to exceed eight~~ or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum~~, payable annually or semiannually~~ if sold at private sale. There is no interest rate ceiling on warrant issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Coupons

* NOTE: Section 61-16-32 was repealed by section 11 of House Bill No. 1077, chapter 632.

evidencing the interest for each year or half year, as the case may be, may be attached to the warrants. The warrants shall state upon the face thereof the purpose for which issued and the project fund from which they are payable and shall be signed by the chairman of the board of commissioners and countersigned by the secretary of the district. ~~Such~~ The warrants shall be payable serially in such amounts as the board shall determine, extending over a period of not more than thirty years.

SECTION 32. AMENDMENT. Section 61-21-50 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-50. DRAIN WARRANTS - TERMS AND AMOUNTS. Drain costs shall be paid upon order of the board by warrants signed by the chairman and one other member of the board. ~~Such~~ The warrants shall be payable from the proper drain fund and, upon maturity, shall be receivable by the treasurer for drain assessments supporting such fund. ~~Such~~ The warrants may be issued at any time after the order establishing the drain has become final and after incurring liability to pay for any drain work to be financed by drain assessments and in anticipation of levy and collection of such assessments. Every ~~such~~ warrant not made payable on demand shall specify the date when it ~~shall--become~~ becomes payable. Demand warrants not paid for want of funds shall be registered by the county treasurer and shall thereafter bear interest at a rate determined by the board, not exceeding eight percent per annum. Warrants of specified maturities shall bear interest according to their provisions at a rate or rates resulting in an average net interest cost not exceeding ~~eight~~ twelve percent per annum ~~payable annually or semiannually~~ if sold at private sale, and may be ~~made and~~ issued with interest coupons attached. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain warrants shall state upon their face the purpose for which they are issued and the drain fund from which they are payable~~,--and-shall-be in-denominations-of-not-more-than-five-thousand-dollars-each.--Such~~. The warrants may be used to pay drain obligations, or may be sold at not less than ninety-eight percent of par value, provided that the proceeds of warrants sold shall be placed in the proper drain fund and used exclusively for drain expenses. Any unpaid warrants issued for the acquisition of right of way or the construction of any drain, including all incidental costs in connection therewith, shall be funded by a bond issue within one hundred eighty days from and after the filing of the assessment of all such costs with the county auditor as provided in section 61-21-27, but such requirement shall not be construed as prohibiting the funding of warrants or the issuance of bonds after such one hundred eighty-day period.

SECTION 33. AMENDMENT. Section 61-21-53 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-53. DRAIN BONDS. The board may issue bonds to finance acquiring drain right of way, locating and constructing drains, and funding unpaid drain warrants heretofore issued, or issued hereafter under ~~the provisions of~~ this chapter. Drain bonds issued in whole or in part to finance expenditures for which warrants have not been issued shall not be authorized until after firm contracts for projected drain work have been made and proper undertakings therefor have been executed and filed, or until after the drain work has been completed. Proceedings for the issuance of ~~such~~ bonds shall be initiated by the adoption of a preliminary resolution of the board which shall include information and findings as follows:

1. The maximum amount of drain bonds proposed to be issued.

2. The maximum interest rate such bonds shall bear.

3. Designation of the calendar years in which such bonds shall mature.

4. The complete name of the drain for which such bonds are to be issued.

5. The purpose or purposes for which the proceeds of the bonds will be used including the total amount of drain warrants to be bought with such proceeds.

When such preliminary resolution has been duly adopted by the board, the board shall proceed to have the text thereof published in a legal newspaper of general circulation in the locality in which the particular drain is situated, and there shall be published with and as a part of such text a statement that from and after the expiration of thirty days next following the date of the first printing of such text, no action may be commenced or maintained, and no defense or counterclaim may be recognized in the courts of this state to question or impair the drain warrants resolved to be funded, or the drain assessments supporting such warrants. There shall also be included in such publication the further statement that a complete list identifying the drain warrants proposed to be funded has been filed in the office of the county auditor of the county or counties in which the affected lands are located. Such publication shall be made once each week for three successive weeks and proper proof thereof shall be filed with the board. The validity and enforceability of any drain warrant or of any assessment supporting the same shall not be vulnerable to attack in the courts of this state unless an appropriate action or proceeding is commenced or a defense or counterclaim is served within thirty days next following the date of first printing of such publication. ~~It shall be the duty of the~~ The board ~~to cause to be prepared and filed~~ shall prepare and file with the auditor of the proper county or counties a complete list identifying the drain warrants proposed to be funded by such bonds, and such list, or true copies thereof, shall be ~~so~~ filed prior to the date of first printing of said preliminary resolution. Within a reasonable time, and more than thirty days after the first printing of such preliminary resolution,

the board may proceed to authorize the preparation and sale of drain bonds in accordance with such resolution. ~~Such~~ The bonds shall bear interest at a rate or rates resulting in an average ~~annual~~ net interest cost not to exceed ~~eight~~ twelve percent per annum on those issues which are sold at private sale. There ~~shall be~~ is no interest rate ceiling on those issues sold at public sale~~.--Such~~ or to the state of North Dakota or any of its agencies or instrumentalities. The bonds shall contain a provision that interest thereon shall cease at maturity unless the holder shall present the same for payment and payment is refused, shall designate the fund from which they are payable, and shall be offered for sale and sold as provided in chapter 21-03, for the offering and sale of general obligation bonds of governmental subdivisions of this state. Wherever drain bonds are issued for drain warrants, ~~such~~ the bonds in the appropriate amount may be exchanged for ~~such~~ the warrants, but the basis of exchange shall be such that the average ~~annual~~ net rate of interest on the bonds will not exceed the rate on the warrants refunded. Drain warrants purchased with the proceeds of bonds shall not be canceled but shall be retained by the board as assets of the drain fund from which ~~such~~ the warrants are payable. ~~Such~~ The fund shall be continued and payments therefrom shall be made on the warrants drawn thereon without reference to the bond issue, but all such payments shall be placed in the fund from which the bonds are payable and shall be applied to service such bonds and to pay the interest thereon. Bonds issued by drainage districts shall be eligible for purchase by the various trust funds of the state of North Dakota and its instrumentalities.

SECTION 34. REPEAL. Section 54-30-06 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 35. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 1, 1981

CHAPTER 270

SENATE BILL NO. 2262
(Senators Lips, Wenstrom)
(Representatives Kuchera, Wagner)

"VALUE OF TAXABLE PROPERTY" DEFINED

AN ACT to amend and reenact subsection 4 of section 21-03-01 of the North Dakota Century Code, relating to the value of property for purposes of determining indebtedness limitations of political subdivisions; 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 21-03-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Value of taxable property" or "the assessed valuation" of a municipality shall mean ~~the full and true one hundred percent~~ six times the net value of all taxable property in such municipality as ~~finally equalized by the state board of equalization~~ determined pursuant to section 57-02-28, provided that these terms may never mean more than market value of the property.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 31, 1981

CHAPTER 271

HOUSE BILL NO. 1292
(Unhjem)

COUNTY BRIDGE BOND ISSUE

AN ACT to amend and reenact subdivision b of subsection 1 of section 21-03-06 of the North Dakota Century Code, relating to county bonds issued for the construction, enlargement, or repair of bridges.

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

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 21-03-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

b. To construct, enlarge, or repair, or aid in the construction, enlargement, or repair, of bridges within or without ~~such~~ the county, but all outstanding unpaid bonds for ~~such~~ this purpose shall not exceed in amount at any one time one percent of the value of taxable property in ~~such~~ the county.

Approved March 26, 1981

CHAPTER 272

HOUSE BILL NO. 1243
(Representatives Conmy, Gerl, A. Hausauer)
(Senators Barth, Dykshoorn)

JUNIOR COLLEGE CONSTRUCTION BOND ISSUE

AN ACT to authorize school districts having community or junior colleges or off-campus educational centers to issue bonds and levy taxes for capital construction purposes.

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

SECTION 1. BOND ISSUES FOR CAPITAL CONSTRUCTION FOR COMMUNITY OR JUNIOR COLLEGES OR OFF-CAMPUS EDUCATIONAL CENTERS - LEVY OF TAX. The school board of any school district having a community or junior college or off-campus educational center, as provided in chapter 15-18 which has an enrollment of one thousand or more students may, upon motion of the board, issue and sell bonds for capital construction purposes, including the construction and equipping of new buildings or repairing or renovating and equipping of existing buildings. The school board may levy a tax not exceeding two mills on the dollar of the net assessed valuation of the school district for the purpose of paying the principal and interest on bonds issued pursuant to this Act. The mill levy authorized by this Act shall be in addition to any mill levy limitations provided by law. The total principal amount of bonds issued pursuant to this Act shall not exceed seven hundred thousand dollars, and any indebtedness incurred by a school district shall be within debt limitations established by law. Bonds issued under this Act shall never become a general obligation of the state of North Dakota.

Approved April 6, 1981

CHAPTER 273

HOUSE BILL NO. 1519
(G. Larson, Unhjem)

MUNICIPAL BOND REFUNDING

AN ACT to amend and reenact 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 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. Subdivision c of subsection 7 of section 21-03-06 of the 1979 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 ~~interest~~ 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 ~~the earliest~~ 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 ~~its earliest~~ the earlier redemption date; and any premium required for redemption on such date; and 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 ~~shall~~ 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, 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 2. AMENDMENT. Section 40-27-13 of the 1979 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 ~~the provisions of~~ 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 ~~the provisions of~~ this chapter, which are past due 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 same. Such new bonds may be issued for the purpose of extending the maturities of the outstanding refunding warrants or bonds, or reducing the ~~interest costs~~ 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 ~~the earliest~~ 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 ~~its earliest~~ the earlier redemption date, and any premium required for redemption on such date. 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 ~~shall~~ 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, 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 3. AMENDMENT. Subsection 3 of section 40-36-13 of the 1979 Supplement to 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 ~~interest~~ 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 ~~the earliest~~ 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 ~~its--earliest~~ the earlier redemption date, and any premium required for redemption on such date. 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 ~~shall~~ 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, 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 March 11, 1981

CHAPTER 274

SENATE BILL NO. 2151
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

MUNICIPAL BOND SALE TO MUNICIPAL BOND BANK

AN ACT to amend and reenact section 21-03-30 of the North Dakota Century Code, relating to the sale of municipal bonds to the North Dakota municipal bond bank.

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

SECTION 1. AMENDMENT. Section 21-03-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-30. MUNICIPAL BONDS - PRIVATE SALE TO UNITED STATES OR STATE AGENCIES. The procedure prescribed in this chapter relative to calling for bids upon the sale of municipal bonds shall not be required in case bonds are sold to ~~the~~:

1. The state board of university and school lands ~~or to the~~.

2. The Bank of North Dakota ~~nor in case other trust~~.

3. The North Dakota municipal bond bank.

4. Trust funds administered by public officials ~~are invested in them, or they are sold to the~~.

5. The United States of America, or any agency or instrumentality thereof.

Approved March 5, 1981

CHAPTER 275

HOUSE BILL NO. 1240
(Representative Black)
(Senator Stenehjem)

MUNICIPAL BOND SALE PROCEEDS DISPOSAL

AN ACT to amend and reenact section 21-03-38.1 of the North Dakota Century Code, relating to disposal of bond proceeds.

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

SECTION 1. AMENDMENT. Section 21-03-38.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-38.1. DISPOSAL OF BOND PROCEEDS. The proceeds of any municipal bond sale, which have not been used for the purpose issued within ~~ten~~ three years after date of issue, may be disposed of by the governing body of the municipality as follows:

1. Sufficient funds shall be transferred to the sinking fund of ~~such~~ the issue in an amount equal to the principal of bonds outstanding and the interest requirements.

2. The governing body may by a two-thirds vote of all its members transfer ~~such~~ the funds to any or all other debt sinking funds of the municipality.

3. The governing body, upon approval by a majority vote of the electors, voting at an election called therefor, may use the funds for some other purpose authorized by law.

If any funds remain, they shall be transferred to the general fund of the municipality.

Approved February 20, 1981

CHAPTER 276

HOUSE BILL NO. 1178
(Committee on Political Subdivisions)
(At the request of the State Auditor)

GOVERNMENTAL DOCUMENT DESTRUCTION

AN ACT to amend and reenact sections 21-06-05 and 21-06-06 of the North Dakota Century Code, relating to the destruction of documents; and to repeal section 40-16-10 of the North Dakota Century Code, relating to the destruction of city records.

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

SECTION 1. AMENDMENT. Section 21-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-06-05. DOCUMENTS WHICH MAY BE DESTROYED - WHEN. ~~All bonds, bond coupons for interest, warrants, special assessment warrants, and any and all other documents evidencing debt made or executed by any school district, city or park district in the state may be destroyed when ten years have elapsed after their payment, and when the period within which an action might be commenced to determine the validity of such documents has expired.~~ After the same have been offered to the state archivist for preservation as archival resources, the auditor or clerk of a school district, city or park district may destroy, by any suitable means as determined by the governing body, their records after the same have become five years old except the following which shall be retained as permanent records of the school district, city or park district:

1. Governing body's proceedings.

2. Receipt and expenditure journals.

3. Payroll records.

SECTION 2. AMENDMENT. Section 21-06-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-06-06. PROCEDURE FOR DESTRUCTION OF DOCUMENTS. The governing body of any school district, city or park district desiring to destroy any documents described in section 21-06-05, at its first meeting in January of each year, shall procure from the

auditor or clerk of such school district, city or park district a list of such documents which have been paid more than ~~ten~~ five years prior to such time and against which the period within which an action might be commenced to determine the validity of such documents has expired, which said list shall contain a full statement and description of the documents desired to be destroyed, and thereupon shall check said documents with such lists. If found correct, the said governing body by resolution shall order said documents to be destroyed and in said resolution shall provide the manner of such destruction. The list provided for in this section shall be filed in the office of the city auditor or clerk of the school district or park district and retained as a permanent record.

SECTION 3. REPEAL. Section 40-16-10 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 26, 1981

CHAPTER 277

SENATE BILL NO. 2095
(Lodoen)

MUNICIPAL BOND VALIDATION

AN ACT to amend and reenact section 21-09-05 of the North Dakota Century Code, relating to the validation of bonds and other evidences of indebtedness issued by public bodies of the state prior to July 1, 1981; and to repeal sections 1-07-07, 1-07-09, 1-07-10, 1-07-11, 1-07-12, 1-07-13, 1-07-14, chapter 21-08, and sections 21-09-01 and 40-24-24 of the North Dakota Century Code, relating to the validation of bonds and other evidences of indebtedness issued prior to certain designated years preceding July 1, 1961, and to the citation of the 1975 Bond Validating Act.

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

SECTION 1. AMENDMENT. Section 21-09-05 of 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 ~~shall--be--applicable~~ apply to all bonds issued and proceedings taken by any public body prior to July 1, ~~1975~~ 1981.

SECTION 2. REPEAL. Sections 1-07-07, 1-07-09, 1-07-10, 1-07-11, 1-07-12, 1-07-13, 1-07-14, chapter 21-08, and sections 21-09-01 and 40-24-24 of the North Dakota Century Code are hereby repealed.

Approved March 6, 1981

HEALTH AND SAFETY

CHAPTER 278

SENATE BILL NO. 2340
(Goodman)

HOSPITAL OR NURSING HOME COMMITTEE REPORT CONFIDENTIALITY

AN ACT to amend and reenact section 23-01-02.1 of the North Dakota Century Code, relating to confidentiality of hospital or nursing home committee report.

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

SECTION 1. AMENDMENT. Section 23-01-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-02.1. HOSPITAL UTILIZATION COMMITTEES - REPORTS - IMMUNITY. Any information, data, reports, or records made available to a mandatory hospital committee or extended care facility committee as required by state or federal law or by the joint commission on accreditation of hospitals by a hospital or extended care facility in this state shall be confidential and shall be used by such committee and the members thereof only in the exercise of the proper functions of the committee. No physician, hospital, or institution furnishing information, data, reports, or records to any such committee with respect to any patient examined or treated by such physician or confined in such hospital or institution shall, by reason of furnishing such information, be liable in damages to any person, or be held to answer for willful violation of a privileged communication. No member of such a committee of a hospital or extended care facility shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of such committee if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him.

Approved March 9, 1981

CHAPTER 279

HOUSE BILL NO. 1094
(Retzer, G. Larson)

STATE HOSPITAL LAND SALE OR TRADE

AN ACT to authorize the state health officer of the state department of health to sell or trade three tracts of land owned by the state of North Dakota and used by the state hospital.

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

SECTION 1. The state health officer of the state department of health is authorized to sell or trade, in separate parcels or in any combination, the following property presently used by the state hospital at not less than the appraised value obtained from a duly qualified appraiser:

1. That portion of the east half of section six, township one hundred thirty-nine north, range sixty-three west, which runs in a north-south direction lying east of the midland-continental railroad right of way excepting all that portion lying within the right of way of interstate highway 94 and the county highway. This tract comprises approximately thirty-four acres.

2. That portion of section five, township one hundred thirty-nine north, range sixty-three west, which runs in a northwest-southeast direction, being bound by that certain township road on the north and east and by the burlington northern railroad right of way on the west and south, excepting all that portion lying within the right of way of interstate highway 94 and the township road. This tract of land comprises approximately eighty-six acres.

3. That portion of the north half of the north half of section five, township one hundred thirty-nine north, range sixty-three west, which runs in an east-west direction lying in the northeast corner thereof and including a one-hundred-foot wide tract which extends along a north boundary and immediately adjacent to the south boundary of interstate 94, excepting all that portion lying within the right of way of interstate

highway 94. This tract contains approximately fifty-six acres.

SECTION 2. The tracts of land described in section 1 shall be sold as prescribed by sections 38-09-01, 54-01-05.1, and 54-01-05.2. However, the state health officer may accept sealed bids in lieu of the public auction required by section 54-01-05.2. The state health officer may accept or reject any or all bids received on the land. Any proceeds received from the sale of the tracts shall be deposited in the general fund in the state treasury.

SECTION 3. The state is not responsible for the payment of any special assessments levied and assessed by any taxing district against property subject to sale and conveyance pursuant to this Act.

Approved February 20, 1981

CHAPTER 280

HOUSE BILL NO. 1172
(Committee on Political Subdivisions)
(At the request of the Health Department)

LOCAL DEATH CERTIFICATE PREPARATION FEE

AN ACT to amend and reenact subsection 2 of section 23-02.1-29 of the North Dakota Century Code, relating to fees collected for the preparation of certified copies of vital records.

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

SECTION 1. AMENDMENT. Subsection 2 of section 23-02.1-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Fees collected under this section by the state registrar shall be deposited in the general fund of this state, according to procedures established by the state treasurer. When a local registrar of any county in the state shall have been duly authorized, by the state registrar, to prepare and issue certified copies of death certificates or fetal death certificates, said local registrar shall be entitled to charge a fee, not to exceed two dollars, for each certified copy. Fees collected under this section by local registrars shall be deposited to the general fund of the respective counties.

Approved March 11, 1981

CHAPTER 281

SENATE BILL NO. 2291
(Reiten, R. Christensen)

BURIAL OF DECEASED INDIGENT

AN ACT to amend and reenact section 23-06-03 of the North Dakota Century Code, relating to the duty of burial.

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

SECTION 1. AMENDMENT. Section 23-06-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-03. DUTY OF BURIAL. The duty of burying the body of a deceased person devolves upon the following persons:

1. If the deceased was married, upon the surviving husband or wife.

2. If the deceased was not married but left kindred, upon the person or persons in the same degree, of adult age, nearest of kin to the deceased living within the state and possessed of sufficient means to defray the necessary expenses.

3. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within the time required by this chapter, upon the person next specified. If all omit to act, upon the tenant, or if there is no tenant, upon the owner of the premises in which the death occurs or the body is found.

4. If the deceased is survived by no person described by subsection 1 or 2 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for poor relief purposes or if residence cannot be established, then the county social service board of the county in which the death occurs, shall employ some person to arrange for and supervise the

burial. The cost of the burial shall be paid by the county social service board, subject to the following:

a. The sum of ~~five~~ six hundred dollars shall be allowed for personal property and burial services furnished by a funeral director or funeral home.

b. The reasonable costs of transporting the body to the place of burial, but not exceeding one hundred dollars.

c. The cost of the grave box or vault, not to exceed the sum of one hundred ~~fifty~~ eighty dollars, provided that a grave box or vault is required by the cemetery before a burial may be made.

d. The cost of a grave space, not to exceed the sum of seventy-five dollars.

e. Any grave opening and closing expenses, not to exceed the sum of one hundred twenty dollars.

Payment for services rendered or personal property furnished under subdivisions a, b, and c shall be made to the funeral home or funeral director furnishing the same, while payment for a grave space, services rendered, or personal property furnished under subdivisions d and e shall be made to the cemetery furnishing the same.

Approved April 1, 1981

CHAPTER 282

HOUSE BILL NO. 1171
(Committee on Political Subdivisions)
(At the request of the Health Department)

ABANDONED CEMETERY REGISTRATION REQUIREMENT

AN ACT to amend and reenact section 23-06-30 of the North Dakota Century Code, relating to the duty of counties to maintain abandoned cemeteries.

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

SECTION 1. AMENDMENT. Section 23-06-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-30. ABANDONED CEMETERIES TO BE MAINTAINED BY COUNTIES. The board of county commissioners of each county shall provide for the general maintenance and upkeep of each abandoned cemetery located within such county. The board shall, at least once each year, proceed to have the weeds and grass cut, restore gravestones to their original placement, and perform any other general maintenance necessary to maintain the dignity and appearance of the grounds. For the purposes of this section, a cemetery means any tract of land used as a burial plot and which is filed with the register of deeds of the county as a public burying place. The board of county commissioners of each county shall provide for the registration, with the state department of health, of each abandoned cemetery within such county unless such cemetery shall have been previously registered. Such registration shall take place within one year of notification being made to the board, by any interested party of the existence of such abandoned cemetery.

Approved March 3, 1981

CHAPTER 283

HOUSE BILL NO. 1513
(Lipsiea)

HEALTH AND SAFETY STANDARDS ENFORCEMENT

AN ACT to amend and reenact section 23-09-02 of the North Dakota Century Code, relating to enforcement of health and safety standards in hotels, lodginghouses, restaurants, and boardinghouses.

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

SECTION 1. AMENDMENT. Section 23-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-02. STATE LABORATORIES DEPARTMENT TO ENFORCE PROVISIONS OF CHAPTER. The state laboratories department shall enforce the provisions of this chapter. Under no circumstances may any other state agency enforce the provisions of this chapter or adopt rules which relate in any way to the provisions of this chapter nor may any other state agency expend any moneys, including salaries, which would involve the agency or its employees in work related to the provisions of this chapter.

Approved March 5, 1981

CHAPTER 284

SENATE BILL NO. 2247
(Lee)

DISTRICT HEALTH UNIT FEE SCHEDULE

AN ACT to amend and reenact section 23-14-06 of the North Dakota Century Code, relating to fees charged by district health units.

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

SECTION 1. AMENDMENT. Section 23-14-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-06. POWERS OF THE DISTRICT BOARDS OF HEALTH - FEES. Each district board of health shall have and shall exercise all the powers and duties which now or hereafter may be given to a local board of health by the laws of the state insofar as the same are not inconsistent with this chapter. District health units may establish by regulation a schedule of reasonable fees which may be charged for services rendered. However, services may not be withheld because of inability to pay any fees established under this section.

Approved March 31, 1981

CHAPTER 285

SENATE BILL NO. 2135
(Wenstrom)

HEALTH DISTRICT LEVY MAXIMUM

AN ACT to amend and reenact subsection 1 of section 23-14-11 of the North Dakota Century Code, increasing the maximum permitted mill levy for health districts from one and one-half mills to two and one-half mills.

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

SECTION 1. AMENDMENT. Subsection 1 of section 23-14-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The district board of health, as provided in this chapter, shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and ~~it~~ shall ~~be submitted~~ submit that budget to the ~~joint~~ board of county commissioners for approval. The amount budgeted and approved shall be prorated, in health districts composed of more than one county, among the various counties in the health district according to the assessed valuation of the respective counties comprising the ~~said~~ health district, and shall, within ten days after approval by the board of county commissioners, be certified by the district health board to the respective county auditors of such counties ~~within ten days thereafter~~, and shall be included in the levies of such counties. The amount called for in the budget shall not exceed the amount which can be raised by a levy of ~~one and one-half~~ two and one-half mills on the assessed valuation , subject to public hearing in each county comprising the district at least fifteen days prior to action taken by the joint boards of county commissioners. Action taken by the joint boards of county commissioners shall be based on the record including comments received at the public hearing. Such levy shall not be subject to the limitation on the county tax levy for general and special county purposes, and the amount derived therefrom shall be placed in a special health fund. The health fund shall be

deposited with and disbursed by the treasurer of the district board of health, and all counties comprising the health district shall remit and make settlements with such treasurer quarterly. Any funds remaining at the end of any fiscal year may be carried over to the next fiscal year.

Approved March 31, 1981

CHAPTER 286

HOUSE BILL NO. 1204
(Committee on Social Services and Veterans Affairs)
(At the request of the Health Department)

CERTIFICATION 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, 23-17.2-09, 23-17.2-11, 23-17.2-13, 23-17.2-14, and 23-17.2-15 of the North Dakota Century Code, relating to the certification of need for capital expenditures, new institutional health service, and major medical equipment.

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

SECTION 1. AMENDMENT. Section 23-17.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-01. REVIEW AND EVALUATION OF PROPOSED ~~CONSTRUCTION AND--PROPOSED--ADDITIONAL--MEDICAL--OR--RESIDENT--CARE--SERVICES--OF HOSPITALS--AND--RELATED-MEDICAL-FACILITIES~~ CAPITAL EXPENDITURES, NEW INSTITUTIONAL 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 ~~construction-and-expansion~~ capital expenditures, new institutional services and acquisition of major medical equipment by or on behalf of health care facilities and ~~the-institution-of-additional~~ 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 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 ~~construction-or-expansion-of--services--in--hospitals--and related--medical~~ capital expenditures, new institutional health service 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

~~before---commencing--construction~~ in order that proper facilities are made available for such care, ~~that-proposed new--or--expanded--medical--facilities-provide,~~ 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 ~~hospitals~~ health care facilities and services and ~~related-medical-facilities-and~~ to ensure that ~~medical~~ capital expenditures, new institutional health services and acquisition of major medical equipment by or on behalf of health care facilities are not ~~constructed-or services~~ expanded which exceed the needs of patients or of persons in the area to be served.

SECTION 2. AMENDMENT. Section 23-17.2-02 of 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 North Dakota Administrative Code chapter 33-03-01. The term does not include the offices of private physicians or dentists, whether for individual or group practice.

2. "Appearance" shall mean a notice in writing filed by any interested person notifying the health council of his interest in any application pending under this chapter.

~~2.~~ 3. "Bed capacity" means space as defined by the department pursuant to regulations promulgated ~~under-chapter-23-16~~ in the department's licensing programs for inpatient facilities.

~~3.---"Commencement---of--construction"--means--the--signing--of contracts-for-construction-or-engaging-construction--crews without--contract--for--the-purpose-of-construction-or-the signing-of-a-purchase--order--in--the--case--of--equipment ordered-to-institute-a-new-service.~~

4. "Capital expenditure" means an expenditure of one hundred fifty thousand dollars or such greater amount as federal regulations may specify, 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:

~~a.---The--proposed-construction-of-any-facility-or-proposed program-which-would-expand-service-or-increase-of--bed capacity.~~

~~b.--Addition of any health service not previously provided by a health care facility or health care service. However, construction shall not include the temporary increase of bed count by reason of an emergency not to exceed sixty days, or by changes required by state or federal health and safety regulatory bodies.~~ 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.

~~5.~~ 6. "Department" means the North Dakota state department of health.

~~6.--"Health care facility and health care service" means any program, institution, place, building, or agency, or portion thereof, private or public, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care to any person or persons which are licensed or certified by the department, or certified pursuant to the Federal Social Security Act as amended.~~

7. "Expenditure minimum", when used in connection with annual operating costs, means seventy-five thousand dollars or such greater amount as federal regulations may specify.

8. "Health care facility" means those health care facilities licensed by the department or certified by the department pursuant to the Federal Social Security Act as amended and so listed in department regulations under North Dakota Administrative Code article 33-09 such as hospitals, skilled nursing facilities, kidney disease treatment centers (including freestanding hemodialysis units), intermediate care facilities, rehabilitation facilities, and ambulatory surgical facilities. The term does not include the offices of private physicians or dentists, whether for individual or group practice.

9. "Health council" means the state health council of the North Dakota state department of health.

10. "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.

11. "Health services" means institutionally related (i.e. diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.

~~8.~~ 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~~,--and--which-is recognized-by-the-department-for--review--and--comment--on application--for--certificate--of-need-as-provided-by-this chapter~~.

13. "Incurring an obligation" means an obligation for a capital expenditure by or on behalf of a health care facility:

a. When 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 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.

14. "Inpatient" means a patient who has been formally admitted at least overnight to a hospital or other health facility which is responsible for his room and board for the purpose of receiving diagnostic or other health services.

15. "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 one hundred fifty 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 one hundred fifty 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.

16. "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.

~~9.~~ 17. "Patient" means a person who is suffering from mental illness, acute or chronic illness or injury, or 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.

~~10.~~ 18. "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. This does not include the offices of private physicians or dentists, whether for individual or group practice.

~~11.~~ 19. "Public body" means the state of North Dakota, and any county or municipal corporation.

~~12.~~ 20. "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.

~~13.~~ 21. "Public institution" means any hospital or related medical facility under the establishment and control of any public body.

~~14.~~ 22. "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].

~~15.~~ 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 North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 23-17.2-03 was also amended by section 1 of Senate Bill No. 2061, chapter 312.

23-17.2-03. ~~FACILITIES---INCLUDED~~ SCOPE OF COVERAGE OF CERTIFICATE OF NEED PROGRAM. ~~Health-care-facilities-and-health-care services--included--for--the--purpose--of-this-chapter-shall-include health-care-facilities--and--health--care--services--as--defined--in subsection-6-of-section-23-17.2-02.~~ The certificate of need program required under this chapter provides for the following:

1. The department, pursuant to this chapter and state health council's regulations, shall review proposals subject to this chapter and shall determine certificate of need approval, disapprove or revoke a certificate. The certificate of need program applies to:

   a. The obligation by or on behalf of a health care facility of any capital expenditure (other than to acquire an existing facility). 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 obligation of any capital expenditure by or on behalf of a health care facility which:

      (1) Increases or decreases the total number of beds by ten beds or ten percent, whichever is less in any two-year period;

      (2) Redistributes beds among various categories by ten beds or ten percent, whichever is less in any two-year period; or

      (3) Relocates beds from one physical facility or site to another by ten beds or ten percent whichever is less in any two-year period.

   c. The addition of a health care service by or on behalf of a health care facility which was not offered within the previous twelve-month period before the month in which the service would be offered which is associated with either a capital expenditure or entails an annual operating cost of at least seventy-five thousand dollars; or the termination of a health service which is associated with any capital expenditure.

   d. The acquisition by any person of major medical equipment that will be owned by or located in a health care facility.

   e. The acquisition by any person of major medical equipment not owned by or located in a health care facility if:

      (1) A notice of intent is not filed at least thirty days before a contract is entered into; or

(2) The department finds, within thirty days after receipt of a notice that the equipment will be used to provide services to inpatients on other than a temporary basis as in the case of a natural disaster, a major accident or equipment failure.

f. The obligation of a capital expenditure 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) or the department finds that the services or bed capacity of the facility will be changed.

g. 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.

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 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 North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-04. CERTIFICATE OF NEED. ~~No--hospital-or-related medical-facility-shall-be-constructed-or-expanded-and-no-new-medical care--service--shall--be-instituted-after-the-effective-date-of-this chapter-except-upon-application-for-and-receipt-of-a-certificate--of need--as--provided-by-this-chapter.--This-chapter-shall-not-apply-to any-facility-that-has--submitted--to--the--state--health--department preliminary--architectural--plans-for-expansion-or-remodeling-during the-calendar-year-1970-and--which--plans--are--followed--up--by--the awarding-of-a-contract-for-construction-by-December-31,-1971.~~

1. No person, subject to the scope of coverage under section 23-17.2-03 of this chapter, shall incur a capital

expenditure or institute a new 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. (As an illustration, where a hospital receives approval to construct a new wing for its facility, the hospital will "undertake the activity" when it begins to provide services in the wing.) 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. A "change in a project" shall include, at a minimum, any change in the bed capacity of a facility and the addition or termination of a health service.

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 North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-05. HEALTH COUNCIL TO PROMULGATE 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 ~~purposes~~ as amended.

3. The establishment of criteria for review as required by Pub. L. 93-641 as amended.

4. 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. ~~The establishment of dollar minimum as to inclusion or exclusion of a proposal.~~

~~6.~~ The establishment of schedules for submitting applications, types of reviews as well as time frames and limitations ~~in review of proposals by review bodies~~.

6. Purview determinations with regard to:

   a. Obligations of capital expenditures;

   b. The offering of new institutional health services; and

   c. The acquisition of major medical equipment.

7. When special reviews will be utilized because of special circumstances found with respect to proposals subject to this chapter.

8. The state health council shall seek the advice of the health systems agencies in these activities.

~~Health care facilities to be certified shall submit an application to the department. Applicants shall comply with criteria of rules and regulations as set forth therein. The health council 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 system agency in which the applicant is located and the determination shall be communicated to the facility or its owners or~~

~~operators, the respective health system agency, and all persons filing an appearance immediately after being made.~~

SECTION 6. AMENDMENT. Section 23-17.2-09 of 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 ~~by the health council. Applications.~~ 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. ~~Applications~~ 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 ~~health council~~ department may require including affirmative evidence of ability to comply with licensing or certification requirements when ~~constructed~~ proposal 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.

SECTION 7. AMENDMENT. Section 23-17.2-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-11. AUTHORITY TO ISSUE ~~OR~~, DENY OR WITHDRAW A CERTIFICATE OF NEED. The health council:

1. Shall issue certificates of need with or without conditions consistent with criteria prescribed in state law and regulations for ~~the construction or expansion of~~ proposals, subject to this chapter, of health care facilities or health care services ~~subject to this chapter~~ which are found to comply with the provisions of this chapter and such regulations as are lawfully promulgated by the health council. ~~Notice of determination by the health council granting, denying, or revoking the certification of need, or deferring the application for further information, shall be communicated to the applicant, the health system agency, and other persons who have filed an appearance.~~

2. May deny the issuance of a certificate of need hereunder on any of the following grounds:

   a. Violation of any of the provisions of this chapter or the rules and regulations promulgated pursuant thereto.

   b. Conduct or practices detrimental to the health or safety of patients and employees of said existing or proposed health care facilities or services.

   c. The issuance of a certification of need based on criteria is not ~~warranted~~ justified.

3. May withdraw a certificate of need issued due to the applicant's inaction in implementation of the proposal or certificate of need may be revoked when the applicant's deviation from initial approved certificate is such that initial purpose of the approval is no longer being implemented.

4. The state health council may approve an application with or without a condition, and disapprove or revoke a certificate of need based on criteria promulgated by the state health council.

5. The department shall periodically review the progress of the holder of the certificate in meeting the timetable specified in the approved application.

Notice of determination by the state health council granting, denying, or revoking the certification of need, or deferring the application for further information, shall be communicated to the applicant, the health systems agency, and other persons who have filed an appearance.

Within thirty days from date of mailing the determination, the applicant, any recognized health ~~system~~ systems agency, or any person ~~who--has-filed-an-appearance~~ may petition the health council for a public hearing for a reconsideration of ~~a~~ the department's determination in the case of either a certification approval, denial, withdrawal, or revocation. The public hearing shall be held before the health council in accordance with the provisions of chapter 28-32 pursuant to written notice to persons ~~who--have--filed an--appearance,~~ served by registered or certified mail, which shall concisely state the grounds for such approval, denial, withdrawal, or revocation and shall fix the time and place of hearing which shall not be less than ~~thirty~~ forty-five days after the date of the mailing of such notice. After such hearing, the council shall make an order denying or granting the application for certification, withdrawing, or revoking the certification previously granted. Revocation proceedings of the certificate of need, regardless of time lapse, may be initiated by the state health council, before implementation or after implementation of a proposal, when the

approved proposal deviates so that the initial intent of the approval can no longer be accomplished. The council shall send a copy of its order to all persons who have filed an appearance by registered or certified mail, which shall contain its findings and conclusions, and such order shall become final thirty days after the date of mailing unless an appeal is taken therefrom in the manner provided by section 23-17.2-13. The state health council shall have the sole authority to determine compliance or violation in administration of this chapter.

SECTION 8. AMENDMENT. Section 23-17.2-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-13. APPEAL. An appeal may be taken to the district court from any order of the health council denying, approving, or delaying a determination on an application for certificate of need or the withdrawal or revocation of a certificate of need previously granted. Any such appeal shall be taken in the manner provided in chapter 28-32.

1. After the commencement of a hearing before the council and before a decision is made, there shall be no ex parte contacts between any person acting on behalf of the applicant or holder of a certificate of need, or any person opposed to the issuance or in favor of withdrawal of a certificate of need and any person in the state health council who exercises any responsibility respecting the application or withdrawal.

2. The state court shall affirm the decision of the state health council unless it finds it to be arbitrary or capricious or not made in compliance with applicable law.

SECTION 9. AMENDMENT. Section 23-17.2-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-14. LICENSING OR USE PROHIBITED. Any person or public body establishing, conducting, managing, or operating any institution within the meaning of this chapter without first obtaining a certificate of need therefor as herein provided, or who shall violate any of the provisions of this chapter shall not be eligible for licensure and all licensing agencies are prohibited from issuing a license to operate in violation hereof. The prohibition of license shall apply to a building, portion or section of a building or that service which is subject to certificate of need within the meaning of this chapter which person proceeded without obtaining the proper certificate of need or any person or public body establishing, conducting, managing, or operating any institution within the meaning of this chapter without first obtaining a certificate of need therefor as herein provided, or who shall violate any of the provisions of this chapter shall be subject to a civil penalty not to exceed two hundred and fifty dollars per day and each day's continuance of the violation gives rise to a new penalty.

SECTION 10. AMENDMENT. Section 23-17.2-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-15. INJUNCTION. The department of health, in accordance with the laws of the state governing injunctions and other process, may maintain an action in the name of the state against any person~~,-partnership,-association,--or--corporation,--for establishing,--conducting,--managing,--or--operating-any-hospital-or related-medical-facility~~ for undertaking any activity subject to the provisions of this law, without first having a certificate of need therefor as herein provided.

Approved April 6, 1981

CHAPTER 287

SENATE BILL NO. 2060
(Legislative Council)
(Interim Health Care Committee)

HOME HEALTH AGENCY LICENSURE

AN ACT to license home health agencies.

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

SECTION 1. DEFINITIONS. In this Act, unless the context and subject matter otherwise requires:

1. "Certificate of need" means a certificate issued following the review process required pursuant to chapter 23-17.2 and rules and regulations promulgated thereunder.

2. "Clinical record" means a written account which covers the services the agency provides directly and those provided through arrangements with another agency which account contains pertinent past and current medical, nursing, social, and other therapeutic information, including the plan of treatment.

3. "Department" means the state department of health.

4. "Home health agency" means a public or private agency, organization, facility, or subdivision thereof which is engaged in providing home health services to individuals and families where they are presently residing for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.

5. "Home health aide" means an individual who renders personal related service under the supervision of a registered professional nurse.

6. "Home health services" means a broad range of health and social services furnished to individuals and families by a home health agency or by others under arrangements with the agency, in the places where the recipients are presently residing. Services must include the services of

a currently licensed registered professional nurse and at least one other therapeutic service and may include additional support services. These services may only be provided with the approval of a licensed physician.

7. "Licensed practical nurse" means one who has met all legal requirements for licensure and holds a current license to practice in North Dakota pursuant to chapter 43-12.1.

8. "Nursing services" means those services pertaining to the preventive, curative, and restorative aspects of nursing care that are performed by or under the supervision of a registered professional nurse.

9. "Person" means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

10. "Physician" means any person currently licensed pursuant to chapter 43-17.

11. "Registered professional nurse" means a registered nurse as defined under chapter 43-12.1.

12. "Skilled nursing" means professional nursing services rendered by nurses licensed under chapter 43-12.1.

13. "Supportive services" includes the use of medical appliances; medical supplies, other than drugs and biologicals prescribed by a physician; the collection of blood and other samples for laboratory analysis; and nutritional guidance, homemaker, or companion services.

14. "Therapeutic services" means services which include:

    a. Skilled nursing care.

    b. Medical social services.

    c. Home health aide services.

    d. Physical, occupational, or speech therapy.

    e. Respiratory therapy.

SECTION 2. LICENSE REQUIRED - RULES. A person may not conduct, maintain, or operate a home health agency without a license issued by the department. The department shall adopt rules for the application, issuance, and renewal of a license.

SECTION 3. CERTIFICATE OF NEED REQUIRED. A new home health agency must first obtain a certificate of need from the department prior to applying for a license. An existing home health agency

must first obtain a certificate of need from the department prior to an expansion of its geographic area of service.

SECTION 4. ISSUANCE AND RENEWAL OF LICENSES - EVALUATION. On receipt of an initial or renewal application, the department or its authorized agent shall evaluate the home health agency. If minimum standards described in section 5 of this Act are met, the department shall issue the license for renewal.

SECTION 5. STANDARDS OF LICENSURE.

1. Minimum standards which a home health agency must meet for licensure are:

   a. The agency must provide skilled nursing and at least one other therapeutic service, such as, physical therapy, occupational therapy, speech therapy, medical social services, or home health aide services, on a regular basis.

   b. The agency must maintain personnel folders on all agency employees, which indicate that qualified personnel are available to render designated services. Where hospital or long-term care personnel are utilized by the hospital or long-term care facility to treat agency patients during the normal working hours, the hospital's or facility's personnel folder meets this requirement for that facility's employees. Home health agencies that contract for staff to provide services shall maintain a current written agreement with personnel serving under that contract in the personnel folders maintained under this subsection.

   c. The agency must maintain plans of treatment, clinical notes, and other means to verify that services are actually provided and not merely listed as being offered.

   d. The agency must maintain full information in its files relating to ownership of the agency. In those instances where the agency is incorporated for profit, the files must contain names and addresses of the corporate officers and of each person having ten percent or greater interest in the ownership of the agency.

   e. The agency must have a supervising physician or a supervising registered professional nurse who is responsible for the direction, coordination, and general supervision of the therapeutic services provided by the agency and who is employed on a full-time basis. There must be supervision from a physician or registered professional nurse during all hours of operation.

f. If services are to be provided by arrangement with other agencies or organizations, the home health agency must ensure that the other agencies or organizations furnish qualified and trained personnel.

g. If services are provided under written contracts between a home health agency and other agencies or other organizations, the home health agency must have documentation which verifies that communications between the contractor and the staff of the agency are frequent, and that the home health agency has all information necessary to assure that the administrative responsibility for the care of patients rests with the home health agency.

h. The agency must maintain clinical records on all patients to serve as documentation of the medical, nursing, and therapeutic care rendered to the patient and for communication between the physician and the agency.

i. The agency must ensure that home health aides are properly trained and function under adequate supervision.

2. All phases of an agency's operation shall be without discrimination against individuals or groups of individuals on the basis of race, creed, color, national origin, sex, or age.

SECTION 6. ADVICE AND CONSULTATION. The department shall provide professional advice and consultation related to the quality of home health agency aspects of health care and services provided by the licensee.

SECTION 7. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. The department may deny, suspend, or revoke a license for noncompliance with this Act in accordance with the administrative hearing provisions of chapter 28-32.

SECTION 8. RULES - DEPARTMENT OF HEALTH. The department shall adopt necessary rules relating to the home health agencies licensed pursuant to section 2 of this Act, including rules governing:

1. Qualifications of professional and ancillary personnel in order to furnish adequately home health services.

2. Standards for the organization and quality of patient care.

3. Procedures for maintaining records.

4. Provision for contractual arrangements for professional and ancillary health services.

5. Procedures for application, issuance, and renewal of license.

6. Procedures for denial, suspension, or revocation of license.

7. Inspections of licensed home health agencies.

SECTION 9. INSPECTIONS - REQUIRED INFORMATION.

1. The department is authorized to conduct periodic inspections of the facilities of licensed home health agencies with respect to fitness and adequacy of equipment, personnel, rules and bylaws, standards of service and medical care, plans of treatment, records, and other standards of licensure.

2. Any home health agency which provides or makes available any home health services to the public in this state, in any organized program developed or rendered under its auspices or provided under contract with any other person shall submit annually to the department a complete description of that home health agency's operation, including name, address, location, or principal place of business, ownership, identification of administrative personnel responsible for home health services, and the nature and extent of the programs. The department shall determine the form and content of the information compiled and the annual date for submission of information. The department shall make the information available to the appropriate governmental agencies of the state so as to make known the availability of home health services to provide data for planning and for health needs of the people of the state. The information shall be available to the public and to the health systems agencies.

Approved April 8, 1981

CHAPTER 288

HOUSE BILL NO. 1174
(Committee on Natural Resources)
(At the request of the Department of Health)

IONIZING RADIATION DEVELOPMENT

AN ACT to create and enact five new sections to chapter 23-20.1 of the North Dakota Century Code, relating to the regulation and control of ionizing radiation resulting from uranium mining, processing, and related waste disposal; to amend and reenact section 23-20.1-01, subsection 1 of section 23-20.1-04, and section 23-20.1-10 of the North Dakota Century Code, relating to the definition of terms and the collection and appropriation of fees for the issuance of licenses and registration certificates for sources of ionizing radiation; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 23-20.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.1-01. DEFINITIONS. For the purposes of this chapter, the following words and phrases are defined:

1. "Ionizing radiation" means gamma rays and X-rays, alpha and beta particles, high speed electrons, protons, neutrons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

2. "Radioactive material" means any solid, liquid, or gas that emits ionizing radiation spontaneously.

3. "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, other than the commission, ~~or any successor thereto~~ and other than federal government agencies licensed by the commission ~~or any successor thereto~~.

4. "Department" means North Dakota state department of health.

5. "Commission" means United States ~~atomic energy commission~~ nuclear regulatory commission, or any successor thereto.

6. "Byproduct material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and the tailings or wastes produced by the extraction, or concentration of uranium or thorium from any ore processed primarily for its source material content.

7. "Source material" means uranium, thorium, or any other material which the department declares by rule to be source material after the commission~~, or any successor thereto,~~ has determined the material to be such; or ores containing one or more of the foregoing materials, in such concentration as the department declares by rule to be source material after the commission ~~or any successor thereto~~ has determined the material in such concentration to be source material.

8. "Special nuclear material" means:

   a. Plutonium, uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any other material which the department declares by rule to be special nuclear material after the commission~~, or any successor thereto,~~ has determined the material to be such, but does not include source material; or

   b. Any material artificially enriched by any of the foregoing but does not include source material.

9. "General license" means a license effective pursuant to regulations promulgated by the department without the filing of an application to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing byproduct, source, ~~or~~ special nuclear materials or other radioactive material occurring naturally or produced artificially.

10. "Specific license" means a license issued after application, to process, generate, dispose, use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing byproduct, source, ~~or~~ special nuclear materials or other radioactive material occurring naturally or produced artifically.

11. "Registration" means the notification of the department of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with sections 23-20-02 through 23-20-06.

12. "Surety" means cash deposits, surety bonds, certificates of deposit, deposits of government securities, letters of credit, and other surety mechanisms deemed acceptable by the department.

SECTION 2. AMENDMENT. Subsection 1 of section 23-20.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The department shall provide by rule or regulation for general or specific licensing of persons to process, generate, dispose, use, manufacture, produce, acquire, own, receive, possess, or transfer byproduct, source, special nuclear material and other radioactive materials occurring naturally or produced artificially or devices or equipment utilizing such materials. Such rule or regulation shall provide for amendment, suspension, or revocation of licenses.

SECTION 3. A new section to chapter 23-20.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

CUSTODY OF DISPOSAL SITES.

1. Any radioactive materials license issued or renewed for any activity which results in the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially shall contain any terms and conditions the department determines to be necessary to assure that, prior to termination of such license:

   a. The licensee will comply with any decontamination, decommissioning, and stabilization standards prescribed by the department, which shall be equivalent to or more stringent than those of the commission for sites, structures, and equipment used in conjunction with the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially; and

   b. Ownership of any disposal site and source material, byproduct material, or other radioactive material occurring naturally or produced artificially which resulted from the licensed activity shall, subject to the provisions of subsection 2 be transferred to either the United States where provided by federal law

or North Dakota if North Dakota exercises the option to acquire land used for the disposal of such source material, byproduct material, or other radioactive material occurring naturally or produced artificially.

2. a. The department shall require by rule, regulation, or order that prior to the termination of any license, title to the land, including any interests therein (other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States or land already owned by the United States or by North Dakota) which is used for the disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially pursuant to a license, shall be transferred to either the United States where provided by federal law or North Dakota unless the commission and the department determine prior to the termination that transfer of title to the land and the material is not necessary to protect the public health, safety or welfare or to minimize danger to life or property.

b. If transfer to North Dakota of title to the land, source material, byproduct material, or other radioactive material occurring naturally or produced artificially is required, the department shall maintain the material and land in a manner as will protect the public health, safety, and the environment.

c. The department is authorized to undertake any monitoring, maintenance and emergency measures necessary to protect the public health and safety for those materials and property for which it has assumed custody pursuant to this chapter.

d. The transfer of title to land or source material, byproduct material, or other radioactive material occurring naturally or produced artificially, to North Dakota shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to the transfer.

e. Material and land transferred to either the United States or North Dakota in accordance with this Act shall be transferred without cost to either the United States or North Dakota other than administrative and legal costs incurred by either the United States or North Dakota in carrying out the transfer.

SECTION 4. A new section to chapter 23-20.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

SURETY REQUIREMENTS.

1. The department shall establish by rule or regulation, standards and instructions as it deems necessary or desirable to ensure:

   a. That an adequate surety as determined by the department will be provided by the licensee to permit the completion of all requirements established by the department for the decontamination, decommissioning, and stabilization of sites, structures, and equipment used in conjunction with the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially; and

   b. That if the department determines that any long-term maintenance and monitoring is necessary, the licensee, before termination of any license for source material, byproduct material, or other radioactive material occurring naturally or produced artificially will make available such funds as may be necessary to assure maintenance and monitoring.

2. Any funds for long-term site surveillance and control shall be available to North Dakota if title and custody of source material, byproduct material, or other radioactive material occurring naturally or produced artificially and its disposal site is transferred to North Dakota pursuant to subsection 1 of section 3 of this Act. The funds shall be transferred to the United States if title and custody of the source material, byproduct material, or other radioactive material occurring naturally or produced artificially and its disposal site is transferred to the United States upon termination of any license for source material, byproduct material, or other radioactive material occurring naturally or produced artificially. These funds include, but are not limited to, sums collected for long-term surveillance (i.e., continued site observation, monitoring and, possibly in some cases, if necessary, maintenance). The funds do not, however, include moneys, held as surety where no default had occurred and the reclamation or other bonded activity has been performed.

3. Where the department requires a surety for stabilization or funds for long-term surveillance (i.e., continued site observation, monitoring and, possibly in some cases, if necessary, maintenance), the amounts must be sufficient to ensure compliance with those standards established by the commission and the department pertaining to financial arrangements to ensure adequate stabilization and long-term management of source material, byproduct

material, or other radioactive material occurring naturally or produced artificially and its disposal site.

SECTION 5. A new section to chapter 23-20.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

PROCEDURAL REQUIREMENTS. In the licensing and regulation of the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially, the department shall provide:

1. In the cases of licenses:

a. An opportunity, after public notice, for written comments and a public hearing, with a transcript;

b. An opportunity for cross-examination;

c. A written determination of the action to be taken which is based upon findings included in the determination and upon evidence presented during the public comment period and which is subject to judicial review;

d. For each licensed activity which has a significant impact on the human environment, a written analysis prepared by the department, which shall be available to the public before commencement of hearings, of the impact of the licensed activity on the environment. The analysis shall include:

(1) An assessment of the radiological and nonradiological impacts to the public health;

(2) An assessment of any impact on any waterway and ground water;

(3) Consideration of alternatives to the activities to be conducted; and

(4) Consideration of the long-term impacts of the licensed activities;

e. A prohibition of any major construction with respect to the activities to be conducted prior to completing the action stipulated in paragraphs a, b, c, and d; and

f. Assurance that management of source material, byproduct material, or other radioactive material occurring naturally or produced artificially is carried out in conformance with applicable standards

promulgated by the department, the commission, and the United States environmental protection agency.

2. In the case of rulemaking:

a. An opportunity for public participation through written comments or a public hearing; and

b. An opportunity for judicial review.

SECTION 6. A new section to chapter 23-20.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

ADDITIONAL AUTHORITIES. The department is authorized, in carrying out its authority under subdivision f of subsection 1 of section 5 of this Act, to require persons exempt from licensing to conduct monitoring, perform remedial work and to comply with any other measures the department deems necessary or desirable to protect health or minimize danger to life or property.

SECTION 7. A new section to chapter 23-20.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

FEES DEPOSIT IN OPERATING FUND. The department by rule or regulation may prescribe and provide for the payment and collection of reasonable fees for the issuance of licenses and registration certificates. The license and registration certificate fees shall be based on the anticipated cost of filing and processing the application, of taking action on the requested license or registration certificate, and of conducting an inspection program to determine compliance or noncompliance with the license or registration certificate.

Any moneys collected for permit or registration fees shall be deposited in the department of health operating fund in the state treasury and shall be spent subject to appropriation by the legislative assembly.

SECTION 8. AMENDMENT. Section 23-20.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.1-10. PENALTIES. Any person who violates any provision of this chapter or any license condition or limitation implemented by this chapter is subject to a civil penalty of not more than ten thousand dollars per day of violation.

In addition to any other penalty or remedy pursuant to this chapter, any person who knowingly violates any of the provisions of this chapter, or rules, regulations, or orders of the department in effect pursuant thereto shall be guilty of a class A misdemeanor.

Approved March 9, 1981

CHAPTER 289

SENATE BILL NO. 2149
(Committee on Social Welfare and Veterans Affairs)
(At the request of the Department of Health)

HAZARDOUS WASTE MANAGEMENT PROGRAM

AN ACT to provide for a program to regulate hazardous waste from the point of generation through transportation, storage, treatment and disposal, a permit and manifest system, and a demonstration of financial responsibility; and to provide a penalty.

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

SECTION 1. 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 management of hazardous waste.

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.

SECTION 2. 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. "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 (1) because of its quantity, concentration, or physical, chemical, or other characteristic, in the judgment of the department may (a) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or (2) 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 hazardous waste during its transportation from the site of generation to the site of storage, treatment, or disposal.

8. "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. "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. "Transportation" means the offsite movement of hazardous wastes to any intermediate site or to any site of storage, treatment, or disposal.

11. "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. "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. "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. 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 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.

4. Enter into agreements or letters of understanding with other state or federal agencies regarding responsibilities for regulating hazardous wastes in order to promote consistency in enforcement and to avoid duplication in regulation.

SECTION 4. 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 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. 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. Regulations for the location, design, construction, operation, and maintenance of treatment, storage, and disposal facilities.

5. 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. Regulations providing procedures and requirements for a manifest system.

7. Regulations which prescribe procedures and requirements for the following:

   a. Recordkeeping

   b. Reporting

   c. Sampling

   d. Performing analysis

   e. Monitoring

8. 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. Any other regulations necessary to carry out the purposes of this chapter.

SECTION 5. PERMITS.

1. No person shall construct, substantially alter, or operate any hazardous waste treatment, storage or disposal facility, nor shall any person treat, store or dispose of any hazardous waste without first obtaining a permit from the department for such facility or activity. No hazardous waste treatment, storage or disposal facility shall be issued a permit unless the applicant demonstrates to the satisfaction of the department that a need for the facility exists and that the facility can comply with all applicable requirements under this chapter.

2. Any facility required to have a permit under this section which facility is in existence on the effective date of this chapter 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.

3. The department, by regulation, shall require that any person who owns or operates a facility which is treated as having been issued a permit under subsection 2 of section 5, meet all applicable requirements of section 4.

4. Permits shall contain such terms and conditions as the department deems necessary.

5. Permits shall be issued for a period of five years.

6. Any permit issued under this section may be revoked by the department according to the regulations promulgated under subsection 3 of section 4 at any time when the permittee fails to comply with the terms and conditions of the permit, or with applicable requirements under this chapter.

7. In the event that a permit applicant proposes modifications of an existing facility, or in the event that the department determines that modifications are necessary to conform to the requirements established under this chapter, the permit shall specify the time allowed to complete the modifications.

8. Before the issuing of a permit the department shall:

   a. Cause to be published in the official county newspaper of the county in which the proposed facility will be located and in major local newspapers of general circulation and broadcast over local radio stations notice of the department's intention to issue such permit, and

b. Transmit in writing notice of the department's intention to issue such permit to each unit of local government having jurisdiction over the area in which the facility is proposed to be located and to each state agency having any authority under state law with respect to the construction or operation of the facility.

If within forty-five days the department receives written notice of opposition to the department's intention to issue a permit and a request for a hearing, or if the department determines on its own initiative, the department shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether the department should issue a permit for the proposed facility. Whenever possible the department shall schedule the hearing at a location convenient to the nearest population center to the proposed facility. Notice of the hearing shall be published in the manner provided in subdivisions a and b of subsection 8 of this section. The notice shall contain the date, time, place, and subject matter of the hearing.

9. Any facility required to have a permit under this chapter is exempt from the permit requirements of chapter 23-29.

SECTION 6. 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 where wastes which the department has reason to believe may be hazardous are, may be, or may have been generated, stored, transported, treated, disposed of, or otherwise handled.

2. Inspect and obtain samples of any waste which the department has reason to believe may be hazardous, 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 7. MONITORING, ANALYSIS, AND TESTING.

1. If the department determines, upon receipt of any information, that:

   a. The presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or

b. The release of any such waste 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 of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste 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 8. IMMINENT HAZARD. Upon receipt of information that the handling, storage, transportation, treatment, or disposal of any waste 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 9. ENFORCEMENT PENALTIES AND CITIZEN PARTICIPATION.

1. Whenever the department finds that any person is in violation of any permit, rule, regulation, standard or requirement of this chapter, the department may issue an order requiring such person to comply with such permit, rule, regulation, standard, or requirement, and the department may bring an action for a civil or criminal penalty, including an action for injunctive relief. Any action under this chapter shall be brought in the North Dakota district court for the county in which the violation occurred or in which the party in violation has his residence or principal office in the state.

2. Any person who violates any provision of this chapter or any regulation, standard, or permit condition adopted pursuant to this chapter, shall be subject to a civil penalty not to exceed twenty-five thousand dollars per day of violation. Each day of noncompliance shall constitute a separate violation for purposes of penalty assessments.

3. Any person who knowingly violates any provision of this chapter or any regulation, standard, or permit condition

adopted pursuant to this chapter, or who knowingly makes any false statement or representation in any documentation required by this chapter, shall be subject to a fine not to exceed twenty-five thousand dollars per day of violation, to imprisonment for a period not to exceed one year, or both.

4. Any person who knowingly violates any provision of this chapter in such a manner so as to manifest extreme indifference to human life, and whose conduct thereby places another person in imminent danger of death or serious bodily injury shall be subject to a fine not to exceed fifty thousand dollars per day of violation, to imprisonment for a period not to exceed two years, or both.

5. a. Any person having an interest which is or may be adversely affected by a violation of this chapter may commence a civil action on his own behalf to compel compliance with this chapter, or any regulation, order, or permit issued pursuant to this chapter.

   b. Notice of the violation shall be given to the department and to any alleged violator sixty days before commencement of a citizen suit brought under this subsection.

   c. Any person with an interest which is or may be adversely affected by a violation of this chapter may intervene as a matter of right in any civil action brought by the department to require compliance with the provisions of this chapter.

6. Any administrative action brought under this chapter shall be conducted in accordance with article 33-22 of the North Dakota Administrative Code.

SECTION 10. APPLICABILITY. The provisions of this Act do not apply to:

1. Drilling fluids, produced water, and other wastes associated with the exploration, development, or production or 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; and

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 31, 1981

CHAPTER 290

SENATE BILL NO. 2125
(Committee on Social Services and Veterans Affairs)
(At the request of the Health Department)

SOLID WASTE MANAGEMENT VIOLATION PENALTY

AN ACT to amend and reenact section 23-29-12 of the North Dakota Century Code, relating to penalties for violation of chapter 23-29, the solid waste management law.

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

SECTION 1. AMENDMENT. Section 23-29-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-29-12. PENALTIES. Any person violating any provision of this chapter, or any rule, regulation, ~~or~~ order, or permit condition issued thereunder, ~~shall be guilty of a class A misdemeanor and upon conviction shall be punished as provided by law~~ is subject to a civil penalty not to exceed three hundred dollars per day of such violation.

Approved March 9, 1981

HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 291

SENATE BILL NO. 2183
(Committee on Transportation)
(At the request of the Highway Department)

BRIDGE INSPECTION AND ROAD BID REQUIREMENTS

AN ACT to amend and reenact sections 24-01-37, 24-02-17, and 24-08-03 of the North Dakota Century Code, relating to the time period for inspection of bridges by the state highway department and the counties, and the maximum dollar amount allowed for the awarding of contracts by the state highway department without advertising for bids.

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

SECTION 1. AMENDMENT. Section 24-01-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-01-37. INSPECTION OF BRIDGES. The department, at least every ~~two~~ four years, and so far as time and conditions may permit, shall cause an inspection to be made of all bridges on the state highway system in the state. In case any bridge on the state highway system shall be deemed unsafe for public use by the said department, it forthwith shall take steps to close the same and prevent the use thereof by the public. In case any bridge on the state highway system shall be deemed unsafe for loads in excess of a certain weight, the department forthwith shall post notices on both ends of such bridge stating that such bridge is unsafe for loads beyond that weight.

SECTION 2. AMENDMENT. Section 24-02-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-17. CONTRACTS - BIDS. Whenever the cost of any construction improvement shall exceed the sum of ~~two~~ five thousand dollars, the department shall proceed to advertise the same, request bids, and award such contracts in the manner provided in this chapter. Whenever any proposed contract or work of the department shall be for a sum less than ~~two~~ five thousand dollars, it shall be discretionary with the department whether the same shall be awarded after advertising for bids. The department shall award such contracts in the manner provided in this chapter, but where contracts are in excess of ~~one~~ three thousand dollars, the

department shall request bids from as many contractors, manufacturers, and dealers as can be requested conveniently.

* SECTION 3. AMENDMENT. Section 24-08-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-08-03. SUPERVISION AND REPAIRS OF BRIDGE. Any bridge built under the provisions of section 24-08-01 shall be under the supervision of the board of county commissioners, and the cost of rebuilding or repairing the same shall be paid by the county. Where the cost of rebuilding or repairing a bridge would exceed the sum of thirty thousand dollars on estimate of the county engineer and upon the approval of the estimate by the North Dakota highway department, the county commissioners shall advertise for bids and award the contract in the manner provided by section 24-08-01. When a bridge is destroyed by flood, fire, or other casualty and the public interest would suffer by delay, the county commissioners may proceed to contract for the rebuilding or repair of such bridge without advertising for bids, regardless of the cost. The board of county commissioners at least every ~~two~~ four years, and so far as time and conditions may permit, shall cause an inspection to be made of all bridges on the county road system in the county. In case any bridge on the county road system shall be deemed unsafe for public use by the said board of commissioners, it forthwith shall take steps to close the same and prevent the use thereof by the public. In case any bridge on the county road system shall be deemed unsafe for loads in excess of a certain weight, the board of commissioners forthwith shall post notices on both ends of such bridge stating that such bridge is unsafe for loads beyond that weight. The county shall not be immune from claims or suits for damages arising out of negligent failure to perform the inspection and repair duties set out above.

Approved March 9, 1981

* NOTE: Section 24-08-03 was also amended by section 1 of Senate Bill No. 2263, chapter 293.

CHAPTER 292

HOUSE BILL NO. 1224
(Representatives Peltier, L. Hanson)
(Senator Grotberg)

ROAD MACHINERY ADVERTISING REQUIREMENT

AN ACT to amend and reenact section 24-05-04 of the North Dakota Century Code, relating to advertising requirements for purchases or rentals by counties of road machinery or improvements of highways.

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

SECTION 1. AMENDMENT. Section 24-05-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-05-04. CONTRACTS TO BE ADVERTISED - REQUIREMENTS FOR RENTAL CONTRACTS. All purchases of county road machinery and all rental contracts or agreements for the use of road machinery and other articles or contracts for the improvement of the highways, except necessary repairs for such road machinery, which shall exceed the sum of ~~five~~ ten thousand dollars, shall be advertised in the manner provided by law for the purchase of county supplies. The board of county commissioners shall not enter into a rental contract or agreement for the use of road machinery and other articles for a longer period than twelve months from the date of such rental contract or agree to pay rental for the use of road machinery and other articles which would result in the lessor receiving rental at a rate in excess of twenty per centum per annum of the cash sale price thereof, which cash sale price of such road machinery and other articles shall be clearly set forth in all such rental contracts, and failure to include such data in any rental contract for the use of road machinery and other articles shall render any such rental contract null and void, and any payments made thereunder shall be recoverable from the county commissioners making such contract jointly and severally. Notwithstanding the provisions of this section relating to the duration of rental contracts, the board of county commissioners may enter into lease-purchase agreements for the road machinery and articles covered by this section, if those agreements provide for the complete performance and full payment of the purchase price of the machinery or articles within five years from the date of the execution of the lease-purchase agreement according to the provisions of section 44-08-01.1.

Approved March 9, 1981

CHAPTER 293

SENATE BILL NO. 2263
(Streibel)

COUNTY EMERGENCY BRIDGE CONSTRUCTION

AN ACT to amend and reenact section 24-08-03 of the North Dakota Century Code, relating to supervision and repair of bridges.

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

* SECTION 1. AMENDMENT. Section 24-08-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-08-03. SUPERVISION AND REPAIRS OF BRIDGE. Any bridge built under the provisions of section 24-08-01 shall be under the supervision of the board of county commissioners, and the cost of rebuilding or repairing the same shall be paid by the county. Where the cost of rebuilding or repairing a bridge would exceed the sum of thirty thousand dollars on estimate of the county engineer and upon the approval of the estimate by the North Dakota highway department, the county commissioners shall advertise for bids and award the contract ~~in--the--manner--provided-by~~ pursuant to section 24-08-01. When a bridge is destroyed by flood, fire, or other casualty and the public interest would suffer by the delay from advertising for bids and awaiting the contract pursuant to section 24-08-01, the county commissioners may ~~proceed-to~~ promptly contract for the rebuilding or repair of ~~such~~ the bridge without advertising for bids, regardless of the cost. The board of county commissioners at least every two years, and so far as time and conditions may permit, shall cause an inspection to be made of all bridges on the county road system in the county. In case any bridge on the county road system shall be deemed unsafe for public use by the ~~said~~ board of commissioners, it ~~forthwith~~ immediately shall take steps to close the same and prevent the use thereof by the public. In case any bridge on the county road system shall be deemed unsafe for loads in excess of a certain weight, the board of commissioners forthwith shall post notices on both ends of ~~such~~ the bridge stating that ~~such~~ the bridge is unsafe for loads beyond that weight. The county shall not be immune from claims or suits for damages arising out of negligent failure to perform the inspection and repair duties ~~set-out-above~~ required by this section.

Approved March 16, 1981

* NOTE: Section 24-08-03 was also amended by section 3 of Senate Bill No. 2183, chapter 291.

MENTALLY ILL AND RETARDED, TUBERCULAR, BLIND, AND DEAF

CHAPTER 294

SENATE BILL NO. 2253
(Senators H. Christensen, R. Christensen, Wenstrom)
(Representatives Eagles, Unhjem)

RIGHTS OF THE DEVELOPMENTALLY DISABLED

AN ACT to specify certain rights to which developmentally disabled persons are entitled.

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. "Developmental disability" means a disability which meets all of the following conditions:

   a. Is attributable to a mental or physical impairment or combination of mental and physical impairments.

   b. Is manifested before the person attains age twenty-two.

   c. Is likely to continue indefinitely.

   d. Results in substantial functional limitations to the person's ability to function normally in society.

2. "Institution or facility" means any school, hospital, residence center, group home, or any other facility operated by any public or private agency, organization, or institution, which provides services to developmentally disabled persons.

3. "Least restrictive appropriate setting" means that setting which allows the developmentally disabled person to develop and realize his fullest potential and enhances the person's ability to cope with his environment without unnecessarily curtailing fundamental personal liberties.

4. "Service or services for developmentally disabled persons" means services provided by any public or private agency, organization, or institution, directed toward the

alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of a developmentally disabled person.

SECTION 2. APPROPRIATE TREATMENT, SERVICES, AND HABILITATION - TREATMENT IN LEAST RESTRICTIVE APPROPRIATE SETTING. All persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for those disabilities. Treatment, services, and habilitation for developmentally disabled persons shall be provided in the least restrictive appropriate setting.

SECTION 3. PRESUMPTION OF INCOMPETENCE PROHIBITED - DISCRIMINATION PROHIBITED - DEPRIVATION OF CONSTITUTIONAL, CIVIL, OR LEGAL RIGHTS PROHIBITED. No developmentally disabled person shall be presumed to be incompetent or shall be deprived of any constitutional, civil, or legal right solely because of admission to or residence at an institution or facility or solely because of receipt of services for developmentally disabled persons. However, nothing in this section shall be construed to limit or modify the provisions of section 16-01-04. The constitutional, civil, or legal rights which may not be varied or modified under the provisions of this section include, but are not limited to:

1. The right to vote at elections;

2. The free exercise of religion;

3. The right of reasonable opportunities to interact with members of the opposite sex; and

4. The right to confidential handling of personal and medical records.

SECTION 4. MAIL, TELEPHONE, AND VISITATION RIGHTS. Except as provided in this section, every person who resides in a mental health or developmental disabilities institution or facility has the right of private, unimpeded, uncensored communication with persons of the resident's choice by mail, telephone, and visitation.

1. The facility director shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for private visitation is available.

2. The facility director may establish in writing reasonable times and places for use of telephones and for visits, provided that a resident's ability to contact an attorney may not be restricted, and provided that any rules or restrictions shall be posted in each residential facility. A copy of any rules or restrictions shall be given to all residents over eighteen years of age and to the parents or guardian of all residents under eighteen years of age, upon admission.

SECTION 5. PERSONAL PROPERTY. Except in the circumstances and under the conditions provided in this section, every resident of an institution or facility shall be permitted to receive, possess, and use lawful personal property and shall be provided with a secure, convenient, and reasonable amount of storage space for that property.

1. The facility director may restrict the possession and use of certain classes of property which may be dangerous or may harm a resident.

2. Notice of any restrictions shall be given in writing to all residents over eighteen years of age and to the parents or guardian of all residents under eighteen years of age, upon admission.

3. When a resident is discharged from the institution or facility all of the resident's lawful personal property which is in the custody of the facility shall be returned to the resident.

SECTION 6. LABOR - WAGES - MONEY. A resident or service recipient may consent to perform labor for a service provider if the professional responsible for overseeing the implementation of that resident's individual habilitation plan determines that the labor would be consistent with that plan.

1. A resident or service recipient who performs labor which is of any consequential economic benefit to a service provider shall receive wages which are commensurate with the value of the work performed, in accordance with applicable federal and state laws and regulations. A resident may be required to perform tasks of a personal housekeeping nature without compensation.

2. A resident may use his money as he chooses, unless he is a minor, is prohibited from doing so under a court guardianship or conservatorship order, or the use would be inconsistent with the resident's individual habilitation plan. A minor or a person under guardianship or conservatorship may be required to deposit his money with the service provider, or in a financial institution in the name of a parent, guardian, or conservator, and may be permitted to use the money in accordance with written instructions of the parent, guardian, or conservator.

3. A resident may deposit money, or cause money to be deposited, in his name with a financial institution of the resident's choice, or the resident may deposit the money with a service provider. The service provider may not retain any money deposited with the service provider under this subsection, but shall hold all such funds in an account in the resident's name. All earnings attributable to a resident's money shall accrue to the resident.

4. No service provider nor any of the service provider's employees shall be made representative payee for a resident's social security, pension, annuity, trust fund, or any other form of direct payment or assistance without the resident's informed consent.

5. When a resident is discharged, all of the resident's money, including earnings, shall be returned to the resident.

SECTION 7. MEDICAL AND DENTAL SERVICES. All residents of an institution or facility are entitled to appropriate and adequate medical and dental services, which must be provided by qualified professionals who are licensed to practice or are otherwise authorized to provide medical and dental services pursuant to state and federal law and regulations.

SECTION 8. MEDICATION - CHEMICAL RESTRAINTS. No person receiving services at any institution or facility for the developmentally disabled shall at any time be administered any drug or medication, or be chemically restrained or tranquilized in any manner, except upon the written authorization of a licensed physician when necessary and appropriate as an element of the service being received or as a treatment of any medical or physical condition in conformity with accepted standards for that treatment. The nature, amount of, and reasons for the administration of any drug or medication shall be promptly recorded in the person's medical record.

SECTION 9. PUNISHMENT - ISOLATION - PHYSICAL RESTRAINTS - PSYCHOSURGERY - STERILIZATION - SHOCK TREATMENT. No person receiving services at any institution or facility for the developmentally disabled shall at any time:

1. Be subjected to any corporal punishment.

2. Be isolated or secluded, except in emergency situations when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that person or other persons.

3. Be physically restrained in any manner, except in emergency situations when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that person or to other persons.

4. Be subjected to psychosurgery, sterilization, medical behavioral research, or pharmacological research, except in conformity with an order of a court of competent jurisdiction. Under no circumstances may a person receiving treatment be subjected to hazardous or intrusive experimental research which is not directly related to the specific goals of that person's treatment program.

5. Be subjected to electroconvulsive therapy or shock treatment without that person's written and informed consent. If the recipient of services is a minor, the recipient's parent or guardian may provide informed consent for that treatment which the parent or guardian believes to be in the recipient's best interests.

SECTION 10. SECLUSION OR PHYSICAL RESTRAINT - FACILITY ADMINISTRATOR TO BE NOTIFIED. Whenever a person is placed in seclusion or is physically restrained, the facility administrator or his representative shall be notified and shall determine if the isolation or restraint is necessary. The isolation or restraint may be continued only upon written order of the administrator or his representative and for a period of not more than twenty-four hours. Any person who is in seclusion or who is physically restrained shall be checked by an attendant at least once every thirty minutes.

SECTION 11. PSYCHOSURGERY, STERILIZATION, OR RESEARCH - COURT ORDER REQUIRED - HEARING - RIGHT TO COURT-APPOINTED ATTORNEY. A court of competent jurisdiction may issue the orders required for the procedures or treatments in subsection 4 of section 9 of this Act upon application of the party alleging the necessity of the procedure, the person who is receiving or is entitled to receive the treatment, or the person's guardian, following a hearing on the application.

1. The person receiving or entitled to treatment shall:

   a. Receive prior notice of the hearing;

   b. Have the right and the opportunity to present evidence; and

   c. Have the right to be confronted with and to cross-examine witnesses.

2. In the event that the developmentally disabled person cannot afford counsel, the court shall appoint an attorney not less than ten days before the hearing.

3. The burden of proof shall be on the party alleging the necessity of the procedure or treatment.

4. An order allowing the procedure or treatment may not be granted unless the party alleging the necessity of the procedure or treatment proves by clear and convincing evidence that the procedure is in the best interest of the recipient and that no less drastic measures are feasible.

SECTION 12. DIET. Every resident of any institution or facility shall be provided with a nutritionally adequate and sufficient diet planned by a qualified dietician.

SECTION 13. EDUCATION. Every developmentally disabled child is entitled to a free and appropriate education in the least restrictive appropriate setting in accordance with chapter 15-59.

SECTION 14. INDIVIDUALIZED HABILITATION PLAN - CONTENTS. Any institution, facility, school, agency, or organization that provides services for developmentally disabled persons shall have a written, individualized habilitation plan developed and put into effect for each person for whom that institution, facility, school, agency, or organization is primarily responsible for the delivery, or coordinating the delivery, of services. The individualized habilitation plan shall:

1. Be developed and put into effect within thirty days following admission of the person.

2. Be reviewed and updated from time to time, but no less than annually.

3. Include a statement of the long-term habilitation goals for the person and the intermediate objectives relating to the attainment of those goals. The objectives shall be stated specifically, in sequence, and in behavioral or other terms that provide measurable indices of progress.

4. State an objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved.

5. Describe the personnel necessary for the provision of the services described in the plan.

6. Specify the date of initiation and the anticipated duration of each service to be provided.

SECTION 15. RIGHT TO REFUSE SERVICES. An adult recipient of services, or, if the recipient is a minor or under guardianship, the recipient's guardian or parent, shall be given the opportunity to refuse generally accepted mental health or developmental disability services, including but not limited to medication, unless those services are necessary to prevent the recipient from causing serious harm to himself or to others. The facility director shall inform a recipient or guardian or parent of a minor who refuses generally accepted services of alternate services available, the risks of those alternate services, and the possible consequences to the recipient of the refusal of generally accepted services.

SECTION 16. NOTICE OF RIGHTS. Every facility shall post conspicuously in public areas a summary of the rights which are set out in this Act. In addition, upon commencement of services or as soon after commencement as the recipient's condition permits, every recipient who is eighteen years of age or older, the parents of all recipients under eighteen years of age, and the guardian of a minor

recipient or other recipient under guardianship shall be given written notice of the rights guaranteed by this Act.

SECTION 17. ENFORCEMENT OF RIGHTS. Every developmentally disabled person shall be entitled to enforce any of the rights guaranteed by this Act by civil action or any other remedy available by common law or statute. In any proceeding to enforce these rights the court may, in its discretion, award reasonable attorneys' fees and costs to a successful plaintiff. A developmentally disabled person who is successful in an administrative proceeding may also be awarded reasonable attorneys' fees and costs. Any award of attorneys' fees and costs shall be in addition to any actual or punitive damages to which the person may be entitled.

SECTION 18. AUTHORITY TO ADOPT RULES. The director of the state department of human services may adopt, in accordance with chapter 28-32, any rules necessary to implement the provisions of this Act. The rules adopted may not restrict or limit the rights guaranteed by this Act.

Approved April 3, 1981

CHAPTER 295

SENATE BILL NO. 2082
(Legislative Council)
(Legislative Audit and Fiscal Review Committee)

STATE HOSPITAL PATIENT EXPENSE CHARGE

AN ACT to amend and reenact section 25-09-02 of the North Dakota Century Code, relating to expenses chargeable against a state hospital or Grafton state school patient and providing that no expenses shall be charged by the state hospital for the care and treatment of a patient transferred from a jail or regional corrections center.

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

SECTION 1. AMENDMENT. Section 25-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-09-02. EXPENSES CHARGEABLE AGAINST PATIENT OR HIS ESTATE - FILING CLAIMS. Expenses for care and treatment of each patient at the state hospital and each patient over twenty-one years of age at the Grafton state school shall, if practicable, be in accordance with the cost of providing care and treatment for the different degrees or conditions of mental and physical health. The supervising department shall recover monthly from the patient, if possible, or from the person who has been a patient in such institution after he has been discharged from the institution, expenses for care and treatment. The state hospital shall not recover expenses under this chapter, however, for the 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 or is a veteran who has received, who is receiving, or who is entitled to receive compensation or pension from the veterans' administration, such expenses shall be a current claim against such patient and may be recovered monthly by the supervising department except that any amount required by the payor of such benefits to be paid directly to the patient shall, upon approval of the director of institutions, be credited to the patient's personal account from any money thus received.

Approved March 9, 1981

CHAPTER 296

HOUSE BILL NO. 1614
(Eagles, Unhjem)

VOCATIONAL REHABILITATION FACILITY LICENSURE

AN ACT to create and enact a new section to chapter 25-15 of the North Dakota Century Code, relating to recognition by the division of vocational rehabilitation of licensure of facilities by the state department of health; to amend and reenact sections 25-15-02, 25-15-03, and 25-15-04 of the North Dakota Century Code, relating to the definition of vocational rehabilitation facilities, the duties of the vocational rehabilitation facilities advisory committee, and the duties of the division of vocational rehabilitation; and to repeal section 25-15-07 of the North Dakota Century Code, relating to the duties of community vocational rehabilitation facilities boards.

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

* SECTION 1. A new section to chapter 25-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

RECOGNITION BY THE DIVISION OF PHYSICAL PLANT LICENSING BY THE STATE HEALTH DEPARTMENT. In lieu of the division of vocational rehabilitation conducting an independent inspection of the physical plant of facilities licensed under chapters 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. Division recognition and acceptance of the license issued by the state health department shall not exempt the facilities applying for license under this chapter from the program standards established by the division.

SECTION 2. AMENDMENT. Section 25-15-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-02. VOCATIONAL REHABILITATION FACILITIES - DEFINITION. For purposes of this chapter, a vocational rehabilitation facility is ~~a nonprofit~~ an organization which is operated for the purpose of providing rehabilitation to handicapped individuals who are unable

* NOTE: This section was amended by section 1 of House Bill No. 1050, chapter 297.

to participate in competitive employment due to their disability. A vocational rehabilitation facility shall ~~supply two or more of the following~~ provide one or more of the services enumerated in the state plan for vocational rehabilitation as a step in the rehabilitative process for those who cannot be readily absorbed in the competitive labor market and during ~~such~~ any time as that employment opportunities for them in the competitive labor market do not exist.

~~1. Work Activity. The provision of therapeutic activities to handicapped individuals whose physical and mental impairment is so severe as to make their productive capacity inconsequential, for the purpose of enhancing their ability to function as independently as possible in their homes and community.~~

~~2. Extended Employment. A work situation in a supervised environment which provides employment opportunities for indefinite periods of time.~~

~~3. Vocational Evaluation. A comprehensive process that systematically utilizes work as the focal point for assessment and vocational exploration, the purpose of which is to assist individuals in vocational development. Vocational evaluation incorporates medical, psychological, social, vocational, educational, cultural, and economic data.~~

~~4. Vocational Development. A program which applies vocational services including evaluation, training, transitional or interim employment, to resolve the problem of unemployment and to enable the person served to obtain competitive employment or further education or training, or both, leading to employment.~~

~~5. Residential Rehabilitation. The provision of supervised training within a community living setting which is designed to prevent the need for institutional living, and is programmed to meet individual needs. Services offered provide activities designed to maximize community contact and develop positive cultural, social, occupational and educational attitudes.~~

SECTION 3. AMENDMENT. Section 25-15-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-03. ADVISORY COMMITTEE. The division of vocational rehabilitation 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. Division of vocational rehabilitation.

2. Department of public instruction - special education.

3. Department of accounts and purchases.

4. Job service North Dakota.

5. Organized labor.

6. Division of mental health and retardation 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 division of vocational rehabilitation without compensation.

It shall be the duty of the vocational rehabilitation facilities advisory committee to recommend standards for community rehabilitation facilities for the handicapped~~,--including--the mentally--retarded~~ 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 ~~deemed~~ as the committee deems appropriate~~,-and-shall submit-the-same-to-the-division-for--its--approval~~. 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 4. AMENDMENT. Section 25-15-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-04. DUTIES OF THE DIVISION OF VOCATIONAL REHABILITATION.

1. The division of vocational rehabilitation shall issue licenses on an annual basis to ~~programs~~ facilities meeting approved standards and applying for licensure.

2. Other duties of the division:

   a. To encourage the development of local community initiative in broadening the scope of noninstitutional care and training programs for persons who are mentally retarded or seriously handicapped.

b. To maintain standards for the operation of such programs.

c. To review and assist programs as they develop.

d. To foster the progress of vocational rehabilitation facilities to higher levels of service and to stimulate their rehabilitative aspects.

SECTION 5. REPEAL. Section 25-15-07 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 16, 1981

CHAPTER 297

HOUSE BILL NO. 1050
(Legislative Council)
(Interim Budget "B" Committee)

FACILITIES FOR THE DEVELOPMENTALLY DISABLED

AN ACT to amend and reenact section 1 of House Bill No. 1614, as approved by the forty-seventh legislative assembly, relating to recognition by the division of vocational rehabilitation of physical plant licensing by other governmental entities; and to amend and reenact sections 25-15-05, 25-16-01, 25-16-02, 25-16-03, 25-16-03.1, 25-16-05, 25-16-06, 25-16-07, 25-16-08, 25-16-09, 25-16-10, 25-16-11, and 25-16-12 of the North Dakota Century Code, relating to the licensure of facilities for developmentally disabled persons by the developmental disabilities division, division of vocational rehabilitation, and the state department of health; to provide effective dates; and to provide expiration dates.

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

SECTION 1. AMENDMENT. Section 1 of House Bill No. 1614, as enacted by the forty-seventh legislative assembly, is hereby amended and reenacted to read as follows:

RECOGNITION BY THE DIVISION OF PHYSICAL PLANT LICENSING BY THE STATE HEALTH DEPARTMENT AND THE DEVELOPMENTAL DISABILITIES DIVISION. In lieu of the division of vocational rehabilitation conducting an independent inspection of the physical plant of facilities licensed under chapters 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 ~~department~~ or the developmental disabilities division shall not exempt the facilities applying for license under this chapter from the program standards established by the vocational rehabilitation division.

SECTION 2. AMENDMENT. Section 25-15-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-05. ORGANIZATIONS ELIGIBLE FOR LICENSURE. Eligible vocational rehabilitation facilities ~~shall--be~~ are organizations which ~~are---nonprofit---entities,---operating~~ operate vocational rehabilitation facilities or provide residential care for those developmentally disabled persons attending the vocational rehabilitation facilities and ~~serving--the~~ serve handicapped, including ~~the--mentally--retarded~~ developmentally disabled persons, without regard to race, religion, or national origin. Such organizations ~~shall~~ are to be licensed in accordance with this chapter and conform to standards recommended by the advisory committee and established by the division of vocational rehabilitation.

SECTION 3. AMENDMENT. Section 25-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-01. DEFINITIONS. In this chapter unless the context or subject matter otherwise requires:

1. "Treatment or care center" ~~shall-mean~~ means any hospital, home, or other premises, owned and operated by a charitable nonprofit corporation or association, especially to provide relief, care, custody, treatment, ~~training---or--education--of--the--mentally--retarded~~ day activity, work activity, or extended employment services to developmentally disabled persons.

2. "Division" ~~shall--mean~~ means the state mental health and retardation division of the state department of health.

SECTION 4. AMENDMENT. Section 25-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-01. DEFINITIONS. In this chapter unless the context or subject matter otherwise requires:

1. "Treatment or care center" means any hospital, home, or other premises, owned and operated by a charitable nonprofit corporation or association, especially to provide relief, care, custody, treatment, day activity, work activity, or extended employment services to developmentally disabled persons.

2. "Division" means the ~~state-mental-health-and-retardation~~ developmental disabilities division of the state department of ~~health~~ human services.

SECTION 5. AMENDMENT. Section 25-16-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-02. LICENSE REQUIRED. Any charitable nonprofit association or corporation which operates a treatment or care center for ~~mentally-retarded~~ developmentally disabled persons shall secure

annually from the division a license as required ~~in~~ by rules adopted under this chapter.

SECTION 6. AMENDMENT. Section 25-16-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-03. REQUIREMENTS FOR LICENSE. ~~A~~ The division shall issue a license for the operation of a treatment or care center for ~~mentally--retarded--shall--be-issued-by-the-division~~ developmentally disabled persons to reputable and responsible charitable nonprofit associations or corporations 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; and

5. Appropriate arrangements are made for a medical and psychological examination of each resident ~~at--least--once every-six-months~~.

6. The provider is in compliance with rules adopted by the division under this chapter.

SECTION 7. AMENDMENT. Section 25-16-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-03.1. CONVICTION NOT BAR TO LICENSURE - EXCEPTIONS. Conviction of an offense shall not disqualify a person from licensure under this chapter unless the division determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a treatment or care center for ~~mentally--retarded~~ developmentally disabled persons, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 8. AMENDMENT. Section 25-16-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-05. CONTENT OF LICENSE. The license to operate a treatment or care center for ~~mentally--retarded~~ developmentally disabled persons issued under the provisons of this chapter ~~shall set-forth~~ must specify:

1. The name of the licensee.

2. The premises to which the license is applicable.

3. The number of residents who may be received in such premises at any one time.

4. The date of expiration of the license.

SECTION 9. AMENDMENT. Section 25-16-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-06. DIVISION TO PRESCRIBE FORMS - REGULATIONS. The division may prescribe forms for the registration and record of the ~~residents~~ persons residing in treatment or care centers for ~~mentally retarded~~ developmentally disabled persons and ~~shall--make--such~~ may adopt reasonable rules and regulations for the conduct of such centers as are necessary to carry out the purposes of this chapter.

SECTION 10. AMENDMENT. Section 25-16-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-07. RECORDS OF TREATMENT OR CARE CENTER CONFIDENTIAL. No agent of the department of health or the superintendent of the Grafton state school or the licensee or their agents or employees shall disclose the contents of the individual records of a treatment or care center for ~~mentally--retarded~~ developmentally disabled persons, 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 any other legally constituted boards or agencies serving the interests of the residents; or

3. To the parents or legal guardians of the resident.

SECTION 11. AMENDMENT. Section 25-16-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-07. RECORDS OF TREATMENT OR CARE CENTER CONFIDENTIAL. No agent of the department of ~~health~~ human services or the superintendent of the Grafton state school or the licensee or their agents or employees shall disclose the contents of the individual records of a treatment or care center for developmentally disabled persons, 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 any other legally constituted boards or agencies serving the interests of the residents; or

3. To the parents or legal guardians of the resident.

SECTION 12. AMENDMENT. Section 25-16-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-08. REVOCATION OF LICENSE. The division may revoke a license of a treatment or care center for ~~mentally--retarded~~ 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; or

4. The owner or operator of the center has been guilty of an offense determined by the division to have a direct bearing upon a person's ability to serve the public as an owner or operator, or the division determines, following conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 13. AMENDMENT. Section 25-16-09 of 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 ~~mentally--retarded-shall-be~~ developmentally disabled persons is denied or before the revocation of such license by the division, 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, if such hearing is requested within ten days after service of written charges.

SECTION 14. AMENDMENT. Section 25-16-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-10. PURCHASE OF SERVICES. The state mental health and retardation division of the state department of health is hereby authorized to purchase from funds appropriated to it for that purpose, residential care, custody, treatment, training, and education for ~~mentally--retarded~~ developmentally disabled persons from any treatment or care center for ~~mentally-retarded~~ such persons licensed in the state of North Dakota. ~~The-cost-of-such-care,-custody,-treatment-and-education-for-each-resident-shall-not--exceed-the--per--diem--cost--of--residential--care--at--the--largest--state-institution--serving--the--mentally--retarded--in--North--Dakota--as-determined--by-the-superintendent-of-that-institution-for-the-fiscal-year-preceding-the-contract.~~

SECTION 15. AMENDMENT. Section 25-16-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-10. PURCHASE OF SERVICES. The ~~state mental health and retardation~~ developmental disabilities division of the state department of ~~health~~ human services is hereby authorized to 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 state of North Dakota.

SECTION 16. AMENDMENT. Section 25-16-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-11. FUNDS OF STATE MENTAL HEALTH AND RETARDATION DIVISION FOR PURCHASING RESIDENTIAL CARE, CUSTODY, TREATMENT AND EDUCATION FOR ~~MENTALLY--RETARDED~~ DEVELOPMENTALLY DISABLED PERSONS. All moneys received from appropriation by the legislative assembly to purchase residential care, custody, treatment, training, and education for ~~mentally--retarded~~ developmentally disabled persons from any treatment or care centers licensed in North Dakota shall be kept by the state treasurer in a fund known as the "fund of the ~~state mental health and retardation division of the~~ state department of health for purchasing residential care, custody, treatment, training, and education for ~~mentally--retarded~~ developmentally disabled persons", and all expenditures made under the provisions of this chapter shall be upon warrants prepared by the department of accounts and purchases and signed by the state auditor, such expenditures to be supported by vouchers to be signed by the director of the mental health and retardation division of the state department of health or his agents, or by such other officer or assistants as the division may designate and certify to the department of accounts and purchases. Any fund received from federal agencies shall be deposited and disbursed in the manner provided by Act of Congress or by the regulations of the federal agencies from which the funds were received.

SECTION 17. AMENDMENT. Section 25-16-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-11. FUNDS OF STATE ~~MENTAL--HEALTH--AND--RETARDATION DIVISION~~ DEPARTMENT OF HUMAN SERVICES FOR PURCHASING RESIDENTIAL CARE, CUSTODY, TREATMENT AND EDUCATION FOR DEVELOPMENTALLY DISABLED PERSONS. All moneys received from appropriation by the legislative assembly to purchase residential care, custody, treatment, training, and education for developmentally disabled persons from any treatment or care centers licensed in North Dakota shall be kept by the state treasurer in a fund known as the "fund of the state department of ~~health~~ human services for purchasing residential care, custody, treatment, training, and education for developmentally disabled persons", and all expenditures made under the provisions of this chapter shall be upon warrants prepared by the department of accounts and purchases and signed by the state auditor, such expenditures to be supported by vouchers to be signed by the

director of the ~~mental-health-and-retardation-division-of-the~~ state department of ~~health~~ human services or his agents, or by such other officer or assistants as the ~~division~~ director may designate and certify to the department of accounts and purchases. Any fund received from federal agencies shall be deposited and disbursed in the manner provided by Act of Congress or by the regulations of the federal agencies from which the funds were received.

SECTION 18. AMENDMENT. Section 25-16-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-12. DIVISION EFFORTS TO OBTAIN PRIVATE AND GOVERNMENTAL GRANTS. The state mental health and retardation division of the state department of health and the duly licensed treatment or care centers for ~~mentally-retarded~~ developmentally disabled persons are hereby authorized to exert all possible efforts to obtain grants, both private and governmental, for the care, custody, treatment, training, and education of ~~the-mentally-retarded~~ developmentally disabled persons.

SECTION 19. AMENDMENT. Section 25-16-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-12. DIVISION EFFORTS TO OBTAIN PRIVATE AND GOVERNMENTAL GRANTS. The ~~state--mental--health--and--retardation~~ developmental disabilities division of the state department of ~~health~~ human services and the duly licensed treatment or care centers for developmentally disabled persons are hereby authorized to exert all possible efforts to obtain grants, both private and governmental, for the care, custody, treatment, training, and education of developmentally disabled persons.

SECTION 20. EFFECTIVE DATES. Sections 1, 4, 11, 15, 17, and 19 of this Act shall become effective on January 1, 1982.

SECTION 21. EXPIRATION DATES. Sections 3, 10, 14, 16, and 18 of this Act shall be effective through December 31, 1981, and after that date shall be ineffective.

Approved April 6, 1981

INSURANCE

CHAPTER 298

HOUSE BILL NO. 1073
(Legislative Council)
(Legislative Audit and Fiscal Review Committee)

PREMIUM TAX AND ANNUAL STATEMENT DUE DATES

AN ACT to amend and reenact sections 26-01-11 and 26-07-05 of the North Dakota Century Code, relating to the tax on insurance premiums and the filing date of an annual statement by insurance companies.

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

SECTION 1. AMENDMENT. Section 26-01-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-01-11. COMMISSIONER OF INSURANCE TO COLLECT PREMIUM TAX - INSURANCE COMPANIES GENERALLY - DOMESTIC FIRE INSURANCE COMPANIES - COMPUTATION. Before issuing the annual certificate required by law, the commissioner of insurance shall collect the following annual taxes from insurance companies doing business within the state:

1. From every insurance company doing business in this state except stock and mutual companies organized under the laws of this state, a tax equal in amount to two and one-half percent of the gross amount of premiums, membership fees, and policy fees received in this state during the preceding year, such tax to be payable at the time when the annual statement of business required by law is filed; provided, however, that this tax shall not apply to considerations for annuities.

2. From every domestic fire insurance company, whether mutual, stock, or otherwise, a tax upon its fire insurance premiums or assessments, or both, equal to one-half of one percent of the gross premiums and assessments, less return premiums on all direct business received by it, or by its agent for it, in cash or otherwise in this state. Such tax shall be collected for the purpose of assisting in the maintenance of the fire marshal's department and shall be payable on or before ~~April~~ March first in each year.

SECTION 2. AMENDMENT. Section 26-07-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-07-05. EACH COMPANY REQUIRED TO FILE ANNUAL STATEMENT. Every insurance company doing business in this state shall transmit to the commissioner of insurance, not later than the first day of ~~April~~ March in each year, a statement of its condition and business for the year ending on the preceding thirty-first day of December. An insurance company organized under the law of any foreign country or province shall include in such statement only business transacted within the United States of America, and shall file a supplemental statement of business transacted without the United States not later than the first day of December. The commissioner, upon the receipt in his office of any such statement, shall stamp the date of the receipt thereon. He shall not accept the annual statement from any company if the same was transmitted after the date designated in this section unless the same is accompanied by the penalty prescribed in this chapter for each day's delinquency in the filing thereof.

Approved February 18, 1981

CHAPTER 299

HOUSE BILL NO. 1622
(Crabtree, Wald)

AUTOMOBILE INSURANCE POLICY SPOUSE EXCLUSION

AN ACT to create and enact a new section to chapter 26-02 of the North Dakota Century Code, relating to the exclusion of a spouse of the named insured from coverages under a private passenger automobile insurance liability policy.

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

SECTION 1. A new section to chapter 26-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

EXCLUSION OF SPOUSE OF NAMED INSURED. No insurer shall be responsible under a private passenger automobile insurance policy covering an automobile registered or principally garaged in this state from any liability for any claims resulting from the operation of the motor vehicle by either a husband or wife of the named insured who reside in the same household if an endorsement on the policy excludes the other spouse from coverage under the policy and the spouse excluded signs the endorsement. If the named insured gives his express or implied consent to the operation of a secured motor vehicle by a spouse excluded under the policy, the named insured shall not be relieved of personal liability as provided by subsection 5 of section 26-41-04.

Approved March 11, 1981

CHAPTER 300

HOUSE BILL NO. 1453
(Representatives Wentz, Wagner)
(Senators Lips, Stenehjem)

LEGAL EXPENSE INSURANCE

AN ACT to create and enact a new section to chapter 26-02 of the North Dakota Century Code, relating to the definition of legal expense insurance, and to create and enact new subsections to sections 26-08-02, 26-14-07, and 26-17.1-07 of the North Dakota Century Code, relating to the establishment of legal expense insurance as an authorized line of insurance.

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

SECTION 1. A new section to chapter 26-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

"LEGAL EXPENSE INSURANCE" DEFINED. Legal expense insurance, as authorized in this title, means insurance which involves the assumption of a contractual obligation to reimburse the beneficiary against or on behalf of the beneficiary, all or a portion of his fees, cost, or expenses related to or arising out of services by or under the supervision of an attorney licensed to practice law in this state, regardless of whether the payment is made by the beneficiaries individually or by a third party for them, but does not include the provision of or reimbursement for legal services incidental to other insurance coverages. Unless otherwise provided, this title shall not apply to:

1. Plans licensed under the Prepaid Legal Services Act.

2. Retainer contracts made by attorneys with individual clients with fees based upon an estimate of the nature and amount of services to be provided to a specific client and similar contracts made with a group of clients involved in the same or closely related legal matters.

3. Employee welfare benefit plans as defined by the Employee Retirement Income Security Act of 1974.

SECTION 2. A new subsection to section 26-08-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Legal expense insurance.

SECTION 3. A new subsection to section 26-14-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Legal expense insurance.

SECTION 4. A new subsection to section 26-17.1-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Legal expense insurance.

Approved March 11, 1981

CHAPTER 301

HOUSE BILL NO. 1059
(Legislative Council)
(Interim Health Care Committee)

NURSING HOME COVERAGE POLICY

AN ACT to create and enact a new section to chapter 26-03 and a new subdivision to subsection 9 of section 26-30-04 of the North Dakota Century Code, relating to nursing home policies, requiring such policies to be guaranteed renewable for life, limiting preexisting conditions, and unfair claims settlement practices.

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

SECTION 1. A new section to chapter 26-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

NURSING HOME POLICIES - GUARANTEED RENEWABLE FOR LIFE - LIMITATION ON PREEXISTING CONDITIONS. Any policy providing benefits for confinement to a nursing home shall be guaranteed renewable for life. For the purposes of this section, the term "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 shall contain no 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.

SECTION 2. A new subdivision to subsection 9 of section 26-30-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Providing coverage under a policy for confinement to a nursing home and refusing to pay a claim when a person

covered by such a policy was confined to a hospital for three days or more and the person's physician ordered confinement for care other than custodial care. Custodial care means care which is primarily for the purpose of meeting personal needs without supervision by a registered nurse or a licensed practical nurse.

Approved March 5, 1981

CHAPTER 302

HOUSE BILL NO. 1438
(Representatives Dietz, Haugland, Retzer)
(Senators Reiten, Quail)

MEDICARE SUPPLEMENT POLICY STANDARDS

AN ACT to provide minimum standards for medicare supplement insurance policies, to set out responsibilities of the commissioner of insurance, and to provide for an outline of coverage of such policies to be delivered to potential purchasers.

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

SECTION 1. DEFINITIONS. Wherever used or referred to in this Act, unless a different meaning clearly appears from the context:

1. "Applicant" means:

   a. In the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits; and

   b. In the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder.

2. "Certificate" means any certificate issued under a group medicare supplement policy, which policy has been delivered or issued for delivery in this state.

3. "Medicare" means the Health Insurance for the Aged and Disabled Act, title XVIII of the Social Security Act of 1935, as amended [Pub. L. 92-603; 86 Stat. 1370].

4. "Medicare supplement policy" means a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations 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. Such 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 such 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 such policy or plan to its members.

c. Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this Act.

SECTION 2. STANDARDS FOR POLICY PROVISIONS.

1. The commissioner of insurance shall issue reasonable rules pursuant to chapter 28-32 to establish specific standards for policy provisions of medicare supplement policies. Such standards shall be in addition to and in accordance with applicable laws of this state, and may cover, but shall not be limited to:

a. Terms of renewability.

b. Initial and subsequent conditions of eligibility.

c. Nonduplication of coverage.

d. Probationary periods.

e. Benefit limitations, exceptions, and reductions.

f. Elimination periods.

g. Requirements for replacement.

h. Recurrent conditions.

i. Definitions of terms.

2. The commissioner of insurance may adopt rules that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner of insurance, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

3. Notwithstanding any other provisions of the law, a medicare supplement policy may not deny a claim for losses incurred for more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

SECTION 3. MINIMUM STANDARDS FOR BENEFITS. The commissioner of insurance shall adopt rules to establish minimum standards for benefits under medicare supplement policies.

SECTION 4. LOSS RATIO STANDARDS. Medicare supplement policies shall be expected to return benefits to individual policyholders in the aggregate of not less than sixty percent of premium received. The commissioner of insurance shall adopt rules to establish minimum standards for medicare supplement policy loss ratios on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules adopted pursuant to this section, medicare supplement policies issued as a result of individual solicitations through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

SECTION 5. DISCLOSURE STANDARDS.

1. To provide for full and fair disclosure in the sale of medicare supplement policies, no medicare supplement policy shall be delivered or issued for delivery in this state and no certificate shall be delivered pursuant to a group medicare supplement policy delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time application is made.

2. The commissioner of insurance shall prescribe the format and content of the outline of coverage required by subsection 1. For purposes of this section, "format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of

type and the arrangement of text and captions. Such outline of coverage shall include:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the exceptions, reductions, and limitations contained in the policy.

c. A statement of the renewal provisions, including any reservation by the insurer 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. The commissioner of insurance may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner of insurance may require by rule that the information brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner of insurance may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare by reason of age, but in no event later than the time of policy delivery.

4. The commissioner of insurance may adopt rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for medicare, other than:

a. Medicare supplement policies;

b. Disability income policies;

c. Basic, catastrophic, or major medical expense policies;

d. Single premium, nonrenewable policies; or

e. Other policies defined in subsection 4 of section 1 of this Act.

5. The commissioner of insurance may also adopt rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts, or certificates by persons eligible for medicare.

SECTION 6. NOTICE OF FREE EXAMINATION. Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within ten days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

Approved March 12, 1981

CHAPTER 303

HOUSE BILL NO. 1472
(Richie, Hedstrom)

LIFE AND ACCIDENT AND HEALTH INSURANCE POLICY LANGUAGE SIMPLIFICATION ACT

AN ACT to provide for the adoption of the national association of insurance commissioners' Life and Accident and Health Insurance Policy Language Simplification Act.

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

SECTION 1. TITLE. This Act may be cited as the "Life and Accident and Health Insurance Policy Language Simplification Act".

SECTION 2. PURPOSE. The purpose of this Act is to establish minimum standards for language used in policies, contracts and certificates of life insurance, accident and health insurance, credit life insurance and credit health insurance delivered or issued for delivery in this state to facilitate ease of reading by insureds.

This Act is not intended to increase the risk assumed by insurance companies or other entities subject to this Act or to supersede their obligation to comply with the substance of other insurance legislation applicable to life, accident and health, credit life or credit health insurance policies. This Act is not intended to impede flexibility and innovation in the development of policy forms or content or to lead to the standardization of policy forms or content.

SECTION 3. DEFINITIONS. As used in this Act:

1. "Policy" or "policy form" means any policy, contract, plan or agreement of life or accident and health insurance, including credit life insurance and credit health insurance, delivered or issued for delivery in this state by any company subject to this Act; any certificate, contract or policy issued by a fraternal benefit society; and any certificate issued pursuant to a group insurance policy delivered or issued for delivery in this state.

2. "Company" or "insurer" means any life or health insurance company, fraternal benefit society, nonprofit health service corporation, nonprofit hospital service corporation, nonprofit medical service corporation, prepaid health plan, dental care plan, vision care plan, pharmaceutical plan, health maintenance organization, and all similar type organization.

3. "Commissioner" means the insurance commissioner of this state.

SECTION 4. APPLICABILITY.

1. This Act shall apply to all policies delivered or issued for delivery in this state by any company on or after the date such forms must be approved under this Act, but nothing in this Act shall apply to:

   a. Any policy which is a security subject to federal jurisdiction.

   b. Any group policy covering a group of one thousand or more lives at date of issue, other than a group credit life insurance policy or a group credit health insurance policy. However, this shall not exempt any certificate issued pursuant to a group policy delivered or issued for delivery in this state.

   c. Any group annuity contract which serves as a funding vehicle for pension, profit sharing, or deferred compensation plans.

   d. Any form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates such forms must be approved under this Act.

   e. The renewal of a policy delivered or issued for delivery prior to the dates such forms must be approved under this Act.

2. No other statute of this state setting language simplification standards shall apply to any policy forms.

SECTION 5. MINIMUM POLICY LANGUAGE SIMPLIFICATION STANDARDS.

1. In addition to any other requirements of law, no policy forms, except as stated in section 4, shall be delivered or issued for delivery in this state on or after the dates such forms must be approved under this Act, unless:

a. The text achieves a minimum score of forty on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection 3 of this section.

b. It is printed, except for specification pages, schedules and tables, in not less than ten point type, one point leaded.

c. The style, arrangement and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsements or riders.

d. It contains a table of contents or an index of the principal sections of the policy, if the policy has more than three thousand words printed or three or fewer pages of text, or if the policy has more than three pages regardless of the number of words.

2. For the purpose of this section, a Flesch reading ease test score shall be measured by the following method:

a. For policy forms containing ten thousand words or less of text, the entire form shall be analyzed. For policy forms containing more than ten thousand words, the readability of two 2-hundred word samples per page may be analyzed instead of the entire form. The samples shall be separated by at least twenty printed lines.

b. The number of words and sentences in the text shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of one and fifteen thousandths.

c. The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of eighty-four and six-tenths.

d. The sum of the figures computed under subdivisions b and c subtracted from two hundred six and eight hundred thirty-five thousandths equals the Flesch reading ease score for the policy form.

e. For purposes of subdivisions b, c, and d of subsection 2 of section 5, the following procedures shall be used:

(1) A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall be counted as one word.

(2) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence.

(3) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. Where the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

f. The term "text" as used in this section shall include all printed matter except the following:

(1) The name and address of the insurer, the name, number or title of the policy, the table of contents or index, captions and subcaptions, specification pages, schedules or tables.

(2) Any policy language which is drafted to conform to the requirements of any federal law, regulation or agency interpretation, any policy language required by any collectively bargained agreement, any medical terminology, any words which are defined in the policy, and any policy language required by law or regulation, provided, however, the insurer identifies the language or terminology excepted by this paragraph (2) and certifies, in writing, that the language or terminology is entitled to be excepted by this paragraph (2).

3. Any other reading test may be approved by the commissioner for use as an alternative to the Flesch reading ease test if it is comparable in result to the Flesch reading ease test.

4. Filings subject to this section shall be accompanied by a certificate signed by an officer of the insurer stating that it meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved in accordance with section 7 of this Act. To confirm the accuracy of any certification, the commissioner may require the submission of further information to verify the certification in question.

5. At the option of the insurer, riders, endorsements, applications, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

SECTION 6. CONSTRUCTION. Nothing in this Act shall be construed to negate any law of this state permitting the issuance of

any policy form after it has been on file for the time period specified.

SECTION 7. POWERS OF THE COMMISSIONER. The commissioner may authorize a lower score than the Flesch reading ease score required in subdivision a of subsection 1 of section 5, whenever, in his sole discretion, he finds that a lower score:

1. Will provide a more accurate reflection of the readability of a policy form.

2. Is warranted by the nature of a particular policy form or type or class of policy forms.

3. Is caused by certain policy language which is drafted to conform to the requirements of any state law, regulation or agency interpretation.

SECTION 8. APPROVAL OF FORMS. A policy form meeting the requirements of paragraph (1) of section 5 shall be approved notwithstanding the provisions of any other laws which specify the contents of policies, if the policy form provides the policyholders and claimants protection not less favorable than they would be entitled to under such laws.

SECTION 9. EFFECTIVE DATE.

1. Except as provided in section 4, this Act applies to all policy forms filed on or after July 1, 1982. No policy form shall be delivered or issued for delivery in this state on or after July 1, 1986, unless approved by the commissioner or permitted to be issued under this Act. Any policy form which has been approved or permitted to be issued prior to July 1, 1986, and which meets the standards set by this Act need not be refiled for approval, but may continue to be lawfully delivered or issued for delivery in this state upon the filing with the commissioner of a list of such forms identified by form number and accompanied by a certificate as to each such form in the manner provided in subsection 4 of section 5.

2. The commissioner may, in his sole discretion, extend the dates in subsection 1.

Approved March 12, 1981

CHAPTER 304

SENATE BILL NO. 2241
(Lips)

INSURANCE COMPANY NOTE INVESTMENT AUTHORITY

AN ACT to amend and reenact subsection 3 of section 26-08-11 of the North Dakota Century Code, relating to the authorized investments of domestic insurance companies.

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

SECTION 1. AMENDMENT. Subsection 3 of section 26-08-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Notes secured by mortgages on improved unencumbered real estate, including leaseholds substantially having and furnishing the rights and protection of a first real estate mortgage, within ~~this state or within any state in which such company is, or becomes, authorized and licensed to transact business, or within any state contiguous to the state of North Dakota~~ the United States of America or any province of the Dominion of Canada. No loan may be made under this subsection unless ~~the property mortgaged is worth double the amount of the loan secured by the mortgage, except that where a loan is amortized on the basis of a final maturity twenty-five years or less from the date of the loan, it may be made in an amount not exceeding seventy-five percent of the value of the property mortgaged~~ at the date of acquisition the total indebtedness secured by such lien shall not exceed seventy-five percent of the value of the property upon which it is a lien. The mortgage loan may be made in an amount exceeding seventy-five percent so long as any amount over seventy-five percent of the value of the property mortgaged is guaranteed or insured by the federal housing administration or guaranteed by the administrator of veteran affairs or is insured by a private mortgage insurance through an insurance company authorized to do business in this state. Loans may be amortized on the basis of a final maturity not exceeding thirty years from the date of the loan with an actual maturity date of the

loan at any time less than thirty years. However, a loan on a single-family dwelling where the loan is amortized on the basis of a final maturity twenty-five years or less from the date of the loan may be made in an amount not exceeding eighty percent of the value of the property mortgaged. The loan on a single-family dwelling may be made in an amount exceeding eighty percent so long as any amount over eighty percent of the value of the property mortgaged is insured by private mortgage insurance through an insurance company authorized to do business in this state. Buildings shall not be included in the valuation of such property unless they are insured and the policies are made payable to the company as its interest may appear. In no event shall a loan be made in excess of the amount of insurance carried on the buildings plus the value of the land. No insurance company shall hold less than the entire loan represented by such bonds or notes described in this subsection except that a company may own part of an aggregate obligation if all other participants in the investment are insurance companies authorized to do business in North Dakota or banks whose depositors are insured by the federal deposit insurance corporation or savings and loan associations whose members are insured by the federal savings and loan insurance corporation or unless the security of said bonds or notes, as well as all collateral papers, including insurance policies, executed in connection therewith, are made to and held by a trustee, which trustee shall be a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of banks or trust companies incorporated under the laws of the state of North Dakota, wherein a paid-in capital of not less than one hundred thousand dollars shall be required, and that in case of proper notification of default such trustee, upon request of at least twenty-five percent of the holders of the bonds outstanding, and proper indemnification, shall proceed to protect the rights of such bondholders under the provisions of the trust indentures.

Approved March 12, 1981

CHAPTER 305

SENATE BILL NO. 2097
(Tennefos)

INSURANCE COMPANY SAVINGS INVESTMENTS

AN ACT to amend and reenact subsection 9 of section 26-08-11 of the North Dakota Century Code, relating to authorized investments of domestic insurance companies.

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

SECTION 1. AMENDMENT. Subsection 9 of section 26-08-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. ~~Shares---and---savings---in--domestic--building--and--loan associations-and-federal-savings--and--loan--associations, and--shares--and-savings-in-building-and-loan-associations organized-under-the-laws-of-other-states,-if--such--shares and--savings--are--insured-by-the-federal-savings-and-loan insurance-corporation.~~

a. Savings accounts, under certificates of deposit or in any other form, in solvent banks and trust companies which have qualified for federal deposit insurance corporation protection. Investments in such savings accounts shall not be limited to, or by, the amount of any such insurance protection.

b. Shares and savings accounts, under certificates of deposit or in any other form, in solvent building and loan or savings and loan associations organized under federal law or state law of this or any other state which have qualified for federal savings and loan insurance corporation protection. Investments in such shares and savings accounts shall not be limited to, or by, the amount of any such insurance protection.

c. Shares and deposit accounts, under certificates of deposit or in any other form, in solvent state or federally chartered credit unions which are insured by the national credit union administration. Investments in such shares and deposit accounts shall not be limited to, or by, the amount of any such insurance protection.

Approved March 19, 1981

CHAPTER 306

SENATE BILL NO. 2244
(Lips)

INSURANCE COMPANY DATA PROCESSING SYSTEM INVESTMENT

AN ACT to authorize domestic insurance companies to invest funds in the purchase of electric or mechanical machines constituting a data processing system, and to hold such system as an admitted asset for use in the company's business.

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

SECTION 1. DATA PROCESSING EQUIPMENT. Any domestic insurance company heretofore or hereafter organized under any law of this state may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in the purchase of electric or mechanical machines constituting a data processing system, and thereafter may hold the system as an admitted asset for use in connection with the business of the company if, (1) its aggregate cost shall not exceed five percent of the admitted assets of the company; (2) the cost of the component machines constituting the system shall be fully amortized over a period of not to exceed ten years. If a data processing system consists of separate component machines which are acquired at different times, then the cost of each component shall be amortized over a period not to exceed ten years commencing with the date of acquisition of each component.

Approved March 6, 1981

CHAPTER 307

SENATE BILL NO. 2425
(R. Christensen, Wenstrom)

FRATERNAL BENEFIT SOCIETY MORTALITY TABLE USE

AN ACT to amend and reenact subsection 3 of section 26-12-08, subsection 6 of section 26-12-16, subsection 2 of section 26-12-17, and sections 26-12-24 and 26-12-34 of the North Dakota Century Code, relating to fraternal benefit societies and the mortality tables and interest assumptions made with respect to their policies.

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

SECTION 1. AMENDMENT. Subsection 3 of section 26-12-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Pay or allow, nor offer nor promise to pay or allow, to any person any death or disability benefit until:

   a. Actual bona fide applications for death benefit certificates shall have been secured upon at least five hundred lives for at least one thousand dollars each;

   b. All of such applicants shall have been examined regularly by legally qualified practicing physicians and certificates of such examinations shall have been filed and approved by the chief medical examiner of the society;

   c. There shall have been established at least ten subordinate lodges or branches into which the five hundred applicants for membership have been initiated;

   d. There shall have been submitted to the commissioner of insurance, under the oath of the president and secretary or corresponding officers of the society, a list of the applicants for membership giving their names, addresses, the dates upon which they were examined, the date of the approval of the examinations, the name and number of the subordinate

lodge or branch of which each applicant is a member, the amount of benefits to be granted by the society, the society's rate of stated periodical contributions which shall be sufficient to provide for meeting the mortuary obligations contracted when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality and four percent interest or any higher standard at the option of the society, or any mortality tables and interest assumptions now or hereafter authorized for use by life insurance companies, and the society's rate of stated periodical contributions for disability benefits by tables based upon reliable experience with an interest assumption not higher than four percent per annum; and

e. It shall have been shown to the commissioner of insurance by the sworn statement of the treasurer or corresponding officer of the society that at least five hundred applicants have paid each in cash at least one regular monthly payment as provided in this section for each one thousand dollars of indemnity to be effected. Such payments, in the aggregate, shall amount to at least twenty-five hundred dollars. Such advance payments, during the period of organization, shall be held in trust and shall be credited to the mortuary or disability funds on account of such applicants, and no part of same may be used for expenses. If the organization of the society is not completed within one year as provided in this chapter, such payments shall be returned to the applicants.

SECTION 2. AMENDMENT. Subsection 6 of section 26-12-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. If it shall show by the annual valuation provided for in this chapter that it is accumulating and maintaining a reserve not lower than the usual reserve computed by the American Experience Table and four percent interest, or any mortality tables and interest assumptions now or hereafter authorized for use by life insurance companies, issuance of endowment certificates, and the granting to its members extended and paid-up protection or such withdrawal equities, as its constitution and laws may provide. Such grants, however, in no case shall exceed in value the portion of the reserves to the credit of the members to whom the same are made.

SECTION 3. AMENDMENT. Subsection 2 of section 26-12-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The contributions to be made upon certificates issued under the provisions of this section shall be based upon

the Standard Industrial Mortality Table and three and one-half percent, or upon the English Life Table Number Six, or upon ~~such other mortality table as may be approved by the commissioner~~ any mortality tables and interest assumptions now or hereafter authorized for use by life insurance companies.

SECTION 4. AMENDMENT. Section 26-12-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-12-24. FUNDS OF FRATERNAL BENEFIT SOCIETY - EMERGENCY - SURPLUS - HOW DERIVED - USE - CONTRIBUTIONS REQUIRED. Any fraternal benefit society may create, maintain, invest, disburse, and apply an emergency, surplus, or other similar fund in accordance with its laws. Unless otherwise provided in the contract of the society, such funds shall be held, invested, and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or to the surrender of any part thereof, except as provided in subsection 6 of section 26-12-16. The funds from which benefits shall be paid, and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members of the society and the accretions of said funds. No domestic society shall be incorporated, and no foreign society shall be admitted to transact business in this state unless it shall require stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted by the society when the same are valued upon the basis of the National Fraternal Congress Table of Mortality, or upon the basis of any higher standard, with interest assumption at not more than four percent per annum, or upon any mortality tables and interest assumptions now or hereafter authorized for use by life insurance companies, and no such society shall write or accept members for temporary or permanent disability benefits within this state except upon tables based upon reliable experience, with an interest assumption not higher than four percent per annum.

SECTION 5. AMENDMENT. Section 26-12-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-12-34. REPORT OF CERTIFICATE VALUATION - VERIFICATION - MINIMUM STANDARD OF VALUATION. Annually, and within ninety days after the submission of the last preceding annual report, each fraternal benefit society transacting business in this state shall file with the commissioner of insurance a report showing the valuation of its certificates in force on the thirty-first day of December last preceding, and including those issued within the year for which the report is filed in cases where the contributions for the first year are used in whole or in part for current mortality and expense payments. Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the department of insurance of the home state, territory, or province of the society. The legal minimum standard of valuation for all certificates, except for

disability benefits, shall be the National Fraternal Congress Table of Mortality and four percent interest, or, at the option of the society any higher table or a table based upon the society's own experience of at least twenty years and covering not less than one hundred thousand lives, with interest assumption of not more than four percent per annum, or any mortality tables and interest assumptions now or hereafter authorized for use by life insurance companies, or any table and interest rate producing greater aggregate net values than those herein above prescribed, such as the Commissioners 1941 Standard Ordinary Table. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society. Where a combined contribution table is used by a society for both death and permanent total disability benefits, however, the valuation shall be according to tables of reliable experience and in such case, a separation of the funds shall not be required.

Approved March 6, 1981

CHAPTER 308

HOUSE BILL NO. 1058
(Legislative Council)
(Interim Health Care Committee)

INTERCARRIER HEALTH INSURANCE POOL

AN ACT to establish an intercarrier health insurance pool through an association of insurers, to designate a lead carrier to administer the plan of coverage, and to authorize the state insurance commissioner to act as the regulatory authority; and to provide an effective date.

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

SECTION 1. DEFINITIONS. In this Act, unless the subject matter or context requires otherwise:

1. "Accident and sickness insurance policy" or "policy" means insurance 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 sickness insurance.

2. "Association plan premium" means the charge for membership in the association plan based on the benefits provided in sections 3 or 4 of this Act and determined pursuant to section 5 of this Act.

3. "Commissioner" means the state commissioner of insurance.

4. "Comprehensive health association" or "association" means the association created by section 7 of this Act.

5. "Comprehensive health insurance plan" or "association plan" means a policy of insurance coverage offered by the association through the lead carrier.

6. "Eligible person" means an individual who is a resident of North Dakota and meets the enrollment requirements of section 11 of this Act.

7. "Fraternal benefit society" or "fraternal" means a corporation, society, order, or volunteer association without capital stock which sells accident and sickness insurance in accordance with chapter 26-12.

8. "Health benefits" means benefits offered on an indemnity or prepaid basis which pay the costs of or provide medical, surgical, or hospital care or, if selected by the eligible person, chiropractic care.

9. "Insurer" means those companies operating pursuant to chapters 26-03.1, 26-26, or 26-27, and offering or selling policies or contracts of accident and sickness insurance. Insurer does not include health maintenance organizations.

10. "Lead carrier" means the insurer selected by the association to administer the comprehensive health insurance plan.

11. "Plan of health coverage" means any plan or combination of plans of coverage, including combinations of individual accident and sickness insurance policies or coverage under a nonprofit health service plan.

12. "Qualified plan" means those health benefit plans which have been certified by the commissioner as providing the minimum benefits required by sections 3 or 4 of this Act or the actuarial equivalent of those benefits.

SECTION 2. CERTIFICATION OF QUALIFIED PLANS. Upon application by the association or the lead carrier for certification of a plan of health coverage as a qualified plan for the purposes of this Act, the commissioner shall make a determination within ninety days as to whether the plan is qualified. All plans of health coverage shall be labeled as "qualified plan A", "qualified plan B", or "nonqualified" on the front of the policy or evidence of insurance. All qualified plans shall indicate whether they are number one, two, or three coverage plans.

SECTION 3. MINIMUM BENEFITS OF A QUALIFIED PLAN A.

1. A plan of health coverage shall be a number three qualified plan A if it otherwise meets the requirements established by chapter 26-03.1, and other laws of the state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

   a. The minimum benefits for covered individuals shall, subject to the other provisions of this subdivision, be equal to at least eighty percent of the cost of

covered services in excess of an annual deductible which does not exceed one hundred fifty dollars per person. The coverage shall include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

b. Covered expenses shall be the usual and customary charges for the following services and articles when prescribed by a physician:

(1) Hospital services.

(2) Professional services for the diagnosis or treatment of injuries, illness, or conditions, other than outpatient mental or dental, which are rendered by a physician or at a physician's direction.

(3) Use of radium or other radioactive materials.

(4) Oxygen.

(5) Anesthetics.

(6) Diagnostic X-rays and laboratory tests.

(7) Services of a physical therapist.

(8) Transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.

c. Covered expenses shall also include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.

d. Covered expenses for the services or articles specified in this subsection do not include the following:

(1) Drugs requiring a physician's prescription.

(2) Services of a nursing home.

(3) Services of a home health agency.

(4) Home and office calls.

(5) Prostheses.

(6) Rental or purchase of durable medical equipment.

(7) The first twenty dollars of diagnostic X-ray and laboratory charges in each fourteen-day period.

(8) Oral surgery.

(9) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a worker's compensation or similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent to self-insurance, or for which benefits are payable under another policy of accident and sickness insurance or medicare.

(10) Any charge for treatment for cosmetic purposes other than for surgery for the repair of an injury or birth defect.

(11) Any charge for travel other than transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.

(12) Any charge for confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician.

(13) That part of a charge for services or articles rendered or prescribed by a physician, dentist, chiropractor, or other health care personnel which exceeds the prevailing charge in the locality where the service is provided.

(14) Any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.

(15) Care which is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.

2. A plan of coverage shall be certified as a number two qualified plan A if it meets the requirements established by the laws of this state and provides for payment of at least eighty percent of the covered expenses required by

this section in excess of a deductible which does not exceed five hundred dollars per person. The coverage shall include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for sevices covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

3. A plan of health coverage shall be certified as a number one qualified plan A if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which does not exceed one thousand dollars per person. The coverage shall include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

SECTION 4. MINIMUM BENEFITS OF A QUALIFIED PLAN B.

1. A plan of health coverage shall be a number three qualified plan B if it otherwise meets requirements established by chapter 26-03.1, and the other laws of the state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

   a. The minimum benefits for covered individuals shall, subject to the other provisions of this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which does not exceed one hundred fifty dollars per person. The coverage shall include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. The coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

   b. Covered expenses shall be the usual and customary charges for the following services and articles when prescribed by a physician:

      (1) Hospital services.

      (2) Professional services for the diagnosis or treatment of injuries, illness, or conditions, other than outpatient mental or dental, which are rendered by a physician or at a physician's direction.

      (3) Drugs requiring a physician's prescription.

(4) Services of a nursing home for not more than one hundred twenty days in a year if the services commence within fourteen days following confinement of at least three days in a hospital for the same condition.

(5) Service of a home health agency up to a maximum of one hundred eighty visits per year.

(6) Use of radium or other radioactive materials.

(7) Oxygen.

(8) Anesthetics.

(9) Prostheses.

(10) Rental or purchase, as appropriate, of durable medical equipment.

(11) Diagnostic X-rays and laboratory tests.

(12) Oral surgery for partially or completely unerupted impacted teeth, a tooth root without the extraction of the entire tooth, or the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth.

(13) Services of a physical therapist.

(14) Transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.

c. Covered expenses shall also include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.

d. Covered expenses for the services or articles specified in this subsection do not include the following:

(1) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a worker's compensation or similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent self-insurance, or for which

benefits are payable under another policy of accident and sickness insurance or medicare.

(2) Any charge for treatment for cosmetic purposes other than surgery for the repair of an injury or birth defect.

(3) Any charge for travel other than transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.

(4) Any charge for confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician.

(5) That part of any charge for services or articles rendered or prescribed by a physician, dentist, chiropractor, or other health care personnel which exceeds the prevailing charge in the locality where the service is provided.

(6) Any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.

(7) Care which is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.

2. A plan of health coverage shall be certified as a number two qualified plan B if it meets the requirements established by the laws of this state and provides for payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which does not exceed five hundred dollars per person. The coverage shall include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

3. A plan of health coverage shall be certified as a number one qualified plan B if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which does not exceed one thousand dollars per person. The coverage shall include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1.

Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

SECTION 5. ASSOCIATION PLAN PREMIUM. The schedule of premiums to be charged eligible persons for membership in the comprehensive health insurance plan shall be designed to be self-supporting and based on generally accepted actuarial principles.

SECTION 6. DUTIES OF COMMISSIONER. The commissioner shall:

1. Formulate general policies to advance the purposes of this Act and adopt rules pursuant to chapter 28-32 to carry out the provisions of this Act.

2. Supervise the creation of the comprehensive health association within the limits described in section 7.

3. Approve the association's contract with the lead carrier including the association plan coverage and premiums to be charged.

4. Conduct periodic audits to assure the general accuracy of the financial data submitted by the lead carrier and the association.

5. Undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of this Act so that the residents of this state may best avail themselves of the health care benefits provided by this Act.

SECTION 7. COMPREHENSIVE HEALTH ASSOCIATION.

1. There is established a comprehensive health association with participating membership consisting of those insurers, licensed or authorized to do business in this state, with an annual premium volume of accident and sickness insurance contracts, derived from or on behalf of residents in the previous calendar year, of at least one hundred thousand dollars, as determined by the commissioner.

2. The board of directors of the association shall be made up of ten individuals, one from each of the ten participating member insurers of the association with the highest annual premium volumes of accident and sickness insurance contracts as determined in subsection 1. Each board member shall be entitled to votes, in person or by proxy, based on the member's annual premium volume of accident and sickness insurance contracts as determined in subsection 1, in accordance with the following schedule:

$ 100,000	- 4,999,999	1 vote
$ 5,000,000	- 9,999,999	2 votes
$10,000,000	- 14,999,999	3 votes
$15,000,000 or more		4 votes

Members of the board may be reimbursed from the moneys of the association for expenses incurred by them due to their service as board members, but shall not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors shall be borne by participating members of the association.

3. All participating members shall enter into a contract of reinsurance with the association according to the terms specified in section 8. The contract of reinsurance shall be executed for a period of one year and shall be renewed annually thereafter. An insurance company which ceases to do business within the state shall remain liable under the contract for the reinsurance contracted for during that calendar year.

4. All participating members shall maintain their membership in the association, as a condition for writing accident and sickness insurance policies as defined in this Act in this state.

5. The association shall submit bylaws and operating rules to the commissioner for approval.

6. The association may:

   a. Exercise the powers granted to insurers under the laws of this state.

   b. Sue or be sued.

   c. Enter into contracts with insurers, similar associations in other states, or other persons for the performance of administrative functions.

   d. Establish administrative and accounting procedures for the operation of the association.

   e. Provide for the reinsuring of risks incurred as a result of issuing the coverages required by members of the association.

   f. Provide for the administration by the association of policies which are reinsured pursuant to subdivision e of this subsection.

SECTION 8. OPERATION OF COMPREHENSIVE PLAN.

1. Upon certification as an eligible person in the manner provided by section 11, an eligible person may enroll in the comprehensive health insurance plan by payment of the association plan premium to the lead carrier.

2. Not less than eighty-seven and one-half percent of the association plan premium paid to the lead carrier shall be used to pay claims and not more than twelve and one-half percent shall be used for payment of the lead carrier's direct and indirect expenses as specified in section 10 of this Act.

3. Any income in excess of the costs incurred by the association in providing reinsurance or administrative services shall be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan or be allocated to reduce association plan premiums.

4. Each participating member of the association shall share the losses due to claims expenses of the comprehensive health insurance plan pursuant to the terms of individual reinsurance contracts executed by the association with each participating member in accordance with section 7 of this Act. Deviations in the total claims expense of the association plan from the premium payments allocated to the payment of benefits shall be the liability of association members. Association members shall share in the excess costs of the association plan in an amount equal to the ratio of a member's total annual premium volume for accident and sickness insurance charges, received from or on behalf of state residents, to the total accident and sickness insurance premium contract charges received by all association members from or on behalf of state residents, as determined by the commissioner. The reinsurance contracts shall provide for a retroactive determination of each member's liability and payment shall be due within thirty days after each renewal date of the reinsurance contract. Failure by a member to tender to the association the assessed reinsurance payments within thirty days of notification by the association shall be grounds for termination of membership.

SECTION 9. MINIMUM BENEFITS OF COMPREHENSIVE HEALTH INSURANCE PLAN. The association through its comprehensive health insurance plan shall offer policies which provide at least the benefits of a number one, two, and three qualified plan A and qualified plan B.

SECTION 10. ADMINISTRATION OF PLAN.

1. Any participating member of the association may submit to the commissioner the policies of accident and sickness insurance which are being proposed to serve as the

comprehensive health insurance plan. The time and manner of the submission shall be prescribed by rule of the commissioner.

2. Upon the commissioner's approval of the policy forms and contracts submitted, the association shall select policies and contracts by a member or members of the association to be the comprehensive health insurance plan. The association shall select one lead carrier to issue the qualified plans. The board of the directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from the members of the association for the purpose of selecting the lead carrier. The selection of the lead carrier shall be based upon criteria established by the board of directors.

3. The lead carrier shall perform all administrative and claims payment functions required by this section upon the commissioner's approval of the policy forms and contracts submitted. The lead carrier shall provide these services for a period of at least three years, unless a request to terminate is approved by the association and the commissioner. The commissioner and the association shall approve or deny a request to terminate within ninety days of its receipt. A failure to make a final decision on a request to terminate within the specified period shall be deemed an approval. Six months prior to the expiration of each three-year period, the association shall invite submissions of policy forms from members of the association, including the lead carrier. The association shall follow the provisions of subsection 2 in selecting a lead carrier for the subsequent three-year period, or if a request to terminate is approved on or before the end of the three-year period.

4. The lead carrier shall provide all eligible persons involved in the plan an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, the method and place of filing claims, and to whom benefits are payable. The certificate shall indicate that coverage was obtained through the association.

5. The lead carrier shall submit to the association and the commissioner on a semiannual basis a report of the operation of the association plan. Specific information to be contained in this report shall be determined by the association prior to the effective date of the association plan.

6. All claims shall be paid by the lead carrier pursuant to the provisions of this Act and shall indicate that the claim was paid by the association plan. Each claim payment shall include information specifying the procedure

involved in the event a dispute over the amount of payment arises.

7. The lead carrier shall be reimbursed from the association plan premiums received for its direct and indirect expenses. Direct and indirect expenses include a prorated reimbursement for the portion of the lead carrier's administrative, printing, claims administration, management, and building overhead expenses which are assignable to the maintenance and administration of the association plan. The association shall approve cost accounting methods to substantiate the lead carrier's cost reports consistent with generally accepted accounting principles. Direct and indirect expenses shall not include costs directly related to the original submission of policy forms prior to selection as the lead carrier.

8. The lead carrier shall at all times, when carrying out its duties under this Act, be considered an agent of the association and the commissioner, and shall be civilly liable for its actions, subject to the laws of this state.

SECTION 11. ENROLLMENT BY ELIGIBLE PERSON.

1. The comprehensive health insurance plan shall be open for enrollment by eligible persons. A person is eligible and may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate shall provide the following:

   a. Name, address, and age of the applicant, and length of applicant's residence in this state.

   b. Name, address, and age of spouse and children, if any, if they are to be insured.

   c. Written evidence that the applicant has been rejected for accident and sickness insurance, or that restrictive riders or a preexisting conditions limitation, the effect of which is to reduce substantially coverage from that received by a person considered a standard risk, was required, by at least two insurers within six months of the date of the certificate.

   d. A designation of coverage desired.

2. Within thirty days of receipt of the certificate of application, the lead carrier shall either reject the application for failing to comply with the requirements of subsection 1 or forward the eligible person a notice of acceptance and billing information. Insurance shall be effective immediately upon receipt of the first month's association plan premium, and shall be retroactive to the

date of application, if applicant otherwise complies with the requirements of this Act.

3. An eligible person may not purchase more than one policy from the association plan.

4. No person who obtains coverage pursuant to this section shall 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 filing of an application. However, this subsection does not apply to a person who has had continuous coverage under a family or group accident and sickness insurance policy during the year immediately preceding the filing of an application.

SECTION 12. SOLICITATION OF ELIGIBLE PERSONS.

1. The association, pursuant to a plan approved by the commissioner, shall disseminate appropriate information to the residents of this state regarding the existence of a comprehensive health insurance plan and the means of enrollment. Means of communication may include use of the press, radio, and television, as well as publication in appropriate state offices and publications.

2. The association shall devise and implement means of maintaining public awareness of the provisions of this Act and shall administer this Act in a manner which facilitates public participation in the association plan.

3. All licensed accident and sickness insurance agents may engage in the selling or marketing of qualified association plans. The lead carrier shall pay an agent's referral fee of twenty-five dollars to each licensed accident and sickness insurance agent who refers an applicant to the association plan, if the applicant is accepted. The referral fees shall be paid to the lead carrier from monies received as premiums for the association plan.

4. Every insurer which rejects or applies underwriting restrictions to an applicant for accident and sickness insurance shall notify the applicant of the existence of the association plan, requirements for being accepted in it, and the procedure for applying to it.

SECTION 13. EFFECTIVE DATE. Beginning January 1, 1982, the association shall make qualified comprehensive health insurance plans available to eligible persons as required by this Act.

Approved April 6, 1981

CHAPTER 309

HOUSE BILL NO. 1364
(Kloubec)

INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

AN ACT to create and enact a new chapter to the North Dakota Century Code, relating to the national association of insurance commissioners' model insurance holding company system regulatory act; and to repeal section 26-11-13 of the North Dakota Century Code, relating to special purpose corporations.

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

SECTION 1. DEFINITIONS. As used in this chapter, the following terms shall have the respective meanings hereinafter set forth, unless the context otherwise requires:

1. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

2. "Commissioner" is the insurance commissioner, his deputies, or the insurance department, as appropriate.

3. "Control", "controlling", "controlled by", and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided for in subsection 9 of section 4 of this Act, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making

specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

4. An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

5. "Insurer" shall have the same meaning as set forth in section 26-02-02, except that it shall not include:

   a. Agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

   b. Fraternal benefit societies.

   c. Nonprofit medical and hospital service associations.

6. A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

7. A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

8. A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

9. "Voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

SECTION 2. SUBSIDIARIES OF INSURERS - AUTHORIZATION - ADDITIONAL INVESTMENT AUTHORITY - EXEMPTION FROM INVESTMENT RESTRICTIONS - QUALIFICATION OF INVESTMENT - CESSATION OF CONTROL.

1. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

   a. Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

b. Acting as an insurance broker or as insurance agent for its parent or for any of its parent's insurer subsidiaries.

c. Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

d. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.

e. Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended.

f. Rendering investment advice to governments, government agencies, corporations or other organizations or groups.

g. Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services.

h. Ownership and management of assets which the parent corporation could itself own or manage.

i. Acting as administrative agent for a governmental instrumentality which is performing an insurance function.

j. Financing of insurance premiums, agents and other forms of consumer financing.

k. Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business.

l. Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

2. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections, a domestic insurer may also:

a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of five percent of such insurer's admitted assets or fifty percent of such insurer's surplus as regards

policyholders, provided that after such investments the insurer's surplus regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there shall be included:

(1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

b. If the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than ten percent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

c. Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subsection 1. For the purpose of this clause, "the total investment of the insurer" shall include:

(1) Any direct investment by the insurer in an asset, and

(2) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary;

d. With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

e. Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to and managing or developing real or personal property, if after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, and if following such investment all voting securities of such subsidiary would be owned by the insurer.

3. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection 2 hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions applicable to such investments of insurers.

4. Whether any investment pursuant to subsection 2 meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made.

5. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section, and the insurer has notified the commissioner thereof.

SECTION 3. ACQUISITION OF CONTROL OF OR MERGER WITH DOMESTIC INSURER - FILING REQUIREMENTS - CONTENT OF STATEMENT - ALTERNATIVE FILING MATERIALS - APPROVAL BY COMMISSIONER - HEARINGS - MAILINGS TO SHAREHOLDERS - EXEMPTIONS - VIOLATIONS - JURISDICTION - CONSENT TO SERVICE OF PROCESS.

1. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to

acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed. For purposes of this section, a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

2. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

a. The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection 1 is to be effected, hereinafter called the "acquiring party":

(1) If such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years; or

(2) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by this subsection.

b. The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any

transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

c. Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

d. Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

e. The number of shares of any security referred to in subsection 1 which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection 1, and a statement as to the method by which the fairness of the proposal was arrived at.

f. The amount of each class of any security referred to in subsection 1 which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

g. A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection 1 in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

h. A description of the purchase of any security referred to in subsection 1 during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

i. A description of any recommendations to purchase any security referred to in subsection 1 made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

j. Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection 1, and, if distributed, of additional soliciting material relating thereto.

k. The term of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection 1 for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

l. Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection 1 is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by subdivisions a through l shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection 1 is a corporation, the commissioner may require that the information called for by subdivisions a through l shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

3. If any offer, request, invitation, agreement or acquisition referred to in subsection 1 is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection 1 may utilize such documents in furnishing the information called for by that statement.

4. The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 unless, after a public hearing thereon, he finds that:

   a. After the change of control, the domestic insurer referred to in subsection 1 would not be able to satisfy the requirements for the issuance of a certificate of authority to write the line or lines of insurance for which it is presently licensed.

   b. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.

   c. The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party.

   d. The terms of the offer, request, invitation, agreement or acquisition referred to in subsection 1 are unfair and unreasonable to the securityholders of the insurer.

   e. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

   f. The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

The public hearing referred to in subsection 4 shall be held within thirty days after the statement required by

subsection 1 is filed, and at least twenty days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders. The commissioner shall make a determination within thirty days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in district court of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

5. All statements, amendments, or other material filed pursuant to subsection 1 or 2, and all notices of public hearings held pursuant to subsection 4, shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

6. The provisions of this section shall not apply to:

   a. Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection 1 of any voting security referred to in subsection 1 which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding.

   b. Any transaction which is subject to the provisions of chapter 26-20, dealing with the merger or consolidation of two or more insurers.

   c. Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as:

      (1) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or

(2) As otherwise not comprehended within the purposes of this section.

7. The following shall be violations of this section:

a. The failure to file any statement, amendment, or other material required to be filed pursuant to subsections 1 or 2.

b. The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

8. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

SECTION 4. REGISTRATION OF INSURERS - INFORMATION AND FORM REQUIRED - MATERIALITY - AMENDMENTS - TERMINATION - CONSOLIDATED FILING - ALTERNATIVE REGISTRATION - EXEMPTIONS - DISCLAIMER - VIOLATIONS.

1. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within sixty days after the effective date of this chapter or fifteen days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

2. Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

   a. The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

   b. The identity of every member of the insurance holding company system.

   c. The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

      (1) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

      (2) Purchases, sales, or exchange of assets;

      (3) Transactions not in the ordinary course of business;

      (4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

      (5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; and

      (6) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company.

   d. Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

3. No information need be disclosed on the registration statement filed pursuant to subsection 2 if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent or less of an insurer's admitted assets as of the thirty-first day of December next

preceding shall not be deemed material for purposes of this section.

4. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen days after the end of the month in which it learns of each such change or addition, provided, however, that subject to subsection 3 of section 5, each registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof.

5. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

6. The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

7. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection 1 to file all information and material required to be filed under this section.

8. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

9. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

10. The failure to file a registration statement or any amendment thereto required by this section within the time

specified for such filing shall be a violation of this section.

SECTION 5. STANDARDS - TRANSACTIONS WITH AFFILIATES - ADEQUACY OF SURPLUS - DIVIDENDS AND OTHER DISTRIBUTIONS.

1. Material transactions by registered insurers with their affiliates shall be subject to the following standards:

   a. The terms shall be fair and reasonable.

   b. The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.

   c. The insurer's surplus as regards to policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

2. For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

   a. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

   b. The extent to which the insurer's business is diversified among the several lines of insurance.

   c. The number and size of risks insured in each line of business.

   d. The extent of the geographical dispersion of the insurer's insured risks.

   e. The nature and extent of the insurer's reinsurance program.

   f. The quality, diversification, and liquidity of the insurer's investment portfolio.

   g. The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

   h. The surplus as regards policyholders maintained by other comparable insurers.

   i. The adequacy of the insurer's reserves.

j. The quality and liquidity of investments in subsidiaries made pursuant to section 2. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

3. No insurer subject to registration under section 4 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

a. Thirty days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or

b. The commissioner shall have approved such payment within such thirty-day period.

4. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of:

a. Ten percent of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or

b. The net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

5. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until:

a. The commissioner has approved the payment of such dividend or distribution, or

b. The commissioner has not disapproved such payment within the thirty-day period referred to above.

SECTION 6. EXAMINATION - POWER OF COMMISSIONER - PURPOSE AND LIMITATION - USE OF CONSULTANTS - EXPENSES.

1. Subject to the limitations contained in this section and in addition to the powers which the commissioner has relating to the examination of insurers, the commissioner

shall also have the power to order any insurer registered under section 4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such affiliates to obtain such information.

2. The commissioner shall exercise his power under subsection 1 only if the examination of the insurer, under other provisions of the law, is inadequate or the interests of the policyholders of such insurer may be adversely affected.

3. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection 1. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

4. Each registered insurer producing for examination records, books and papers pursuant to subsection 1 shall be liable for and shall pay the expense of such examination.

SECTION 7. CONFIDENTIAL TREATMENT. Any information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 6 and all information reported pursuant to section 4, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

SECTION 8. RULES AND REGULATIONS. The commissioner may issue such rules, regulations and orders as shall be necessary to carry out the provisions of this chapter.

SECTION 9. INJUNCTIONS - PROHIBITIONS AGAINST VOTING SECURITIES - SEQUESTRATION OF VOTING SECURITIES.

1. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or of any rule, regulation or order issued by the commissioner hereunder, the commissioner may apply to the

district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court for Burleigh County for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this chapter or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

2. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding, but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder, the insurer or the commissioner may apply to the district court for Burleigh County or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 3 or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

3. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation or order issued by the commissioner hereunder, the district court for Burleigh County or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this chapter.

4. Notwithstanding any other provisions of law, for the purposes of this chapter the sites of the ownership of the securities of domestic insurers shall be deemed to be in this state.

SECTION 10. CRIMINAL PROCEEDINGS. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this chapter, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Burleigh County against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this chapter may be fined not more than ten thousand dollars. Any individual who willfully violates this chapter may be fined not more than ten thousand dollars or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than two years or both.

SECTION 11. RECEIVERSHIP. Whenever it appears to the commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in chapter 26-21 to take possession of the property of such domestic insurer and to conduct the business thereof.

SECTION 12. REVOCATION - SUSPENSION - NONRENEWAL OF INSURER'S LICENSE. Whenever it appears to the commissioner that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

SECTION 13. JUDICIAL REVIEW. Any person by any act, determination, rule, regulation, or order or any other action of the commissioner pursuant to this chapter may appeal therefrom as provided in chapter 28-32.

SECTION 14. REPEAL. Section 26-11-13 of the North Dakota Century Code is hereby repealed.

Approved March 5, 1981

CHAPTER 310

HOUSE BILL NO. 1070
(Legislative Council)
(Legislative Audit and Fiscal Review Committee)

FIRE AND TORNADO FUND NEW CONSTRUCTION RATE AND REINSURANCE LIMIT

AN ACT to amend and reenact subsection 2 of section 26-24-22 of the North Dakota Century Code, relating to the limit of reinsurance required by the state fire and tornado fund; and to repeal section 26-24-14 of the North Dakota Century Code, relating to the new construction insurance rate charged by the state fire and tornado fund on public property.

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

SECTION 1. AMENDMENT. Subsection 2 of section 26-24-22 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The limit of liability of such reinsurance contract shall be no less than ~~sixty~~ one hundred million dollars for each loss occurrence and ~~sixty~~ one hundred million dollars as respects all loss occurrences during each twelve-month period.

SECTION 2. REPEAL. Section 26-24-14 of the North Dakota Century Code is hereby repealed.

Approved February 18, 1981

CHAPTER 311

HOUSE BILL NO. 1415
(Representatives Wentz, Wagner)
(Senators Lips, Stenehjem)

NORTH DAKOTA PREPAID LEGAL SERVICES ACT

AN ACT to create and enact a new chapter to title 26 of the North Dakota Century Code, relating to the creation of the North Dakota Prepaid Legal Services Act, and to provide a penalty.

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

SECTION 1. SHORT TITLE. This Act may be cited as the "North Dakota Prepaid Legal Services Act".

SECTION 2. PURPOSES. This Act shall be interpreted liberally to achieve the following purposes:

1. To encourage the development of effective and economic methods for making legal services available to the public in this state.

2. To allow for the development of legal service plans and encourage experimentation with innovation methods of organizing and administering those plans.

3. To encourage competition among the various entities organized under this statute.

4. To insure maintenance of a high level of competence and adherence to professional standards.

SECTION 3. DEFINITIONS. As used in this Act:

1. "Commissioner" means the North Dakota commissioner of insurance.

2. "Evidence of coverage" means any certificate agreement or contract issued to a participant setting out the coverage to which the participant is entitled.

3. "Legal services" means any services normally provided by or at the direction of an attorney.

4. "Participant" means an individual who is enrolled in a prepaid legal services plan.

5. "Prepaid legal services organization" means any person who undertakes to provide an arrangement for one or more legal service plans.

6. "Prepaid legal services plan" means any arrangement whereby any person undertakes to provide, arrange for, pay for, reimburse or indemnify on a prepaid basis all or part of the cost of legal services and related expenses and court costs incurred in the exercise of any legal right, but not including payment of fines, penalties, judgments, or assessments.

7. "Provider" means any attorney licensed or otherwise authorized to practice law in this state.

SECTION 4. EXEMPTIONS. This Act shall not apply to:

1. Commercial insurers licensed or authorized to do business in this state or to any nonadmitted insurers.

2. Retainer contracts made by attorneys with individual clients with fees based upon an estimate of the nature and amount of services to be provided to a specific client and similar contracts made with a group of clients involved in the same or closely related legal matters.

3. Plans providing no benefits other than consultation with and advice by an attorney in connection or combination with referral services.

4. The furnishing of legal services on an informal basis, involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, educational, or similar relationship.

5. Employee welfare benefit plans as defined by the Employees Retirement Income Security Act of 1974.

SECTION 5. ESTABLISHMENT OF A PREPAID LEGAL SERVICES ORGANIZATION.

1. Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a prepaid legal services organization in compliance with this Act. No person shall establish or operate a prepaid legal services organization in this state, or sell, or offer to sell, or solicit offers to purchase or receive advance or periodic considerations in conjunction with a prepaid legal service plan without obtaining a certificate of authority under this Act. A foreign corporation may

similarly apply for a certificate of authority under this Act, subject to its registration to do business in this state as a foreign corporation under chapter 10-22.

2. Every prepaid legal services organization as of the effective date of this Act shall submit an application for a certificate of authority under subsection 3. Each such applicant may continue to operate until the commissioner acts upon the application. In the event an application is denied under section 6, the applicant shall be treated as a prepaid legal services organization whose certificate of authority has been revoked.

3. Applications for a certificate of authority must be made in a form prescribed by the commissioner and be verified by an officer or authorized representative of the applicant and shall set forth or be accompanied by:

   a. A copy of the basic organizational documents of the applicant, if any, including articles of incorporation, partnership agreements, trust agreements, or other applicable documents.

   b. A copy of the bylaws, regulations, or similar documents, if any, regulating the conduct of the internal affairs of the applicant.

   c. A list of the names, addresses and official capacities within the organization of all persons who are responsible for the conduct of the affairs of the applicant, including all members of the governing body, the officers and directors in the case of a corporation, the partners under a partnership, the trustees under a trust agreement and the members or owners under any other organizational form.

   d. A statement generally describing the organization, its enrollment process, its administrative operations, any cost and quality control assurance mechanisms, its internal grievance procedure, the method it proposes to use to enroll members, the geographic area or areas to be served, the location of its office or offices, the number of providers to be utilized, and recordkeeping system which will provide documentation of the utilization of plan benefits by enrolled participants.

   e. A power of attorney duly executed by the applicant, if not domiciled in the state, appointing the commissioner and his successors in office and duly authorized deputies as the true and lawful attorney of such applicant in and for this state upon whom all lawful process in any legal action or proceeding

against the organization on a cause of action arising in this state may be served.

f. Copies of all contract forms the organization proposes to furnish to enrolled participants.

g. Copies of all contract forms the organization proposes to enter into with providers.

h. Copies of the forms evidencing coverage to be issued to enrolled participants.

i. Copies of the forms of group contracts, if any, which are to be issued to employers, unions, trustees, or other organizations.

j. A statement of the financial condition of the organization, including income statement, balance sheet and sources of funds.

k. A description of the proposed marketing techniques and copies of any proposed advertising materials.

l. A schedule of rates with any available actuarial and other data.

m. Other information required by the commissioner to make the determinations required under section 6.

SECTION 6. ISSUANCE OF A CERTIFICATE OF AUTHORITY. The commissioner shall issue a certificate of authority to any person filing an application within sixty days after the filing unless the commissioner notifies the applicant during that time that the application is not complete or sufficient and the reasons therefor, that payment of the fees required by section 16 has not been made or that the commissioner is not satisfied that:

1. The basic organizational documents of the applicant, when combined with the powers enumerated in section 7 permit the applicant to conduct business as a legal services organization.

2. The organization has demonstrated the intent and ability to provide the services in a manner which insures their availability and accessibility.

3. The organization is financially responsible and may be reasonably expected to meet its obligations to its enrolled participants. In making this determination the commissioner shall consider:

a. Any agreement with an insurer or any other organization paying, contracting to pay for or in any

way guarantying the provision of legal services under the plan.

b. Any agreement with the providers for the furnishing of legal services under the plan.

c. The adequacy of working capital.

d. Any surety bond or deposit of cash or securities as a guaranty that plan services will be performed.

SECTION 7. POWERS OF LEGAL SERVICES ORGANIZATION. The powers of a holder of a certificate of authority issued pursuant to section 5 shall, in addition to any other powers conferred by law, include the following:

1. The purchase, lease, construction, renovation, operation or maintenance of facilities and property reasonably required for the delivery of services or for such purposes as may be reasonably necessary to the operation of the organization.

2. The furnishing of legal services on a prepaid basis under agreements of indemnity with plan enrollees or under service contracts with providers who are under contract with, employed or otherwise associated with the legal services organization.

3. The marketing and administration of a legal service plan or plans, or contracting with any person for the performance of these functions on its behalf.

4. Contracting with an insurance company licensed or authorized to do business in this state for the provision of insurance, indemnity, or reimbursement against the cost of legal services provided by a legal services organization.

SECTION 8. CONTRACT FORMS.

1. All contracts or other documents evidencing coverage issued by the prepaid legal services organization to participants and marketing documents purporting to describe the organization's prepaid legal service plan shall contain:

a. A complete description of the legal services to which the participant is entitled.

b. The predetermined periodic rate of payment for legal services, if any, which the participant is obligated to pay.

c. All exclusions and limitations on services to be provided including any deductible or copayment feature and all restrictions relating to preexisting conditions.

d. All criteria by which a participant may be disenrolled or denied reenrollment.

2. No contract between a legal services organization authorized to do business under this Act and any provider or any participant shall contain any provisions which require participants to guaranty payment, other than copayments and deductibles, to the provider in the event of nonpayment by the legal services organization for any covered services which have been performed under contracts between the participant and the legal services organization.

3. No contract form or amendment shall be issued unless it is approved by the commissioner. The contract form or amendment shall be deemed approved after thirty days following its filing with the commissioner unless the commissioner finds during this period that the contract form or amendment does not comply with the requirements of section 6 or subsection 1 of this section.

SECTION 9. REPORTS TO THE COMMISSIONER.

1. Every legal services organization subject to this Act shall annually, on or before the first day of March, file a report with the commissioner, verified by an appropriate official of the organization, showing its financial condition on the last day of the preceding calendar or fiscal year.

2. The report shall include:

a. A financial statement of the organization, including its balance sheet and statement of income and expenditures for the preceding year prepared by an independent certified public accountant.

b. Any changes in the information submitted initially upon application for a certificate of authority under section 5.

c. Such other information relating to the performance of the organization as the commissioner requires to carry out his duties under this Act.

SECTION 10. COMPLAINT SYSTEM.

1. Every prepaid legal services organization shall establish and maintain a complaint system which has been approved by

the commissioner to provide reasonable procedures for the resolution of complaints initiated by participants concerning any aspect of the prepaid legal service plan or plans operated by the organization.

2. Each prepaid legal services organization shall submit to the commissioner an annual report in a form prescribed by the commissioner which shall include:

   a. A description of the procedure used under the complaint system;

   b. The total number of complaints by type handled through the complaint system; and

   c. Disposition of all complaints filed under the system.

3. The legal services organization shall maintain records of complaints, shall retain those records for a period of three years, and shall make those records available for inspection by the commissioner, provided, however, that no information regarding a participant or an attorney considered protected by the confidential nature of the attorney-client relationship may be divulged without written consent of the participant or upon appropriate court order.

4. Complaints alleging misfeasance, malfeasance or nonfeasance on the part of the attorneys or complaints alleging violations of the code of professional responsibility shall be submitted to the disciplinary board of the supreme court for disposition.

SECTION 11. PROHIBITED PRACTICES.

1. No prepaid legal services organization, or representative thereof, may cause or knowingly permit the use of advertising, solicitation or any form of coverage which is false, fraudulent, misleading or deceptive. For the purposes of this Act:

   a. A statement or item of information is deemed to be false if it does not conform to fact in any respect which is or may be significant to a participant, or a person considering participating in a legal service plan;

   b. A statement or item of information is deemed to be misleading, whether or not it may be literally untrue, if, in the context in which the statement is made or the item of information is communicated, the statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding legal service of coverage, as indicating any

benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to a participant, or person considering participating in a legal services plan, if that benefit or advantage or absence of limitation, exclusion or disadvantage does not in fact exist;

c. An evidence of coverage is deemed to be deceptive if the evidence of coverage taken as a whole and with consideration given to typography and format and language is such as to cause a reasonable person, not possessing special knowledge regarding legal service plans and evidence of coverage thereof, to expect benefits, services, or changes which the evidence of coverage does not provide or which the legal services plan issuing such evidence of coverage does not regularly make available for participants covered under the evidence of coverage.

2. A participant's coverage may not be canceled or nonrenewed except for the failure to pay the charge for that coverage, or for other reasons promulgated or approved by the commissioner.

3. No prepaid legal services organization may use in its name, contracts, or literature any of the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business or similar to the name or description of any insurance or surety corporation doing business in this state.

SECTION 12. LICENSING OF SALES REPRESENTATIVES. The sales representatives of any organization subject to the provisions of this chapter shall be subject to the laws pertaining to insurance agents as defined in chapter 26-17.1. The license or certification for the sales representatives shall be issued on a form as prescribed by the commissioner, and the fee therefor shall be three dollars.

SECTION 13. EXAMINATIONS.

1. The commissioner shall make an examination of the operations of any prepaid legal services organization holding a certificate of authority under this Act. The examination shall include all contracts, agreements, and arrangements for the delivery of services under the plan as often as the commissioner deems necessary, but not less frequently than once every three years.

2. The commissioner shall make an examination concerning the delivery of legal services of any prepaid legal services organization by reviewing any complaints made by participants brought against the organization or against

providers with whom the organization has contracts or other agreements as often as the commissioner deems necessary but not less frequently than once every three years.

3. Every legal services organization shall make its books and records relating to its operations available to the commissioner to facilitate the examination.

4. No examination of the commissioner may be undertaken which would violate the attorney-client privilege except with the written consent of the participant.

5. For the purpose of examination, the commissioner may issue subpoenas, administer oaths to, and examine the officers and agents of the legal services organization, as well as any providers of services.

SECTION 14. ADMINISTRATIVE FINDINGS AND SANCTIONS.

1. The commissioner, consistent with chapter 28-32, may initiate proceedings to determine if a legal service organization has:

   a. Operated in a manner that materially violates its organizational documents;

   b. Materially breached its obligations to furnish the legal services specified in its contracts with enrolled participants;

   c. Violated any provision of this Act, or any regulations promulgated hereunder;

   d. Made any false statement with respect to any report or statement required by this Act or by the commissioner under this Act;

   e. Advertised, marketed, or attempted to market its services in a manner which misrepresents its services or its capacity to deliver services, or engaged in deceptive, misleading, or unfair practices with respect to advertising or marketing; or

   f. Attempted to prevent the commissioner from the performance of any duty imposed by this Act or by other laws of this state.

2. After providing written notice and an opportunity for a hearing pursuant to chapter 28-32, the commissioner shall make administrative findings and, as appropriate, may:

a. Impose a penalty of not more than five thousand dollars for each unlawful act committed under this Act;

b. Issue an administrative order requiring the legal services organization to cease or modify inappropriate conduct or practices by it or any of the personnel employed by or associated with it, to fulfill its contractual obligations, to provide a service which has been improperly denied, or to take steps to provide or arrange for any services which it has agreed to make available; or

c. Suspend or revoke the certificate of authority of the legal services organization.

3. If its certificate of authority is suspended, the organization during the period of that suspension, shall not enroll any additional participants and shall not engage in any advertising or solicitation.

4. If its certificate of authority is revoked, the organization shall proceed under the supervision of the commissioner, immediately following the effective date of the revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of those affairs. The commissioner, by written order, may permit further operation of the organization if it is in the best interest of the participants and it will allow the participants the greatest practical opportunity to obtain continued legal services coverage.

5. The commissioner may apply to any court for the legal or equitable relief deemed necessary to carry out the purposes of this Act.

SECTION 15. STATE BAR ASSOCIATION - ADVISORY COMMITTEE.

1. Upon receipt of an application for issuance of a certificate of authority, the commissioner shall transmit copies of the application and accompanying documents to the state bar association of North Dakota.

2. An advisory committee to assist the commissioner in the development of rules and regulations governing the conduct or organizations authorized under this Act is hereby created. The committee shall consist of seven members appointed by the board of governors of the state bar association of North Dakota. Members of the committee shall be allowed expenses for travel, board, and lodging in the performance of their duties as provided in sections 44-08-04 and 54-06-09. Members of the committee shall have the right to participate in any hearing held under

this Act, and shall receive notice of any order or decision of the commissioner.

SECTION 16. FEES. Every organization subject to this Act shall pay to the commissioner the following:

1. For filing a copy of its application for a certificate of authority or amendment thereto, the amount provided in subsection 3 of section 26-01-04.

2. For filing an annual report, the amount provided in subsection 2 of section 26-01-04.

3. The expenses of any examinations conducted pursuant to section 13.

SECTION 17. STATUTORY CONSTRUCTION AND RELATIONSHIP TO OTHER LAWS. Except as otherwise provided in this Act, provisions of the insurance laws of North Dakota shall not be applicable to any legal services organization granted a certificate of authority under this Act.

SECTION 18. IMPLEMENTING REGULATIONS. The commissioner after notice of hearing, may promulgate reasonable rules and regulations necessary and proper to carry out the provisions of this Act. Nothing in this Act shall be construed to prohibit the commissioner from requiring changes in procedure previously approved.

SECTION 19. CONTROL PROHIBITED. A prepaid legal services organization shall not attempt to control any attorney in the exercise of his or her professional judgment.

SECTION 20. SEVERABILITY. If any section, term, or provision of this Act shall be adjudged invalid for any reason, such judgment shall not affect, impair, or invalidate any other section, term, or provision of this Act but the remaining sections, terms, and provisions shall be and remain in full force and effect.

Approved March 11, 1981

CHAPTER 312

SENATE BILL NO. 2061
(Legislative Council)
(Interim Health Care Committee)

HEALTH MAINTENANCE ORGANIZATIONS

AN ACT to create and enact a new section to chapters 26-38 and 54-52.1 of the North Dakota Century Code, relating to coordination of benefits provisions and authorizing the state employees retirement board to offer health maintenance organizations as optional health insurance coverage for state employees, and to create and enact a new subsection to section 54-52.1-01 of the North Dakota Century Code, relating to defining health maintenance organizations; to amend and reenact section 23-17.2-03, subsection 4 of section 26-38-03, section 26-38-06, subdivision d of subsection 2 of section 26-38-10, section 26-38-16, subsection 3 of section 26-38-17, sections 26-38-20 and 26-38-24, and subsection 3 of section 26-41-10 of the North Dakota Century Code, relating to facilities included for certificate of need laws, health maintenance organizations' applications for certificates of authority, review of applications for certificates of authority, evidence of coverage under a health care plan, open enrollment for health maintenance organizations, malpractice complaints, cancellation of health maintenance organization enrollees, acceptance of other health maintenance organization examinations, and coordination of benefits with basic no-fault benefits.

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

* SECTION 1. AMENDMENT. Section 23-17.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-03. FACILITIES INCLUDED - HEALTH MAINTENANCE ORGANIZATION EXCEPTION. Health care facilities and health care services ~~included~~ for the purpose of this chapter ~~shall~~ include health care facilities and health care services as defined in subsection 6 of section 23-17.2-02. However, health care facilities and health care services, for the purposes of this chapter, do not include health maintenance organizations, as defined in subsection 7 of section 26-38-01, when the health maintenance organization, or other entity, is engaged in activities to determine the feasibility

* NOTE: Section 23-17.2-03 was also amended by section 3 of House Bill No. 1204, chapter 286.

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].

SECTION 2. AMENDMENT. Subsection 4 of section 26-38-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A copy of any contract made or to be made between any providers or persons listed in subsection 3 and the applicant. This subsection does not apply to contracts between individual providers, groups of providers, individual providers and groups of providers, or between other persons who are not applicants.

SECTION 3. AMENDMENT. Section 26-38-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-38-06. REVIEW OF APPLICATION BY COMMISSIONER - ISSUANCE OF CERTIFICATE OF AUTHORITY. The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to section 26-38-03 within ~~a--reasonable--length--of--time~~ ninety days following receipt of the certification from the state department of health. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed if the commissioner is satisfied that the following conditions are met:

1. The persons responsible for the conduct of the affairs of the applicant are honest, competent, and trustworthy.

2. The state department of health certifies, in accordance with section 26-38-05, that the health maintenance organization's proposed plan of operation meets the requirements of that section.

3. The health care plan constitutes an appropriate mechanism whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments.

4. The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

a. The financial soundness of the health care plan's arrangements for health care services ~~and the schedule of charges used in connection therewith~~.

b. A schedule of premium rates with supporting actuarial and other data.

c. The adequacy of working capital.

~~c.~~ d. Any agreement with an insurer, a hospital or medical service corporation, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the plan.

~~d.~~ e. Any agreement with providers for the provision of health care services. This subsection does not apply to agreements between individual providers, groups of providers, individual providers and groups of providers, or between other persons who are not applicants.

~~e.~~ f. Any surety bond or deposit of cash or securities submitted in accordance with section 26-38-19 as a guarantee that the obligations will be duly performed.

5. The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to section 26-38-08.

6. Nothing in the proposed method of operation, as shown by the information submitted pursuant to section 26-38-03 or by independent investigation, is contrary to the public interest.

7. Any deficiencies certified by the state department of health have been corrected.

Denial of a certificate of authority shall be effective only after compliance with the requirements of section 26-38-28.

SECTION 4. AMENDMENT. Subdivision d of subsection 2 of section 26-38-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

d. The total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to an individual contract, and an indication whether the plan is contributory or noncontributory with respect to group ~~certificates~~ contracts.

SECTION 5. AMENDMENT. Section 26-38-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-38-16. OPEN ENROLLMENT - LIMITING MEMBERSHIP. After a health maintenance organization has been in operation ~~twenty-four months~~ five years, it shall have an annual open enrollment period of at least one month during which it accepts enrollees up to the limits of its capacity, as determined by the health maintenance organization, in the order in which they apply for enrollment. A health maintenance organization may apply to the commissioner for authorization to impose ~~such~~ any underwriting restrictions upon enrollment ~~as~~ which are necessary to preserve its financial stability, to prevent excessive adverse selection by prospective enrollees, or to avoid unreasonably high or unmarketable charges for enrollee coverage for health care services. The commissioner shall approve or disapprove ~~such~~ the application within thirty days of ~~the~~ its receipt ~~thereof~~ from the health maintenance organization.

Health maintenance organizations providing or arranging for services exclusively on a group contract basis may limit the open enrollment ~~provided for herein~~ to all members of the group or groups covered or to be covered by ~~such~~ the contracts.

SECTION 6. AMENDMENT. Subsection 3 of section 26-38-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The number, amount, and disposition of malpractice claims ~~settled~~ during the year filed by enrollees of the health maintenance organization against the health maintenance organization and any of the providers used by it.

SECTION 7. AMENDMENT. Section 26-38-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-38-20. PROHIBITED PRACTICES - ADVERTISING AND SOLICITATION - CANCELLATION OF ENROLLEES - NAME OF ORGANIZATION. No health maintenance organization, or representative thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For the purposes of this chapter:

1. A statement or item of information ~~shall be~~ is deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health care plan.

2. A statement or item of information ~~shall be~~ is deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which ~~such~~ the statement is made or ~~such~~ the item of information is communicated, ~~such~~ the statement or item of information may be reasonably understood by a reasonable person, not possessing special

knowledge regarding health care coverage, ~~as indicating~~ to indicate the existence of any benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of, or person considering enrollment in, a health care plan, if ~~such~~ the benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist.

3. An evidence of coverage ~~shall be~~ is deemed to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, ~~shall be such as to cause~~ causes a reasonable person, not possessing special knowledge regarding health care plans and evidences of coverage ~~therefor~~, to expect benefits, services, charges, or other advantages which the evidence of coverage does not provide or which the health care plan issuing ~~such~~ the evidence of coverage does not regularly make available to enrollees covered under ~~such~~ the evidence of coverage.

An enrollee may not be canceled or nonrenewed except for the failure to pay the proper ~~charge~~ premium for ~~such~~ coverage, actual or constructive fraud or flagrant abuse by the enrollee of the provisions of the health care plan, inability to maintain a therapeutic relationship with any of the health maintenance organization's primary care physicians, or for ~~such~~ other reasons as may be ~~promulgated~~ adopted by the commissioner.

No health maintenance organization, unless licensed as an insurer, may use in its name, contracts, or literature any of the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

SECTION 8. AMENDMENT. Section 26-38-24 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-38-24. EXAMINATIONS BY COMMISSIONER AND STATE DEPARTMENT OF HEALTH - EXPENSES ASSESSED AGAINST ORGANIZATION - ~~EXAMINATION--BY OTHER STATES~~ ACCEPTANCE OF OTHER EXAMINATIONS. The commissioner may make an examination of the affairs of any health maintenance organization as often as he deems it necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

The state department of health may make an examination concerning the quality of health care services of any health maintenance organization as often as it deems it necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

For the purpose of examinations, the commissioner and the state department of health may administer oaths to, and examine the officers and agents of the health maintenance organization and the principals of providers with whom ~~such~~ the organization has contracts, agreements, or other arrangements pursuant to its health care plan. To the extent that ~~such~~ examinations may require the disclosure of personally identifying information relating to either financial transactions or medical information concerning a plan enrollee in the records of the health maintenance organization or the records of a provider with whom ~~such~~ the organization has contracts, agreements, or other arrangements pursuant to its health care plan, ~~such~~ the information is to be used for the sole purpose of assessing the quality of care provided and the degree of compliance with provisions of this chapter. ~~Such~~ The information is to be held in confidence and shall not be disclosed except upon the express consent of the enrollee, or pursuant to a court order for the production or discovery of evidence ~~or the discovery thereof~~, or in the event of a claim or litigation between the enrollee and the health maintenance organization ~~wherein such~~ when the information is pertinent.

The expenses of examinations under this section shall be assessed against the organization being examined and remitted to the commissioner or the state department of health for whom the examination is being conducted.

~~In lieu of such examination, the~~ The commissioner or the state department of health may accept an examination or the report of an examination made by the commissioner or the state department of health of another state, the federal government, or ~~jurisdiction~~ an approved independent accrediting organization.

SECTION 9. A new section to chapter 26-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

COORDINATION OF BENEFITS PROVISION. Group health maintenance organization contracts may contain coordination of benefits or other insurance provisions for the control of overinsurance. The provisions shall be in accordance with rules adopted by the commissioner.

SECTION 10. AMENDMENT. Subsection 3 of section 26-41-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. ~~Any~~ An insurer, health maintenance organization, or nonprofit 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. ~~Any such~~ An insurer, health maintenance organization, or nonprofit 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. ~~Any such~~ A coordination of benefits plan shall be approved by the commissioner of insurance.

SECTION 11. A new section to chapter 54-52.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

HEALTH MAINTENANCE ORGANIZATION CONTRACT - MEMBERSHIP OPTION. Notwithstanding the provisions of section 54-52.1-04, the board may contract with one or more health maintenance organizations to provide eligible employees the option of membership in a health maintenance organization. The contract or contracts shall be included in the uniform group insurance program.

SECTION 12. A new subsection to section 54-52.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Health maintenance organization" means an organization certified to establish and operate a health maintenance organization in compliance with chapter 26-38.

Approved March 31, 1981

CHAPTER 313

SENATE BILL NO. 2070
(Legislative Council)
(Interim Judiciary "C" Committee)

"OWNER" DEFINED FOR NO-FAULT REQUIREMENTS

AN ACT to amend and reenact subsection 12 of section 26-41-03 of the North Dakota Century Code, relating to the definition of a motor vehicle owner for purposes of no-fault insurance requirements.

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

SECTION 1. AMENDMENT. Subsection 12 of section 26-41-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. "Owner" means the person in whose name the motor vehicle has been registered. If ownership has been transferred, but the registration record has not been changed, "owner" means the person, other than a lienholder, to whom ownership has been transferred. If no registration is in effect at the time of an accident involving the motor vehicle, "owner" means the person, other than a lienholder, who holds the legal title thereto~~, or in~~. In the event the motor vehicle is the subject of a security agreement ~~or~~ with the debtor having the right to possession, a lease with an option to purchase with the ~~debtor or~~ lessee having the right to possession, or a lease with a term of six months or more with the lessee having the right to possession, "owner" means the debtor or lessee.

Approved March 19, 1981

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 314

SENATE BILL NO. 2384
(Holmberg, Stenehjem)

SERVICE OF PROCESS BY UNITED STATES MARSHALS

AN ACT to repeal section 27-01-08 of the North Dakota Century Code, relating to the authority of federal marshals to serve process by mail.

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

SECTION 1. REPEAL. Section 27-01-08 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 11, 1981

CHAPTER 315

HOUSE BILL NO. 1410
(Representatives Kretschmar, Mushik, Richie)
(Senators H. Christensen, Fritzell, Hanson)

JUDICIAL SALARIES

AN ACT to amend and reenact sections 27-02-02 and 27-05-03 of the North Dakota Century Code, relating to salaries of the judges of the supreme and district courts.

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

SECTION 1. AMENDMENT. Section 27-02-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-02. SALARIES OF JUDGES OF SUPREME COURT. Each judge of the supreme court shall receive an annual salary commencing July 1, ~~1979~~ 1981, of ~~thirty-nine-thousand-two-hundred~~ forty-nine thousand nine hundred dollars and commencing on July 1, ~~1980~~ 1982, an annual salary of ~~forty-one-thousand-seven-hundred~~ fifty-three thousand nine hundred dollars except that the chief justice of the supreme court shall receive an additional one thousand five hundred dollars per annum.

SECTION 2. AMENDMENT. Section 27-05-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-05-03. SALARIES AND EXPENSES OF DISTRICT JUDGES. Each district judge of this state shall receive an annual salary commencing July 1, ~~1979~~ 1981, of ~~thirty-six-thousand-seven-hundred fifty~~ forty-six thousand nine hundred dollars and commencing on July 1, ~~1980~~ 1982, of ~~thirty-nine-thousand-one-hundred~~ fifty thousand six hundred dollars and his actual travel expenses, which shall include mileage and subsistence while engaged in the discharge of his official duties outside the county in which his chambers are located. Such salary and expenses shall be payable monthly in the manner provided by law.

Each district judge who has been appointed by the supreme court to act as presiding judge of a judicial district shall receive an additional one thousand two hundred dollars per annum.

Approved March 19, 1981

CHAPTER 316

SENATE BILL NO. 2383
(Stenehjem)

COURT ADMINISTRATION AND TERM REQUIREMENTS

AN ACT to amend and reenact section 27-02-05.1 of the North Dakota Century Code, relating to administration by the supreme court; and to repeal sections 27-02-06, 27-02-25, 27-05-08.1, 27-05-15, 27-05-16, 27-05-17, 27-05-19, 27-05-20, and 27-05-21 of the North Dakota Century Code, relating to the terms of supreme court and district court.

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

SECTION 1. AMENDMENT. Section 27-02-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-05.1. ADMINISTRATION BY SUPREME COURT. The supreme court shall have and exercise administrative supervision over all courts of this state and the judges, justices, or magistrates of such courts under such rules, and procedures, ~~and regulations~~ as it shall from time to time prescribe. The supreme court shall provide to the extent it deems necessary or desirable, rules ~~and regulations~~ for:

1. Administrative supervision by the supreme court of all courts.

2. ~~The assignment of judges, including consenting retired justices and judges, to temporary duty in any of the courts.~~

3. Administrative practice and procedure in all courts, including the required filing by all courts of all reports deemed necessary by the supreme court. All judges, clerks of court, and other officers or employees of the courts and of offices related to and serving the courts shall comply with all administrative practice and procedure ~~regulations~~ rules promulgated by the supreme court.

3. Uniform financial accounting procedures to be followed by all judicial officers and employees designated to receive

and transmit fees, fines, costs, and other moneys. The court shall not establish any accounting procedures which conflict with those established by the state auditor for county agencies.

4. The transfer of any matter to any proper court when the jurisdiction of any court has been improvidently invoked.

5. Withdrawal of any case or other matter pending before any judge and to reassign ~~said~~ the proceeding or case to another judge, when, in the opinion of the supreme court, ~~such~~ the withdrawal and reassignment should be made in order to expedite and promote justice.

~~6.--The--times--and--places--for--holding--court--when,-in-the opinion-of-the-supreme-court,-it-is-necessary-to-do-so--to expedite-disposition-of-pending-matters.~~

SECTION 2. REPEAL. Sections 27-02-06, 27-02-25, 27-05-08.1, 27-05-15, 27-05-16, 27-05-17, 27-05-19, 27-05-20, and 27-05-21 of the North Dakota Century Code are hereby repealed.

Approved March 19, 1981

CHAPTER 317

SENATE BILL NO. 2387
(Lashkowitz, Stenehjem)

SUPREME COURT RULEMAKING PROCEDURE REQUIREMENTS

AN ACT to repeal sections 27-02-11, 27-02-12, 27-02-13, 27-02-14, and 27-02-15 of the North Dakota Century Code, relating to the rulemaking procedure of the supreme court.

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

* SECTION 1. REPEAL. Sections 27-02-11, 27-02-12, 27-02-13, 27-02-14, and 27-02-15 of the North Dakota Century Code are hereby repealed.

Approved March 11, 1981

* NOTE: Sections 27-02-11 and 27-02-13 were amended by sections 49 and 50 of House Bill No. 1061, chapter 320.

CHAPTER 318

SENATE BILL NO. 2067
(Legislative Council)
(Interim Judiciary "A" Committee)

CHANGE OF JUDGE FOR POSTJUDGMENT MOTIONS

AN ACT to amend and reenact section 27-05-27 and subsection 2 of section 29-15-21 of the North Dakota Century Code, relating to the hearing of postjudgment motions before the judge before whom the matter was originally heard, and the demand for a change of judge.

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

SECTION 1. AMENDMENT. Section 27-05-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-05-27. MOTIONS BEFORE TRIAL JUDGE. ~~Any~~ Except as provided by subsection 2 of section 29-15-21, any motion for a new trial, settlement of a proposed case, judgment ~~non---obstante,~~ notwithstanding the verdict, or vacation or modification of an order, judgment, or other proceeding, shall be presented and heard before the judge before whom the matter was heard, considered, or determined, unless for any reason ~~such~~ the judge is unable to act.

SECTION 2. AMENDMENT. Subsection 2 of section 29-15-21 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The demand is not operative unless it is filed with the clerk of the court at least three days before the matter is to be heard if upon a motion or upon arraignment, or ten days before the date the action or proceeding is scheduled for trial. In any event, no demand for a change of judge may be made after the judge sought to be disqualified has ruled upon any matter pertaining to the action or proceeding in which the demanding party was heard or had an opportunity to be heard. Any proceeding to modify an order for alimony, property division, or child support pursuant to section 14-05-24 or an order for child custody pursuant to section 14-05-22 shall be considered a proceeding separate from the original action and the fact that the judge sought to be disqualified made any ruling in the original action shall not bar a demand for a change of judge.

Approved March 18, 1981

CHAPTER 319

HOUSE BILL NO. 1060
(Legislative Council)
(Interim Judiciary "A" Committee)

COUNTY COURT REVISIONS

AN ACT to provide for a county court in each county, the sharing of the services of a county judge by two or more counties, magistrates, clerks of court, court reporting services, jurisdiction, and practice and procedure in the county court; to create and enact sections 27-01-01.1 and 30.1-02-06.1 of the North Dakota Century Code, providing for the assumption of the expenses of the district courts by the state and appeals under the Uniform Probate Code; to amend and reenact sections 11-11-12, 27-01-05, 27-05.1-05, 27-06-02, 27-06-06, 27-06-09, 27-09.1-14, 27-20-05, subsection 1 of section 27-20-07, sections 27-20-49, 29-07-01.1, and 29-32-05 of the North Dakota Century Code, relating to supplies and attendants for local courts, expenses of actions following a change of venue, family court budgets, salaries and expenses of district court reporters, transcripts in criminal actions, bailiffs of district courts, compensation of jurors, salaries of juvenile court personnel, costs involved in treatment and adjudication of juveniles, and payment of indigent defense expenses; to repeal chapters 27-07, 27-08, 27-18, 30-26, 33-01, 33-02, 33-03, 33-04, 33-05, 33-07, 33-08, 33-09, 33-10, 33-11, and 33-12 of the North Dakota Century Code, relating to the county courts, the county courts of increased jurisdiction, and the county justice courts; and to provide an effective date.

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

SECTION 1. TRANSFER OF CASES TO COUNTY COURT CALENDARS - DOCKETING OF JUDGMENTS. Following the completion of the terms of the present county judges, county justices, and judges of county courts with increased jurisdiction, all untried cases or any unfinished business on the calendars of the county justice courts and the county courts of increased jurisdiction shall be continued and placed on the calendar of the county court of the county, without prejudice, along with the untried cases or unfinished business of the present county courts, and shall be deemed to have been originally filed in the county court. Any judgments rendered in those courts prior to that date shall be deemed entered in the

records of the county court and shall be deemed judgments of the county court for all purposes.

SECTION 2. COUNTY COURTS ESTABLISHED IN ALL COUNTIES - ELECTION OF JUDGES. Following the completion of the terms of the present county judges, county justices, and judges of county courts with increased jurisdiction these offices and judgeships shall cease to exist and there shall be established in each county a county court pursuant to the provisions of this Act. Except in those counties which have entered into an agreement with another county pursuant to section 3 of this Act, at the general election in 1982 and every four years thereafter there shall be elected in each county a judge of the county court. The board of county commissioners of any county may authorize by resolution one or more additional judges for that county. In those counties which have entered into an agreement pursuant to section 3 of this Act, one or more judges of the county court shall be elected by the eligible voters of the counties entering into the agreement. Each candidate for the office of judge of the county court in a county which has entered into a multicounty agreement shall comply with the appropriate filing requirements in each county to be served by the position.

SECTION 3. MULTICOUNTY AGREEMENTS TO SHARE SERVICES OF JUDGES. The boards of county commissioners of any two or more counties may enter into an agreement to provide for the election of a single judge or any number of judges to serve the county courts of the several counties entering into the agreement. Any county entering into such an agreement shall retain its own county court which shall be located in the county seat and each action shall be venued in the county court of any county in which venue is proper under other provisions of law or rule of the supreme court. The agreement shall set forth the number of judges to be elected, the manner in which the salary and expenses of the judge or judges and any court reporters will be divided by the various counties, and the manner in which services will be provided to the various counties. Any such agreement must be entered into at least one hundred twenty days prior to the primary election in any year in which a general election is to be held, except a county in which no candidate is elected and qualified or in which a vacancy occurs may enter into an agreement with another county for the services of a judge at any time. Any agreement must remain effective for the duration of the term to which the county judge is to be elected, or, in the event of a vacancy which occurs after the agreement is entered into, until the vacancy is filled by election and the person elected takes office.

SECTION 4. VACANCIES. Any vacancy in the office of county judge shall be filled by the board of county commissioners pursuant to section 44-02-04, except that in those counties which have entered into a multicounty agreement pursuant to section 3 of this Act, any appointment to fill a vacancy must be approved by a majority of the members of each of the boards of county commissioners of the counties which are party to the agreement.

SECTION 5. SALARIES OF JUDGES OF COUNTY COURTS - AMOUNT AND PAYMENT. A county judge of a county court of this state shall receive the same salary being paid judges of the county courts of increased jurisdiction on December 31, 1982. The salary of judges serving more than one county pursuant to section 3 of this Act shall be based on the combined population of the counties served by the judge. Such salary shall be payable by the county or counties in equal monthly installments and shall be full remuneration for all official duties, including all fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies. All fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies, shall be deposited by the court into the county treasury of the county in which the court is located.

SECTION 6. JUDGES TO BE LEARNED IN THE LAW. Judges of county courts shall be learned in the law.

SECTION 7. JUDGE OF COUNTY COURT NOT TO ACT AS ATTORNEY - REMOVAL FOR VIOLATION. A judge of a county court shall not act as attorney or counselor at law during his term of office. Any judge who willfully violates the provisions of this section shall be subject to removal from office.

SECTION 8. MAGISTRATES - APPOINTMENT - SALARY - AUTHORITY. In those counties which have entered into an agreement to share the services of a judge pursuant to section 3 of this Act and in which the person serving as county judge does not reside, the county judge, subject to confirmation by the board of county commissioners, shall appoint any qualified person, including the clerk of district court, to serve as magistrate. An appointed magistrate shall be paid a salary as fixed by the board of county commissioners and shall have such authority performable by the county judge as assigned by the county judge. The supreme court may promulgate rules for the qualifications of magistrates, the extent and assignment of authority by county judges, and the conduct of the office, including regulations for training sessions and regulations for continuing education.

SECTION 9. CUSTODY OF RECORDS OF COUNTY COURTS. The judge of a county court shall have the care and custody of all the records of the court which relate to actions or proceedings within its civil and criminal jurisdiction. The judge may destroy the following records:

1. All papers contained in marriage files, except the original marriage license, if the license is at least five years old.

2. All mental health or insanity files more than twenty years old as determined by the date of the last paper filed. However, no patient's file shall be destroyed unless he has been dead six years. The judge's investigation shall determine if the patient is alive or his date of death.

The clerk of court shall record the destruction and destruction date in the file's index.

3. All receipts, canceled checks, or vouchers filed in support of any report and account rendered by any personal representative, executor, administrator, conservator, or guardian if the filing date of the report and account is at least six years old. When these are destroyed, the clerk of court shall make a record of the destruction and the destruction date in the margin or elsewhere on the report and account affected.

SECTION 10. CLERK OF COUNTY COURT - SALARY. In those counties with a population of less than twenty-five thousand inhabitants, the clerk of the district court shall be clerk of the county court and shall receive no additional salary from the county for services performed as clerk of the county court. In those counties having a population of twenty-five thousand inhabitants or more, the county judge may appoint a clerk of the county court who shall serve as the clerk for all purposes. Any clerk so appointed shall receive as full compensation for services the salary as may be fixed by the county commissioners, which shall be paid monthly by the county in the same manner as the salaries of other county officers are paid.

SECTION 11. DUTIES OF CLERK OF COUNTY COURT. The clerk of a county court, or the clerk of the district court, or his deputy, in a county in which the clerk of the district court is ex officio clerk of the county court, shall perform all the duties devolved upon him as such clerk in all actions and proceedings commenced in the county court in the same manner as the clerk of the district court is required to perform his duties, so far as the provisions of this code relating to the clerk of the district court are applicable.

SECTION 12. FEES TO BE CHARGED BY THE CLERK OF COUNTY COURT. The clerk of a county court shall charge and collect the same fees as are prescribed in section 11-17-04, except that the clerk shall charge and collect the following fees:

1. For filing a petition for letters testamentary, of administration, of guardianship, or proceedings in heirship, twenty dollars.

2. For applications in joint tenancy to determine estate tax, ten dollars.

3. For filing of civil action in the county court, ten dollars, and from time to time thereafter the clerk may require additional deposits to be made to cover the fees as they accumulate.

4. For default judgments in civil actions, including all fees prior to execution, five dollars.

5. For a certified abstract or transcript of any judgment in any civil action, one dollar.

Upon the entry of judgment in any civil action, the clerk shall refund to the proper party the amount of all moneys deposited with him in excess of the legal fees accrued in the action.

SECTION 13. CLERK TO KEEP FEE BOOK - MONTHLY REPORT TO COUNTY AUDITOR. The clerk of the county court shall keep as a public record in his office a book, to be provided by the county, in which he shall enter all money received by him as fees for services rendered as clerk. Within three days after the close of each calendar month and also at the close of his term of office, the clerk shall file a statement under oath with the county auditor showing the amount of fees which he has received since the date of his last report, and within three days thereafter, he shall deposit with the county treasurer the total sum of such fees, except such fees as he is expressly authorized to retain.

SECTION 14. JUDGE OF COUNTY COURT RESPONSIBLE FOR ACTS OF CLERK. The judge of a county court shall be responsible for all the acts of and for all the fees collected by any clerk of the court who may be appointed by him.

SECTION 15. JUDGE OF COUNTY COURT MAY REQUIRE CLERK TO GIVE HIM A BOND. The judge of a county court may require the clerk of court appointed by him to give a bond conditioned for a faithful performance of all duties as clerk and for the accounting for and the payment to the county treasurer of all the fees and other moneys collected by the clerk by virtue of his office.

SECTION 16. COURT REPORTING SERVICES - ELECTRONIC COURT REPORTING - APPOINTMENT, TERM, METHOD OF QUALIFYING, AND COMPENSATION OF COURT REPORTERS. The judge of a county court shall provide for court reporting services by an electronic court reporting system or the appointment of a court reporter. Any court reporter so appointed shall hold office and discharge the duties thereof in person until the order of appointment is revoked or until another person is appointed to the office. A reporter appointed by a judge serving more than one county pursuant to section 3 shall serve as the reporter for the judge in each county served by the appointing judge. The reporter shall qualify in the same manner as the reporter of a district court and the reporter's duties shall be governed by the provisions of law relating to the duties of the reporter of a district court. The reporter shall receive such compensation as may be fixed by the judge and approved by the county commissioners except that the salary of a court reporter appointed by a judge serving more than one county shall be fixed and paid in the manner provided by the agreement entered into by the various counties. The fees for transcripts shall be the same as those paid to district court reporters.

SECTION 17. BAILIFFS OF COUNTY COURTS - APPOINTMENT, TERMS, POWERS, COMPENSATION. The judge of a county court may appoint one

or more competent persons as bailiffs of the court. Such bailiffs shall hold office at the pleasure of the judge, shall have the same powers as a constable, and shall receive for their services an amount which shall equal the compensation and mileage which is provided for jurors for required attendance at sessions of the district or county court under the provisions of section 27-09.1-14.

SECTION 18. 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.

2. Criminal misdemeanor, infraction, and noncriminal traffic cases.

3. Small claims cases.

4. Probate, guardianship, and other testamentary cases, including trusts and contested matters, pursuant to title 30.1.

5. Preliminary hearings and arraignments in felony criminal cases.

6. Commitment proceedings pursuant to chapter 25-03.1.

7. Any other cases, except proceedings conducted pursuant to chapter 27-20, 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 19. APPELLATE JURISDICTION OF COUNTY COURTS. County courts shall have concurrent jurisdiction with the district courts in appeals from all final judgments entered in municipal court. An appeal to the district court or county court transfers the action to that court for trial anew. That trial shall be conducted in accordance with procedures provided in rules promulgated by the supreme court.

SECTION 20. WHEN JURY TO BE CALLED. A jury may be called at any time at the discretion of the county judge.

SECTION 21. GENERAL POWERS OF JUDGE OF COUNTY COURT. The judge of a county court, in any action or proceeding which lawfully can be instituted before him, shall possess the same power and

authority which a judge of a district court possesses in a similar action or proceeding instituted before him in a like manner.

SECTION 22. GENERAL LAWS AND RULES OF PRACTICE OF DISTRICT COURTS GOVERNING COUNTY COURTS. The provisions of law and rules of practice and procedure applicable to the district courts in civil and criminal actions, including those relating to selection of jurors, issuance and service of process, pleading, adjournments of court, place of trial, trial of actions, taxation of costs, issuance of execution, granting of new trials, preparation of statements of the case, and appeals to the supreme court, and the use of provisional remedies, insofar as such provisions of law and rules of practice and procedure are applicable, shall apply to county courts.

SECTION 23. CHANGE OF PLACE OF TRIAL OF CIVIL ACTIONS MAY BE ORDERED BY COURT. A county court may change the place of trial of a civil action pending therein:

1. If the county designated in the summons and complaint as the place of trial thereof is not the proper county;

2. If there is reason to believe that an impartial trial of such action cannot be had in the county in which the action presently is pending; or

3. If the convenience of the witnesses and the ends of justice would be promoted by such change.

SECTION 24. DEMAND FOR CHANGE OF JUDGE. Any party to a civil or criminal action or proceeding pending in any county court may obtain a change of judge pursuant to the provisions of section 29-15-21, except that either a district judge or a county judge may be appointed to act in place of the disqualified judge.

SECTION 25. DOCKETING JUDGMENT - TRANSCRIPT TO OTHER COUNTIES - LIEN ON REAL PROPERTY. On filing a judgment roll upon a judgment which, in whole or in part, directs the payment of money, the clerk of the county court in which such judgment was rendered shall docket the same in a book to be known as the "judgment docket". Such judgment may be docketed in any other county upon filing with the clerk of the county court of such county a transcript of the original judgment docket. The judgment shall be a lien on all the real property, except the homestead, of every person against whom any such judgment is rendered, which he may have in any county in which such judgment is docketed at the time of docketing or which he thereafter shall acquire in such county, for ten years from the time of docketing the same in the county in which it was rendered. All provisions of law applicable to the district courts pertaining to the filing, docketing, or renewal of a judgment shall apply to county courts.

SECTION 26. JUDGE MAY ISSUE WARRANT OF ARREST AND FIX BAIL. A judge of a county court may issue a warrant of arrest for any

person against whom an information has been filed and shall fix the amount of bail to be required of the accused.

SECTION 27. NECESSITY OF PRELIMINARY EXAMINATION IN COUNTY COURTS. No preliminary examination shall be necessary before trial in criminal misdemeanor cases or noncriminal traffic cases in county court.

SECTION 28. DEFENDANTS IN CRIMINAL ACTIONS OR PROCEEDINGS TO BE BOUND OVER TO COUNTY COURT. In a criminal action or proceeding for a criminal offense over which a county court has jurisdiction, the examining magistrate before whom the preliminary examination is held, if it appears from the examination that a public offense has been committed and that there is reasonable cause to believe the accused guilty of the offense, shall admit the accused to bail and shall bind him over to district court or commit him for trial before the county court, whichever is appropriate.

SECTION 29. PROCEDURE WHEN DEFENDANT IN CRIMINAL ACTION IS IMPROPERLY BOUND OVER TO COUNTY COURT. If any person accused of a criminal offense is admitted to bail and bound over or committed for trial to a county court for a crime over which the county court does not have jurisdiction, the action or proceedings therein shall not abate, nor shall the court lose jurisdiction thereof, but the court shall certify the matter to the district court of the county, and the action or proceedings shall be tried in the district court with the same effect as if originally commenced therein.

SECTION 30. CRIMINAL ACTIONS OR PROCEEDINGS IN DISTRICT COURT TRANSFERABLE TO COUNTY COURT. If any person accused of a criminal offense is bound over to a district court for an offense over which a county court has jurisdiction, or if, at any time, it shall appear by evidence or otherwise to the judge of a district court that a criminal offense with which a person is or should be charged is triable in a county court, the district court judge may certify the case and all related proceedings to the county court for trial, determination, and adjudication. All papers and files related to the case shall be transferred by the clerk of the district court to the county court without any further order or certificate. Any case or related proceeding so certified and transferred shall be tried in the county court with the same effect as if originally commenced there.

SECTION 31. COURT MAY RECEIVE PLEA OF GUILTY AND PASS JUDGMENT. A county court may receive a plea of guilty and may pass judgment at any time.

SECTION 32. DEFENDANTS IN CRIMINAL ACTIONS ENTITLED TO JURY TRIAL - WHEN TO BE INFORMED THEREOF - WAIVER. Except as otherwise provided by law, a defendant in a criminal action in a county court shall be entitled to a trial by jury, and when the defendant is arraigned he shall be informed by the court of this right. If the defendant waives the right to a jury trial, an entry to that effect shall be made on the court minutes.

SECTION 33. DEFENDANT IN CRIMINAL ACTION WAIVING JURY TRIAL MAY BE TRIED BY COURT. If a defendant in a criminal action in a county court waives a trial by jury, the defendant may be tried by the court without a jury. The court shall give prior notice of the trial to the state's attorney of the county.

SECTION 34. PROCEDURE PERMITTING PLEADING OF CROSS-CLAIMS OR COUNTERCLAIMS IN EXCESS OF JURISDICTION OF COUNTY COURTS. In all civil actions instituted in a county court a defendant shall have the right to plead a cross-claim or a counterclaim, compulsory or permissive, in excess of the jurisdiction of the court. When the amount in controversy measured by the value of the relief sought in either a cross-claim or counterclaim exceeds ten thousand dollars or asks for affirmative equitable relief, the county court shall proceed no further with a determination of the rights of the parties provided that the pleading in excess of jurisdiction is accompanied by a motion requesting that the case be transferred to the district court of the same county as the court from which the transfer is requested. The movant shall tender, with his motion, a filing fee of fifteen dollars which shall be paid to the clerk of the district court in event the motion is granted. In the absence of a motion the cross-claim or counterclaim must be stricken and the case must proceed as though no counterclaim or cross-claim had been pleaded.

When the transfer of a case from the county court to the district court has been ordered pursuant to this section, the clerk of the county court shall certify to the district court all of the original pleadings and other papers and documents pertaining to the case accompanied by a certified copy of the order of transfer and an itemized certificate of transmittal. Upon receipt of a certificate and order, the district court shall have the jurisdiction to proceed with the case as though it had been originally commenced in the district court including the power to permit or direct appropriate amendments of pleadings.

SECTION 35. CONTINUING EDUCATION OF JUDGE OF COUNTY COURT REQUIRED. Each judge of a county court shall be required, within one year after his election, and at least once 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. If any such judge shall fail to attend an educational session within any calendar year, without being excused therefrom by the supreme court, the state court administrator shall report such fact to the commission on judicial qualifications for such action as it deems appropriate.

SECTION 36. AMENDMENT. Section 11-11-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-12. BOARD OF COUNTY COMMISSIONERS TO PROVIDE COURTS WITH SUPPLIES AND ATTENDANTS. The board of county commissioners shall provide the county courts ~~which are held within the county~~ with attendants, fuel, lights, and stationery suitable for the

transaction of business. If the board neglects to perform its duty, the court may order the sheriff to do so, and the expense incurred by him in carrying the order into effect, when certified by the court, shall be a county charge.

SECTION 37. Section 27-01-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

27-01-01.1. BUDGETING AND FINANCING OF THE SUPREME COURT AND DISTRICT COURTS. The state court administrator shall submit a comprehensive budget for the supreme court and the district courts to the legislative assembly. An informational copy of the budget shall be delivered to the state budget officer pursuant to section 54-44.1-13. The budget for the district courts shall include all salary and expenses for the district courts, including the juvenile courts, and their employees except the clerks of district courts and their deputies and employees, whose salaries and expenses shall be paid by the counties. Each county shall provide the district court in that county with adequate chamber, court, and law library quarters, and lights and fuel. Any equipment, furnishings, and law libraries in the control and custody of the district court on January 1, 1980, and any such property acquired from that date until the effective date of the Act, shall continue to be in district court's custody and control until the state court administrator determines such items are no longer needed by the court. Upon that determination custody and control of the property shall revert back to the county. Each district court law library maintained by the state shall be available for use by the county court in that county.

SECTION 38. AMENDMENT. Section 27-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-01-05. EXPENSES ON CHANGE OF VENUE. In all actions or proceedings in county court, including criminal actions, where a change of venue ~~is had or made~~ occurs by the order of any court or of any judge pursuant to law, except in cases where ~~such~~ the change is made because ~~such~~ the action was not brought in the proper county, the county in which ~~such~~ the action was commenced shall pay to the county in which the ~~same~~ action is tried the following expenses arising out of ~~such~~ the change of venue:

1. The fees of the clerk which are a lawful charge against the county~~;~~.
2. The per diem fees allowed by law to the petit jurors actually in attendance ~~upon said court~~;.
3. All lawful charges for boarding the jurors~~;~~.
4. The legal fees of all witnesses in any criminal case or proceeding which are a lawful charge against the county~~;~~.

5. The fees allowed by law to the court reporter ~~in attendance upon said court~~ which are a lawful charge against the county~~;~~.

6. All lawful charges and fees for subpoenaing witnesses in any criminal case or proceeding which are a proper charge against the county~~; and~~.

7. All other lawful costs, fees, and disbursements which are a lawful charge against the county.

The fees of the jurors are to be estimated for each day and part of a day, not less than half a day, occupied in trying or disposing of any ~~such~~ action~~,--but no~~. No costs shall be paid to the county to which a change of venue is had which are not properly chargeable against ~~such~~ the county from which the proceeding was transferred.

SECTION 39. AMENDMENT. Section 27-05.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-05.1-05. BUDGET. The presiding judge shall submit a budget to the state court administrator setting forth the amount of funds a family court will require in ~~the~~ carrying out ~~of~~ the purposes of this chapter~~, at the time the order establishing such court is issued, and~~. The budget is to be submitted on or before the first day of July of each year ~~thereafter, to the county commissioners of the respective county or counties wherein a family court has been established~~.

SECTION 40. AMENDMENT. Section 27-06-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-02. SALARY AND EXPENSES OF COURT REPORTER. Each court reporter shall receive an annual salary ~~commencing July 1, 1979, not to exceed twenty thousand eight hundred dollars and commencing on July 1, 1980, an annual salary not to exceed twenty two thousand one hundred dollars~~, within the limits of legislative appropriations, payable in equal monthly installments by the ~~counties constituting the judicial district in which such reporter is employed. Such~~ state. The salary shall be set by each district court judge involved ~~and shall be prorated among the respective counties of each judicial district on the basis of the ratio of the population of each county to the total population of the judicial district according to the last federal decennial census. The presiding judge of each judicial district, on the first day of January of each year, or as soon thereafter as may be, shall apportion the amount of such salary to be paid by each county in his district on the basis aforesaid, and the county auditors of the respective counties in such judicial district shall issue to the order of such court reporter a warrant to the amount shown to be due by such apportionment~~. As reimbursement for expenses incurred in the performance of official duties outside ~~of~~ the county where the

district court chambers are situated, the court reporter shall receive expense allowances in accordance with the provisions of section 44-08-04. ~~Such sums~~ The allowance shall be paid monthly by the ~~county wherein such court reporter is attending to such official duties, when approved by the board of county commissioners~~ state. Claims for transportation expenses shall not exceed amounts provided by section 54-06-09 and shall be in itemized form showing the mileage traveled, the days when and how traveled, and the purposes thereof, and verified by affidavit. No claim for living expenses or transportation expenses shall be approved for payment to a court reporter ~~by the board of county commissioners~~ unless ~~such~~ the claim ~~shall have been~~ is first approved by the district judge.

SECTION 41. AMENDMENT. Section 27-06-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-06. TRANSCRIPT IN CRIMINAL ACTION PREPARED AT EXPENSE OF ~~COUNTY~~ STATE - FILING AND USE OF TRANSCRIPT. A judge of a district court in which a criminal action or proceeding has been tried, on his own motion or on ~~the~~ application of the defendant or the state's attorney of the county, may order a transcript of the original shorthand notes of the action or proceeding, or of any part thereof, to be made by the reporter at ~~county~~ state expense whenever there is reasonable cause therefor. ~~Such~~ The transcript, when prepared, shall consist of one copy to be filed in the office of the clerk of court, one copy for each party separately represented, and, if parole or probation be granted, one copy to the state parole and probation department. ~~For the preparation of such transcript, the~~ The court reporter shall receive compensation for preparation of the transcript in accordance with the provisions of section 27-06-08.

SECTION 42. AMENDMENT. Section 27-06-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-09. BAILIFFS OF DISTRICT COURTS - APPOINTMENT - SALARY. The district court at each term thereof shall appoint a sufficient number of competent bailiffs to wait on the jury and the court during the term. Such bailiffs shall be paid by the ~~county~~ state for their services an amount ~~which shall~~ equal to the compensation and mileage ~~which is~~ provided for district court jurors ~~for required attendance at sessions of the district or county court~~ under ~~the provisions of~~ section 27-09.1-14.

SECTION 43. AMENDMENT. Section 27-09.1-14 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-09.1-14. MILEAGE AND COMPENSATION OF JURORS. A juror shall be paid mileage at the rate of fifteen cents per mile for his travel expenses~~, payable by the county,~~ for each mile actually and necessarily traveled each way. A juror shall be compensated at the rate of twenty-five dollars for each day of required attendance at

sessions of the district or county court~~,--ten-dollars-for--each--day of--required-attendance-at-sessions-of-county-justice-court,~~ and ten dollars for each day of required attendance at sessions of a coroner's inquest~~,--all--payable--by--the--county~~. The mileage and compensation of jurors shall be paid by the state for jurors at sessions of the district court and paid by the county for jurors at sessions of the county court. Jurors at coroner's inquests shall be paid by the county.

SECTION 44. AMENDMENT. Section 27-20-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-05. JUVENILE COURT PERSONNEL.

1. The court may appoint one or more juvenile supervisors who shall serve at the pleasure of the court. Juvenile supervisors have the powers and duties stated in section 27-20-06. If more than one juvenile supervisor is appointed, one may be designated by the court as the chief juvenile supervisor or director of court services, who shall be responsible for the administration of juvenile court services under the direction of the court.

2. Each juvenile supervisor shall receive as full compensation for his services an annual salary as may be fixed from time to time by the judge who appointed him, or by his successor. Such salary shall ~~not-exceed-twenty-two thousand--four--hundred--dollars-and-commencing-on-July-1, 1980,-an-annual-salary-not-to-exceed-twenty-three-thousand eight--hundred-dollars~~ be within the limits of legislative appropriations and payable in equal monthly installments by the state. In addition, the juvenile supervisor shall be paid reasonable travel expenses for mileage and subsistence necessarily incurred in the discharge of his duties, in accordance with the amount allowed to ~~county officials~~ other state employees.

3. In addition to referees authorized by section 27-20-07, a judge of the juvenile court, in his discretion ~~and-subject to--approval--of--the-board-of-county-commissioners-of-the county-or-counties-affected~~, may also provide for the employment of probation officers, clerical and other specialized personnel under the direction and supervision of the judge, to assist the court and juvenile supervisors in carrying out the provisions of this chapter. Personnel so employed shall receive as full compensation for their services such amount as may be fixed and approved from time to time by the judge of the juvenile court assisted, ~~subject-to-approval-of-the-board-of--county--commissioners of--the--county--or-counties-affected~~ within the limits of legislative appropriations, together with reasonable travel expenses, in the manner and subject to the limitations ~~and--apportionment~~ applicable to juvenile

supervisors. Detention center facilities and personnel shall be funded by the county.

4. All salaries, per diem, and other compensation payable to juvenile court personnel, ~~other than the judge, the cost of providing suitable quarters for conducting official business,~~ all necessary books, forms, stationery, office supplies and equipment, postage, telephone, travel, and other necessary expenses incurred in carrying out the provisions of this chapter shall be borne by the ~~counties affected and may be apportioned among them by the judge. Such compensation and expenses shall be paid monthly by the county treasurer of the respective counties affected upon properly certified claims and upon approval of the judge as other claims against the county are allowed and paid~~ state, except for suitable quarters for conducting official business and lights and fuel which shall be funded by the county and except as provided by subsection 1 of section 27-20-49.

SECTION 45. AMENDMENT. Subsection 1 of section 27-20-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The judge may appoint one or more persons to serve at the pleasure of the judge as referees on a full- or part-time basis. A referee shall be a member of the bar. ~~His compensation shall be fixed by the judge with the approval of the board of county commissioners of each county affected and paid as provided in subsection 4 of section 27-20-05,~~ and shall be paid a salary within the limits of legislative appropriations.

SECTION 46. AMENDMENT. Section 27-20-49 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-49. COSTS AND EXPENSES FOR CARE OF CHILD.

1. The following expenses shall be a charge upon the funds of the county upon certification thereof by the court:

   a. The cost of medical and other examinations and treatment, including any necessary transportation, of a child ordered by the court~~,~~.

   b. The cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children, or to a private agency or individual other than a parent~~,~~.

2. The following expenses shall be expenses of the state:

~~c.~~ a. Reasonable compensation for services and related expenses of counsel appointed by the court for a party~~,~~.

~~d.~~ b. Reasonable compensation for a guardian ad litem~~, and~~.

~~e.~~ c. The expense of service of summons, notices, subpoenas, travel expense of witnesses, ~~transportation of the child,~~ and other like expenses incurred in the proceedings under this chapter.

~~2.~~ 3. If, after due notice to the parents or other persons legally obligated to care for and support the child, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in ~~subdivisions a, b, c, and d of~~ subsection 1, and subdivisions a and b of subsection 2, the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the county or the state to the county treasurer of the county or to the state treasurer.

SECTION 47. AMENDMENT. Section 29-07-01.1 of 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 18 of this Act. 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 48. AMENDMENT. Section 29-32-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-32-05. INABILITY TO PAY COSTS. If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing, and legal services, these costs and expenses, except in cases of misdemeanors and infractions exempted under the federal supreme court decisions and violations of

municipal ordinances, shall be made available to the applicant in the preparation of the application, in the trial court, and on review. Costs and expenses made available to the applicant shall, upon approval by the judge, be paid by the state where the application was made to a district court, or by the county in which the criminal action was venued, where the application was made to a county court.

SECTION 49. Section 30.1-02-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

30.1-02-06.1. (1-308) APPEALS. Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments, and power of the appellate court, is governed by the rules applicable to the appeals to the supreme court in equity cases from the district court, except that in proceedings where jury trial has been had as a matter of right, the rules applicable to the scope of review in jury cases apply.

SECTION 50. LEGISLATIVE INTENT. It is the intent of the legislative assembly that counties implement the provisions of section 3 of this Act in consultation with the North Dakota association of counties and any other group the board of county commissioners deems appropriate.

* SECTION 51. REPEAL. Chapters 27-07, 27-08, 27-18, 30-26, 33-01, 33-02, 33-03, 33-04, 33-05, 33-07, 33-08, 33-09, 33-10, 33-11, and 33-12 of the North Dakota Century Code are hereby repealed.

SECTION 52. EFFECTIVE DATE. Sections 1, 4, 5, 7 through 35, 49, and 51 of this Act shall be effective on January 1, 1983.

Approved April 6, 1981

* NOTE: Section 27-07-23 was amended by section 1 of Senate Bill No. 2313, chapter 346. Section 27-08-08 was amended by section 1 of House Bill No. 1653, chapter 321, and by section 2 of Senate Bill No. 2377, chapter 137. Section 30-26-26 was also repealed by section 66 of House Bill No. 1069, chapter 91. Section 33-01-21 was amended by section 19 of House Bill No. 1069, chapter 91. Chapter 33-05 was also repealed by section 2 of House Bill No. 1064, chapter 350, and section 33-05-01 was amended by section 20 of House Bill No. 1069, chapter 91. Section 33-12-19 was amended by section 21 of House Bill No. 1069, chapter 91.

CHAPTER 320

HOUSE BILL NO. 1061
(Legislative Council)
(Interim Judiciary "A" Committee)

COUNTY COURT STATUTORY REFERENCES

AN ACT to amend and reenact sections 4-16-09, 4-30-54, 11-03-08, 11-05-16, 11-08-06, 11-08-07, subsection 1 of section 11-08-08, sections 11-08-11, 11-08-13, 11-08-14, 11-09-22, 11-10-02, subsection 8 of section 11-10-06, subsections 2 and 4 of section 11-10-10, sections 11-11-10, 11-15-10, subsection 2 of section 11-17-01, subsection 18 of section 11-17-04, subsection 1 of section 11-17-08, sections 11-19-08, 11-19-13, 11-19-14, 11-19-15, 11-30-16, 12-45-01, 12-46-13, 12-51-07, 12-53-05, 12-53-13, 12-60-13.1, 12.1-01-04, 14-03-09, 15-22-06, 18-02-09, 19-01-12, 23-05-06, 23-07.1-08, 23-07.1-09, 23-07.1-10, 24-06-05, 24-07-22, 24-07-24, 24-07-25, 24-07-28, subsections 2 and 8 of section 25-03.1-02, sections 25-03.1-03, 25-03.1-29, 27-01-01, 27-02-11, 27-02-13, subsection 4 of section 27-05-06, sections 27-06-08, 27-08.1-01, 27-08.1-03, 27-08.1-08, 27-08.2-01, 27-15-01, 27-15-02, 27-15-10, subsection 2 of section 27-23-01, sections 27-23-02, 28-20-19, 28-20-22, 28-26-07, 28-26-19, 29-01-01, subsection 4 of section 29-01-09, sections 29-01-14, 29-01-15, 29-02-13, 29-05-31, 29-07-06, 29-10.1-38, 29-22-01, 29-22-02, subsection 6 of section 30.1-01-06, sections 31-01-16, 31-01-18, 31-01-19, 31-09-05, 31-09-06, 31-09-07, 32-22-18, 32-24-01, 32-29-05, 33-06-01, 33-06-03, 33-06-04, 36-01-17, 36-01-18, 36-11-10, 36-11-11, 39-06-16, subsection 7 of section 39-06.1-03, sections 40-13-02, 40-18-01, 40-18-03, 40-18-14, 40-18-19, 42-01-07, 42-03-01, 42-03-03, 44-05-01, 44-08-09, 44-09-01, 44-11-12, 46-04-01, 46-04-05, 47-19-14, and 47-19-37 of the North Dakota Century Code, changing references in the North Dakota Century Code to county court of increased jurisdiction, county judges with increased jurisdiction, county justice court, and county justices to county court and county judge, and to require that certain district court expenses be paid by the state; to repeal sections 27-20-05.1 and 28-26-03 of the North Dakota Century Code, relating to county juvenile supervisors and costs on appeal from a county justice; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 4-16-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-16-09. CHARGES ENTERED AS TAXES - NOTICE REQUIRED - APPEARANCE - APPEAL TO DISTRICT COURT - COLLECTION. Before the board of township supervisors charges the amounts spent for gopher extermination as taxes against a parcel of land as provided in section 4-16-08, the board shall give the owner thereof at least twenty days' notice by mail of the time when and the place at which such amount will be so charged. The landowner shall have the right to appear and show cause why such amount shall not be charged as taxes. If the landowner ~~shall feel~~ feels aggrieved by the decision of the board of township supervisors, he may appeal to the district court, and the appeal shall be perfected and prosecuted ~~as~~ in the ~~case of~~ same manner as appeals from ~~justice~~ municipal courts. The county auditor shall enter the amounts upon the tax roll of the county against the land on which the work has been done, and the county treasurer shall collect such amounts in the same manner as taxes are collected, and shall place the same to the credit of the respective townships.

SECTION 2. AMENDMENT. Section 4-30-54 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-54. STATE'S ATTORNEY'S ENDORSEMENT TO COMPLAINT UNNECESSARY UPON VIOLATION OF CHAPTER. It shall be unnecessary to have the endorsement of the state's attorney to a complaint made for a violation of the provisions of this chapter, but when the ~~justice of the peace or other~~ court before whom a complaint is made shall be satisfied of the truthfulness of such complaint, ~~he~~ it shall issue a warrant thereon.

SECTION 3. AMENDMENT. Section 11-03-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-03-08. BOARD OF COUNTY COMMISSIONERS TO APPOINT COUNTY OFFICERS - EXCEPTION. The board of county commissioners appointed by the governor, after the members thereof have qualified, shall appoint all the county officers of the newly organized county. Such officers, after having qualified, shall hold their offices until the first general election thereafter and until their successors are elected and qualified. All county ~~justices~~ judges and constables in office within the boundaries of a county organized under this chapter shall continue to hold such offices in the new county during the remainder of their terms and shall give bonds to the new county in the same amount and in the same manner as to the original county.

SECTION 4. AMENDMENT. Section 11-05-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-05-16. JUDICIAL ACTIONS AND PROCEEDINGS TRANSFERRED TO COURTS OF ADJOINING COUNTY. All actions or suits of every nature which have been filed or which are pending in any of the courts of the petitioning county on the first day of January following the governor's proclamation shall be transferred to the courts of the adjoining county or counties in accordance with the provisions of this section:

1. All such actions or suits filed or pending in the district court of the petitioning county shall be transferred by the clerk of such court to the clerk of the district court of the adjoining county.

2. All ~~probate--proceedings--or-other~~ actions pending in the county court of the petitioning county shall be transferred to the county court of the adjoining county and shall be heard, tried, and determined by that court as though originally filed therein.

~~3.--All--actions--pending--in-the-court-of-a-county-justice-of the-petitioning-county-shall-be-transferred-to--and--tried by-the-county-justice-of-the-adjoining-county-whose-office is--located--in--or--nearest--to--the--courthouse--of--the adjoining--county.--The-county-justices-of-the-petitioning county,-within-ten-days-after-the--first--day--of--January following-the-governor's-proclamation,-shall-deliver-their dockets-and-all-other-books-and-records-of--their--offices to--the--clerk--of--the--district--court--of-the-adjoining county.~~

If the petitioning county is joined to two or more adjoining counties, the judge of the court in which any action or proceeding is pending in the petitioning county may direct to which of the adjoining counties the action or proceeding shall be transferred.

SECTION 5. AMENDMENT. Section 11-08-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-08-06. OFFICERS IN COUNTY ADOPTING CONSOLIDATED OFFICE FORM OF GOVERNMENT. In addition to the board of county commissioners provided for by this title, the following shall be the officers in a county which has adopted the county consolidated office form of government:

1. One county auditor who shall be ex officio ~~county judge,~~ register of deeds, and clerk of the district court.

2. One state's attorney.

3. One sheriff.

4. One county treasurer, except such office with its attendant powers and duties may be combined with and conferred upon the county auditor by the board of county

commissioners but no added compensation shall be paid the county auditor in said capacity.

5. One county superintendent of schools.

6. One coroner.

7. One county ~~justice~~ 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 into the agreement.

8. Four constables.

SECTION 6. AMENDMENT. Section 11-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-08-07. APPOINTIVE OFFICERS - COUNTY COMMISSIONERS ELECTED - TERMS OF OFFICE - HOW VACANCY FILLED. Each county officer mentioned in section 11-08-06, except the members of the board of county commissioners, who shall be elected in the manner provided in section 11-11-02, and the county judge, who shall be elected in the manner and method prescribed by general statute, shall be appointed by the board of county commissioners and shall hold office for a term of four years, except as otherwise provided in this chapter, and until his successor is duly appointed and qualified. Any vacancy resulting from any cause shall be filled by the board of county commissioners.

SECTION 7. AMENDMENT. Subsection 1 of section 11-08-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. On or before the fifteenth day of January, the sheriff, state's attorney, county superintendent of schools, coroner, ~~county--justice,~~ and four constables shall be appointed, and such officers shall qualify within ten days thereafter.

SECTION 8. AMENDMENT. Section 11-08-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-08-11. POWERS AND DUTIES OF COUNTY AUDITOR. The county auditor, in addition to the duties and powers conferred by law on that officer, shall perform the duties and functions and exercise the powers conferred on the register of deeds, and the clerk of the district court~~,-and-the-county-judge-respectively~~. He shall be the chief administrative officer of the county. The board of county commissioners may delegate to the county auditor such duties of an administrative or executive nature as are not specifically conferred by law upon other officers. Such delegated duties shall be exercised by the county auditor under the supervision of the board of county commissioners.

SECTION 9. AMENDMENT. Section 11-08-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-08-13. POWERS AND DUTIES OF OTHER OFFICERS. The sheriff, state's attorney, county superintendent of schools, coroner, ~~county justice,~~ and constables appointed under the provisions of this chapter shall perform the duties and exercise the powers conferred by law upon such officers respectively.

SECTION 10. AMENDMENT. Section 11-08-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-08-14. DEPUTIES AND EMPLOYEES - APPOINTMENT - COMPENSATION - TERMS. Subject to the approval of the board of county commissioners, the county auditor may appoint a deputy auditor, a deputy register of deeds, and a deputy clerk of the district court, ~~and a clerk of the county court~~. The compensation of any such deputy appointed pursuant to this section shall be fixed by the board of county commissioners. The same person may be appointed to serve as deputy in two or more offices. Subject to the approval of the board of county commissioners, the county auditor may employ such clerks, stenographers, and other county employees as may be required to perform the duties of the several offices under his direction. The compensation of the employees shall be fixed by the board of county commissioners. Any deputy or employee shall serve at the pleasure of the county auditor and may be appointed or employed to serve on a part-time basis.

SECTION 11. AMENDMENT. Section 11-09-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-09-22. COUNTY JUDGE - ELECTION ~~OR APPOINTMENT~~ - DUTIES. In counties adopting either the short form of county managership or the county manager form of government, the county judge shall be elected in the manner and method prescribed by general statute. ~~In counties adopting a short form of county managership, the county manager, with the approval of the board of county commissioners, shall appoint a county judge.~~ The county judge shall perform the functions imposed on the office by general statute.

SECTION 12. AMEMDMENT. 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 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. ~~One or more county justices as provided in chapter 27-18.~~

~~11.~~ Four constables.

~~12.~~ 11. One public administrator.

~~13.~~ 12. A board of county commissioners consisting of three or five members as provided in this title.

~~In counties having a population of more than six thousand and not more than fifteen thousand, the county judge shall be an ex officio clerk of the district court, and in~~ In counties having a population of six thousand or less, the register of deeds shall be ex officio clerk of the district court ~~and county judge~~. In counties having a population of twenty-five thousand inhabitants or more, the county judge may appoint a clerk of county court. In counties with a population of less than twenty-five thousand inhabitants, the clerk of district court shall be clerk of county court. The required officers shall 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, the public administrator, who shall be chosen in the manner prescribed in section 11-21-01, ~~the county justice, who shall be chosen in the manner prescribed in section 27-18-01,~~ the county coroner, who shall be chosen in the manner prescribed in section 11-19.1-03, and the constables, who shall be appointed by the board of county commissioners.

SECTION 13. AMENDMENT. Subsection 8 of section 11-10-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. A county ~~justice~~ judge, ten thousand dollars.

* SECTION 14. AMENDMENT. Subsections 2 and 4 of section 11-10-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Subsections 2 and 4 of section 11-10-10 were also amended by section 1 of House Bill No. 1504, chapter 138.

2. The county treasurer, county superintendent of schools, register of deeds, ~~county judge,~~ county auditor, clerk of district court, and state's attorney each shall receive the following annual salary, payable monthly, for official services rendered:

   a. Eleven thousand nine hundred dollars in counties having a population of less than eight thousand.

   b. Twelve thousand two hundred ninety dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.

   c. State's attorneys in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by resolution that the state's attorney shall be full time and shall not be an attorney or counsel for any party except the state or county, shall receive a salary of twenty thousand to twenty-seven thousand nine hundred dollars, to be determined by resolution of the board of county commissioners.

4. ~~In counties having a county court of increased jurisdiction, the~~ The salaries of the judges of county courts ~~of increased jurisdiction~~ shall be as set out in section ~~27-08-08~~ 5 of House Bill No. 1060. The county superintendent of schools shall receive for any trips necessarily made within his county in the performance of school district reorganization duties the same mileage as he receives under the provisions of section 11-10-15. The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official by an amount not to exceed thirty percent above the salary provided in this section or section 27-08-08, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official shall not be reduced during his or her term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. In the event the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials.

SECTION 15. AMENDMENT. Section 11-11-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-10. POWER OF BOARD TO PRESERVE ORDER - FINES - COLLECTION. The board of county commissioners shall have power to preserve order when sitting as a board and may punish contempts by fines of not more than five dollars or by imprisonment in the county jail for not more than twenty-four hours. The board may enforce obedience to its orders by attachment or other compulsory process, and when fines are assessed by it, they may be collected before any county ~~justice~~ judge having jurisdiction, and, within ten days after they are collected, shall be paid into the treasury of the county to be added to the state school fund.

SECTION 16. AMENDMENT. Section 11-15-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-10. FEES IN COUNTY ~~AND JUSTICE'S~~ COURT. The sheriff shall collect the same fees for the performance of his duties in county ~~and county justice's~~ court as are allowed for similar services in the district court. Such fees shall be taxed against the proper party.

SECTION 17. AMENDMENT. Subsection 2 of section 11-17-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Act as clerk of the district court and attend each session thereof, ~~and~~ attend the judge of the district court in chambers when requested to do so~~, provided, that in counties having a county court of increased jurisdiction and the county judge is ex officio clerk of the district court, there may be appointed by such judge a deputy clerk of court when authorized by the board of county commissioners, who shall fix the salary and provide the amount of bond to be furnished. Such deputy clerk of court shall, when requested by the county judge, attend sessions of the district court and attend the judge of the district court in chambers, and perform such other duties as may be assigned such deputy by the judge of the county court~~, and act as clerk of county court as required by law.

SECTION 18. AMENDMENT. Subsection 18 of section 11-17-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18. For filing and docketing a transcript of a judgment from a ~~justice's~~ county court or from any other county, two dollars.

SECTION 19. AMENDMENT. Subsection 1 of section 11-17-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The clerks of the district and county courts ~~and of county courts having increased jurisdiction~~ are hereby authorized to remove from the files in their offices~~,~~ and ~~to~~ destroy:

   a. All records in civil actions in which judgment has not been entered and nothing has been filed of record for more than thirty years.

   b. All records, except the original pleadings, transcripts of testimony, and stipulations signed by the parties or their attorneys, in civil actions in which:

      (1) Judgment has been entered and nothing has been filed of record for more than ten years if the judgment was not renewed or twenty years if the judgment was renewed.

      (2) Judgment has been satisfied for more than twenty years.

      (3) The action has been dismissed for more than twenty years.

SECTION 20. AMENDMENT. Section 11-19-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-19-08. SUBPOENAS FOR WITNESSES - FEES - CONTEMPTS. The coroner may issue subpoenas within his county for witnesses, returnable forthwith or at such time and place as he shall direct. Witnesses before a coroner's jury shall be allowed the same fees as are allowed witnesses in ~~a case before a~~ county ~~justice~~ court. The coroner has the same authority as a county ~~justice~~ judge in a criminal case to enforce the attendance of witnesses and to punish them and jurors for contempt in disobeying his process.

SECTION 21. AMENDMENT. Section 11-19-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-19-13. CORONER MAY ORDER ARREST. If the person charged by the jury with the commission of a crime is present, the coroner may order his arrest by an officer or by any other person present, and then he shall make a warrant requiring the officer or other person to take him before a county ~~justice~~ judge. If the person charged is not present and the coroner believes he can be arrested, the coroner may issue a warrant to the sheriff and constables of the county requiring them to arrest the person and take him before a county ~~justice~~ judge.

SECTION 22. AMENDMENT. Section 11-19-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-19-14. WARRANT RETURNABLE TO A COUNTY ~~JUSTICE~~ JUDGE. The warrant of the coroner shall be of equal authority with that of a

county ~~justice~~ judge. When the person charged is brought before the county ~~justice~~ judge, the same proceedings shall be had as in other ~~cases under complaint in~~ criminal ~~actions~~ proceedings.

SECTION 23. AMENDMENT. Section 11-19-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-19-15. WARRANT OF CORONER TO RECITE VERDICT AND IS FOUNDATION FOR PROCEEDINGS OF ~~JUSTICE~~ JUDGE. The warrant of the coroner shall recite substantially the transactions before him and the verdict of the jury leading to the arrest. Such warrant shall be sufficient foundation for the proceedings of the county ~~justice~~ judge.

SECTION 24. AMENDMENT. Section 11-30-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-30-16. ACTIONS TRANSFERRED TO COURTS OF ADJOINING COUNTY. All actions or suits of every nature that have been filed or are pending in any of the courts of the unorganized county on January first following the governor's proclamation, or that thereafter may arise or be instituted, shall be transferred, brought, and tried in the courts of the adjoining organized county to which the unorganized county is attached. Actions pending in a county ~~justice~~ court in the unorganized county shall be transferred to and tried before the county ~~justice~~ judge in the adjoining organized county whose office is located nearest to the courthouse of said unorganized county.

SECTION 25. AMENDMENT. Section 12-45-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-45-01. INQUEST REQUIRED. If a person confined in the penitentiary or the North Dakota industrial school dies, the warden or superintendent immediately shall notify the coroner of Burleigh or Morton County, as the case may be, or when there is a vacancy in the office, or the coroner is absent or unable to act, the county ~~justice~~ judge of the county. Such coroner or county ~~justice~~ judge so notified immediately shall take possession of the body of said deceased and remove the same from the penitentiary or North Dakota industrial school and retain said body for at least twenty-four hours, and shall hold an inquest thereon and inquire carefully into the cause of said deceased's death, in the manner provided by law in cases of persons supposed to have died by unlawful means. No officer or employee of the penitentiary or North Dakota industrial school shall be placed or permitted to serve on the jury at the inquest.

* SECTION 26. AMENDMENT. Section 12-46-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-13. WHO MAY BE SENT TO STATE INDUSTRIAL SCHOOL - COURT PROCEDURE. Whenever a person under the age of eighteen years is found guilty in any district or county court ~~or county court with~~

* NOTE: Section 12-46-13 was also amended by section 1 of Senate Bill No. 2389, chapter 328.

~~increased jurisdiction~~ of a crime or public offense, other than murder, the court instead of entering judgment against such person, if in its judgment the accused is a proper subject therefor, may direct an order entered in the minutes of the court that the person be committed to the state industrial school until the person attains the age of eighteen years. If the person so committed is of the age that he will not have been committed for at least two years before he attains the age of eighteen years, the court may extend the commitment beyond the date he attains the age of eighteen years, but the entire commitment shall not exceed a period of two years.

* SECTION 27. AMENDMENT. Section 12-51-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-07. PRISONERS ELIGIBLE FOR COMMITMENT TO STATE FARM - COMMITMENT THERETO DEEMED A CONVICTION OF MISDEMEANOR. The judges of the district courts, and ~~of the~~ county courts ~~with increased jurisdiction,~~ may commit to the state farm, so far as the capacity of the farm shall permit, all male persons who otherwise would be committed to the county jail or to the penitentiary for violation of any criminal law of this state, where the sentence is not less than thirty days nor more than one year provided that no person shall be committed to the state farm who:

1. Has at any time been convicted of a sexual offense;

2. Has served a sentence or portion thereof in a penitentiary upon conviction of a felony; or

3. Has a history of moral or sexual degeneration.

A person committed to the state farm shall not be deemed to have been convicted of a felony, but shall be deemed to have been convicted of a misdemeanor.

SECTION 28. AMENDMENT. Section 12-53-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-05. RULES FOR PROBATION AND PAROLE FROM COUNTY JAIL. The supreme court may adopt rules for the district and county courts ~~and the county courts with increased jurisdiction~~ relating to the systems of probation and parole from county jails.

SECTION 29. AMENDMENT. Section 12-53-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-13. IMPOSITION OF SENTENCE SUSPENDED - WHEN AUTHORIZED. When a defendant has been found guilty of a crime, whether or not for the first time, the court having jurisdiction thereof, ~~including a county justice,~~ upon application or its own motion may, in its discretion, suspend the imposing of the sentence and may direct that such suspension continue for a definite period of time, upon such terms and conditions as it may determine. Such period shall not exceed five years, except that in cases where the defendant has been

* NOTE: Section 12-51-07 was also amended by section 1 of House Bill No. 1085, chapter 152

found guilty of abandonment or nonsupport of his wife or children, the period may be continued for as long as responsibility for support continues.

SECTION 30. AMENDMENT. Section 12-60-13.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-60-13.1. COUNTY AND CITY OFFICIALS TO FURNISH CRIME STATISTICS TO SUPERINTENDENT. In an effort to assist in controlling crime in the state through the use of reliable statistics relating to crimes and criminal activity, the superintendent, with the approval of the attorney general, may call upon and obtain from the clerks of district courts, county courts, ~~county--justice--courts,~~ municipal courts, sheriffs, police departments, and state's attorneys all information that he may deem necessary in ascertaining the condition of crimes and criminal activity in North Dakota. It shall be the duty of the said officials to furnish any such information so requested by the superintendent on whatever forms or in whatever manner he may prescribe.

SECTION 31. AMENDMENT. Section 12.1-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-01-04. GENERAL DEFINITIONS. As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.

2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".

3. "Actor" includes, where relevant, a person guilty of an omission.

4. "Bodily injury" means any impairment of physical condition, including physical pain.

5. "Court" means any of the following courts: the supreme court, a district court, a county court ~~with--increased jurisdiction,--a--county--justice~~, and where relevant, a municipal court ~~and-a-county-court~~.

6. "Dangerous weapon" means, but is not limited to, any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon which 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 b.b. gun, air rifle, or CO^2 gun; and any

projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.

8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.

9. Repealed by S.L. 1975, ch. 116, § 33.

10. "Firearm" means any weapon which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.

11. "Force" means physical action.

12. "Government" means:

    a. The government of this state or any political subdivision of this state;

    b. Any agency, subdivision, or department of the foregoing, including the executive, legislative, and judicial branches;

    c. Any corporation or other entity established by law to carry on any governmental function; and

    d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.

13. "Governmental function" includes any activity which one or more public servants are legally authorized to undertake on behalf of government.

14. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare he is interested.

15. "Included offense" means an offense:

a. Which is established by proof of the same or less than all the facts required to establish commission of the offense charged;

b. Which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or

c. Which differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.

16. "Includes" should be read as if the phrase "but is not limited to" were also set forth.

17. ~~"Judge" includes a county justice.~~

~~18.~~ "Law enforcement officer" or "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 or prosecutions for violations of law.

~~19.~~ 18. "Local" means of or pertaining to any political subdivision of the state.

~~20.~~ 19. Repealed by S.L. 1975, ch. 116, § 33.

~~21.~~ 20. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.

~~22.~~ 21. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any governmental agency.

~~23.~~ 22. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.

~~24.~~ 23. "Omission" means a failure to act.

~~25.~~ 24. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government which may lawfully own property in this state.

~~26.~~ 25. "Property" includes both real and personal property.

~~27.~~ 26. "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses.

~~28.~~ 27. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ.

~~29.~~ 28. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.

~~30.~~ 29. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.

~~31.~~ 30. "Writing" includes printing, typewriting, and copying.

~~32.~~ 31. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.

Words used in the singular include the plural, and the plural the singular. Words in the masculine gender include the feminine and neuter genders. Words used in the present tense include the future tense, but exclude the past tense.

SECTION 32. AMENDMENT. Section 14-03-09 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-09. WHO MAY SOLEMNIZE MARRIAGES. Marriages may be solemnized by all judges of courts of record ~~and--by--all--county justices~~ within their respective jurisdictions, by ordained ministers of the gospel and priests of every church, by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches, and by any person authorized by the forms and usages of any church or religious denomination or organization organized or possessing a certificate of authority pursuant to the North Dakota Nonprofit Corporation Act.

SECTION 33. AMENDMENT. Section 15-22-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-06. DEPUTIES - APPOINTMENT - SALARY. In counties in which fifty or more teachers are under his supervision, the county superintendent of schools may appoint an office deputy for whose acts as such deputy he shall be responsible. The salary of the deputy shall be fixed by the board of county commissioners. In counties in which sixty or more teachers are under the supervision of the county superintendent, he shall be allowed one field deputy and an additional field deputy for each additional one hundred teachers or major fraction thereof under his supervision. The field deputies shall assist the county superintendent in visiting schools and in the general supervision of the educational work of the county. They shall possess the educational qualifications required of the county superintendent and shall receive a salary equal to eighty percent of the county superintendent's salary. In counties ~~where the county court has increased jurisdiction and~~ where the county has a population exceeding forty thousand, the number and salary of deputies, clerks, and assistants for the county superintendent of schools shall be fixed from time to time by resolution of the board of county commissioners according to the volume of business of the office.

SECTION 34. AMENDMENT. Section 18-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-02-09. POWERS OF RANGERS, WARDENS, AND DEPUTIES.

~~a.~~ 1. Forest rangers, fire wardens, emergency fire wardens and other duly appointed deputies shall take prompt action against the spread and illegal setting of forest fires. They shall have the power of sheriffs to arrest, without warrant, for violations of the statutes relating to such fires. They may execute and serve all warrants and processes issued by any county ~~justice~~ or municipal judge, or by any court having jurisdiction in the same manner as any constable may serve and execute such processes, and to arrest any person detected in the actual violation, or whom such officer has reasonable cause to believe guilty of a violation of any of the provisions of the statutes relating to forest fires, and to take such person before any court in the county where the offense was committed and make proper complaint.

~~b.~~ 2. They shall have the authority to call upon any able-bodied citizen to assist in fighting such fires in such manner as they may direct.

~~c.~~ 3. All such forest rangers, fire wardens, emergency fire wardens and other duly appointed deputies may in the performance of their official duty go on the lands of any person or corporation to fight forest fires, and in doing so may set back fires, dig trenches, cut and plow firelines or carry on all other activities customary in the fighting of forest fires, without incurring liability to anyone.

SECTION 35. AMENDMENT. Section 19-01-12 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-12. SEIZURE OF UNLAWFUL PRODUCTS - SEARCH WARRANT. A search warrant may be issued by any judge, including a county ~~justice,~~ or municipal judge, whenever probable cause is shown by affidavit or deposition under oath that any article, product, composition, or thing is being kept or is present upon certain premises which shall be particularly described or is in possession of any person who shall be named in the affidavit or deposition, and that such article, product, composition, or thing, is not in compliance with, or is being used or possessed contrary to, any applicable provision of this title or of any rule, regulation, standard, tolerance, or definition issued pursuant thereto. The search warrant shall be in substantially the form described in the North Dakota Rules of Criminal Procedure. It shall particularly describe the premises or the person who has possession of such article and shall be signed by the judge with the name of his office, and shall be directed to any peace officer of the county or to the department or any of its agents. The warrant shall command the peace officer or agent of the department to search the persons or places named and to seize all and any products, articles, compositions, or things of the kind described therein which may be held in violation of any applicable provision of this title, and to bring such products, articles, compositions, or things before the judge.

SECTION 36. AMENDMENT. Section 23-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-06. REMOVAL OF NUISANCE - COMPLAINT TO ~~JUSTICE~~ COUNTY JUDGE - WHEN WARRANT ISSUED. Whenever a local board of health deems it necessary for the preservation of the public health to enter any building within its jurisdiction to examine, destroy, remove, or prevent any nuisance, source of filth, or cause of sickness and is refused entrance into such building, any member of the board may make complaint under oath to a county ~~justice~~ judge within the jurisdiction of the board, stating the facts in the case so far as he has knowledge thereof. The ~~justice~~ judge thereupon shall issue a warrant directed to the sheriff or other peace officer commanding him to destroy, remove, or prevent, between the hours of sunrise and sunset, the nuisance, source of filth, or cause of sickness, under the direction of such members of the local board of health as accompany him.

SECTION 37. AMENDMENT. Section 23-07.1-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07.1-08. HEARING - ORDER. Unless waived by the alleged tubercular person, a hearing shall be held by ~~a--law-trained--county justice--or--a-judge-of-a-county-court-of-increased-jurisdiction~~ the county judge of the county in which the alleged tubercular person

resides within one hundred twenty hours, exclusive of weekends and holidays, after the date of the state health officer's temporary order. The court may consider all relevant evidence, including the results of a physical examination made pursuant to section 23-07.1-06, and the state health officer and the alleged tubercular person shall be afforded an opportunity to testify, to present and cross-examine witnesses, and to be represented by counsel. Upon the request of the state health officer, the state's attorney of the county wherein the hearing is held shall represent the state health officer without additional compensation.

If, upon completion of the hearing, the court finds that the allegation that the person has active, infectious tuberculosis in a communicable and contagious stage has not been sustained by clear and convincing evidence, the court shall dismiss the case and order that the alleged tubercular be discharged if he had been in custody prior to the hearing. If the court finds that the allegation has been sustained by clear and convincing evidence, the court shall issue an order which shall:

1. State its findings that the person does have active, infectious tuberculosis in a communicable and contagious stage and is dangerous to public health; and

2. Authorize the medical facility specified in the order to receive and keep such person in its facility for necessary and appropriate care, treatment, quarantine, and isolation for so long as the disease remains in a communicable and contagious stage and the danger to public health exists.

SECTION 38. AMENDMENT. Section 23-07.1-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07.1-09. APPEAL TO DISTRICT COURT - HABEAS CORPUS - HEARING. An appeal from an order of the ~~county justice or~~ judge of a county court ~~with increased jurisdiction~~ authorizing a specified medical facility to receive a person for care, treatment, quarantine and isolation may be taken to the district court of the county. In such a proceeding, the state's attorney of the county wherein the appeal is taken, without additional compensation, shall represent the state health officer. The clerk of court of the county in which the appeal is taken shall notify the state's attorney of the filing of such appeal. The hearing shall be limited to a review of the procedures, findings, and conclusions of the lower court. All persons placed in the custody of the state health officer under the provisions of this chapter for care, treatment, quarantine and isolation shall be entitled to the benefit of the writ of habeas corpus and a determination as to whether a person in such custody has active, infectious tuberculosis in a communicable and contagious stage and is dangerous to public health shall be made at the hearing. If the court shall decide that the person does have active, infectious tuberculosis and is dangerous to public health, such decision shall not preclude a subsequent application for a writ

or the issuing of a writ upon a subsequent application, if it shall be alleged that such person shall have been restored to health.

SECTION 39. AMENDMENT. Section 23-07.1-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07.1-10. DISCHARGE - RELEASE. All orders of the state health officer or of a ~~county justice or~~ judge of a county court ~~with increased jurisdiction~~ authorizing the reception and retention in custody for care, treatment, quarantine and isolation of persons having active and infectious tuberculosis endangering public health shall be effective only during the continuation of such condition and any person who is cured or who no longer has tuberculosis in a communicable and contagious stage shall be discharged immediately from custody. Such discharge shall be made by the state health officer or his designee, under the guidelines of the state health council. The person in charge of a medical facility may also release any person admitted to the medical facility under the provisions of this chapter at such times and under such conditions as deemed advisable after consultation with the state health officer or his designee.

SECTION 40. AMENDMENT. Section 24-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-06-05. OVERSEER RESPONSIBLE FOR MACHINERY. Each overseer of highways shall be responsible personally for the proper use and care of all implements while in his charge, or in use in his district, and any overseer of highways, or other person who, through negligence or willfully shall injure or damage such implements or permit them to be injured, shall be liable for such damage to such township, in an action to be brought by the chairman of the board of township supervisors before any county ~~justice~~ judge in ~~said~~ the township or any adjoining township.

SECTION 41. AMENDMENT. Section 24-07-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-07-22. APPEALS - WHEN AND WHERE TAKEN. Any person who ~~shall feel himself~~ feels aggrieved by any determination or award of damages made by the board having jurisdiction, either in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue, any highway or cartway, within thirty days after the filing of such determination or award of damages, as provided in this chapter, may appeal therefrom. If the amount of damages claimed by appellant does not exceed one hundred dollars, ~~such~~ the appeal shall be taken to the county ~~justice~~ judge. If the damages claimed exceed one hundred dollars, the appeal shall be taken to the district court.

SECTION 42. AMENDMENT. Section 24-07-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-07-24. APPEALS - FILING - APPROVAL OF UNDERTAKING - SERVICE. If the appeal is taken to a county ~~justice~~ judge, the notice of appeal and undertaking shall be filed with him and the undertaking must be approved by him. If the appeal is taken to the district court, the notice of appeal and undertaking shall be filed with the clerk of such court and the undertaking must be approved by the judge thereof or by the county auditor. In either case, the notice of appeal shall be served upon some member of the board by which the determination was made.

SECTION 43. AMENDMENT. Section 24-07-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-07-25. TRIAL IN COUNTY ~~JUSTICE~~ COURT. In county ~~justice~~ court, the appeal shall be tried by a jury. The county ~~justice~~ judge shall give notice in writing to the appellant and the board from which the appeal was taken, of the time and place of trial at least six days before the day of trial.

SECTION 44. AMENDMENT. Section 24-07-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-07-28. JUDGMENT - COPY FILED - PAYMENT OF COSTS. When judgment ~~shall have~~ has been entered upon an appeal taken as provided in this chapter, the county ~~justice~~ judge or the clerk of the district court, as the case may be, shall file with the county auditor or clerk of the township a certified copy of such judgment.

SECTION 45. AMENDMENT. Subsections 2 and 8 of section 25-03.1-02 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Court" means, except where otherwise indicated, the county court ~~of increased jurisdiction or the county justice court~~ of the county wherein the respondent resides. ~~Only the county justice courts wherein a licensed attorney presides may exercise jurisdiction under this chapter.~~

8. "Magistrate" means the judge of the appropriate county court ~~of increased jurisdiction or the appropriate county justice~~.

SECTION 46. AMENDMENT. Section 25-03.1-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-03. JURISDICTION. The county courts ~~of increased jurisdiction and the county justice courts~~ shall ~~both~~ have original and exclusive jurisdiction over the proceedings governed by this chapter, ~~which jurisdiction is exclusively vested in these courts,~~ except as provided in this section. They shall have concurrent jurisdiction with the juvenile court for the commitment of juveniles for treatment or evaluation. ~~For the limited purpose of proceedings~~

~~under this chapter the supreme court shall designate the county justice courts as courts of record.~~

SECTION 47. AMENDMENT. Section 25-03.1-29 of the 1979 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 ~~district~~ 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.

Pending appeal, the order appealed from shall remain in effect, unless the ~~district~~ 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.

SECTION 48. AMENDMENT. Section 27-01-01 of 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 district courts;
3. The county courts; and
4. ~~The courts of county justices; and~~
5. ~~5.~~ Such other courts as are or may be created by law for cities.

Of these the supreme court and the district and county courts are courts of record.

* SECTION 49. AMENDMENT. Section 27-02-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-11. NOTICE OF INTENTION TO PROMULGATE RULE - REQUIREMENT - METHOD OF GIVING - HEARING INTERESTED PARTIES. No new rule shall be promulgated by the supreme court under the provisions

* NOTE: Section 27-02-11 was repealed by section 1 of Senate Bill No. 2387, chapter 317.

of sections 27-02-07 and 27-02-08 until such court first shall have given notice of its intention to do so by filing such proposed rule in the office of the clerk of the supreme court and by causing a certified copy thereof to be filed in the office of the clerk of the district court of each county in the state and by mailing to each district judge, judge of the county court ~~of increased jurisdiction~~ and to each attorney who has been currently licensed to practice law in this state a copy of such proposed rule together with a notice stating that such proposed rule has been filed in the office of the clerk of the supreme court and that a certified copy thereof has been filed in the office of the clerk of the district court of each county in the state; and stating also the time when and the place where the supreme court will afford any person interested an opportunity to appear and be heard with reference to the adoption of the same. Such notice and copy of the proposed new rule shall be so mailed not less than thirty days before the date fixed for such hearing; after such hearing has been held the court shall make such order as it shall deem just and proper. It may order that the rule be adopted as proposed; it may order that the proposed rule shall not be adopted; it may make any amendments or changes in the rule which in its judgment is desirable to accomplish the purpose sought to be furthered by the rule and adopt the rule as so changed without further notice.

* SECTION 50. AMENDMENT. Section 27-02-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-13. MEANS OF PUTTING INTO EFFECT RULES OR AMENDMENTS TO RULES ADOPTED BY SUPREME COURT. No new rule or amendment promulgated under the provisions of sections 27-02-07 and 27-02-08 shall become effective until the supreme court shall have:

1. Made an order in writing adopting the same;

2. Caused the same to be signed by the chief justice and attested by the clerk of the supreme court under the seal of such court;

3. Filed the same in the office of the clerk of the supreme court and caused a certified copy thereof and of the order adopting the same to be filed in the office of the clerk of the district court of each county in the state. The clerk of the district court of each county shall enter each rule so filed at length in the records of his office.

The clerk of the supreme court shall file proof of the filing of a certified copy of such rule and of the order adopting the same in the office of the clerk of the district court of each county with the original record relating to such rule; and such clerk shall mail a copy of any rule adopted by the supreme court under the provisions of sections 27-02-07 and 27-02-08 and of the order adopting the same to each judge of the district court and to each judge of the county court ~~of increased jurisdiction~~ within eight days after such rule has been adopted.

* NOTE: Section 27-02-13 was repealed by section 1 of Senate Bill No. 2387, chapter 317.

All rules so adopted by the supreme court shall be published in the official reports of the cases decided by the supreme court of North Dakota. The court may make such additional publication of any rule as it may deem desirable.

SECTION 51. AMENDMENT. Subsection 4 of section 27-05-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Jurisdiction of appeals from all final judgments of ~~county justices--and~~ municipal judges~~,--from---all---judgments, decrees,--or--orders-of-the-county-courts-made-under-their probate--jurisdiction,~~ and from the determinations of inferior officers, boards, or tribunals, in such cases and pursuant to such regulations as may be prescribed by law.

SECTION 52. AMENDMENT. Section 27-06-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-08. FEES FOR TRANSCRIPTS. For the preparation of a transcript, a court reporter shall be entitled to receive compensation at the rate of one dollar ~~ten~~ ninety cents per page for the original, thirty-five cents per page for the first copy, and fifteen cents per page for each additional copy or at rates which may be set by the supreme court by rule or special order specifically superseding the rates herein provided. A page shall consist of not less than twenty-five lines written on paper at least eight and one-half inches by eleven inches [21.59 centimeters by 27.94 centimeters] in size, prepared for binding on the left side, with margins of not more than one and three-fourths inch [44.45 millimeters] on the left nor three-eighths inch [9.53 millimeters] on the right. Type shall be standard pica with ten letters to the inch [2.54 centimeters]. Questions and answers shall each begin a new line. Indentations for speakers or paragraphs shall not be more than ten spaces from the left margin. Pages shall be numbered consecutively. Transcripts shall be indexed as to witnesses and exhibits. The reporter's compensation shall be paid by the party requesting the transcript or by the county ~~chargeable-with-the-costs of-the-action,~~ or state as ordered by the court when the transcript is ordered prepared by the judge at ~~such-county's~~ county or state expense.

SECTION 53. AMENDMENT. Section 27-08.1-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-01. SMALL CLAIMS COURT - JURISDICTIONAL LIMITS - EFFECTIVE DATE. All judges of the county courts ~~with--increased jurisdiction--or-the-county-justices~~ shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of said jurisdiction shall be known and referred to as the "small claims court". The jurisdiction of such court shall be confined to cases for recovery of money, or the cancellation of any agreement

involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed ~~five-hundred--dollars where-the-action-is-commenced-in-the-offices-of-a-county-justice-and~~ one thousand dollars ~~where-the-action-is-commenced-in-a-county-court with-increased-jurisdiction~~. The proceedings in this court shall be commenced in the county of the defendant's residence, if the defendant is a natural person. If the defendant is a corporation or a partnership, the proceedings shall be commenced in any county in which the defendant has a place of business or in any county in which the subject matter of the claim arose. No claim shall be filed by an assignee of that claim. No garnishment or attachment shall issue from this court. Actions commenceable in the small claims court shall only be those in which the cause of action has accrued on or after January 1, 1971.

* SECTION 54. AMENDMENT. Section 27-08.1-03 of the 1979 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 ~~five-hundred-dollars-where-the-action was-commenced-in-the-office-of-the-county-justice,-and~~ one thousand dollars ~~where--the--action-was-commenced-in-an-office-of-the-county court-with-increased-jurisdiction~~, which shall be delivered to the plaintiff in person, 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 ~~five hundred-dollars-in-county-justice-court,-and~~ one thousand dollars ~~in county--court--with--increased--jurisdiction~~. 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 the provisions of 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 of two dollars shall be charged for filing the claim affidavit, or counterclaim affidavit, plus one dollar for each defendant served.

* NOTE: Section 27-08.1-03 was also amended by section 2 of House Bill No. 1645, chapter 322.

SECTION 55. AMENDMENT. Section 27-08.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-08. REFEREES, APPOINTMENT - TERM - METHOD OF QUALIFYING - POWERS AND DUTIES - COMPENSATION. The board of county commissioners may authorize a judge of a county court ~~of increased jurisdiction~~ to appoint a referee of the small claims court who shall hold office at the pleasure of ~~said~~ the judge. ~~Such~~ The referee shall qualify in the same manner as other civil officers and his duties and powers 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 provisions are not in conflict with the provisions of this chapter. The referee appointed shall be a person versed in the law. The board of county commissioners shall determine the salary or fee of said referee.

SECTION 56. AMENDMENT. Section 27-08.2-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.2-01. CREATION OF COUNTY JUDICIAL COORDINATING COUNCIL. The judge of the county court ~~with increased jurisdiction or the county justice~~ in each ~~North Dakota~~ county may appoint, from elements of the county criminal justice system and the public, if he deems it appropriate and necessary, a county judicial coordinating council to serve as a forum for communication between the public and the county criminal justice agencies. In addition to persons representing the general public, these appointments could include, but would not be limited to, persons representing county social services, peace officers, municipal courts, correctional officers, parole and probation officers, juvenile supervisors, and the news media.

SECTION 57. AMENDMENT. Section 27-15-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-01. JUDICIAL COUNCIL ESTABLISHED. There shall be maintained a judicial council consisting of:

1. All judges of the supreme court, district courts, and county courts ~~of increased jurisdiction~~ of the state.
2. The attorney general.
3. The dean of the school of law of the university.
4. Five members of the bar who are engaged in the practice of law who shall be chosen by the executive committee of the state bar association.
5. All retired judges of the supreme and district courts of the state.

6. Two ~~judges---of---the--county--court--without--increased jurisdiction,--two--county--justices,--and--two~~ municipal judges, selected by the North Dakota supreme court.

SECTION 58. AMENDMENT. Section 27-15-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-02. TERM OF OFFICE - VACANCY, HOW FILLED. The judges of the supreme ~~and~~ court, district courts, and county courts ~~of increased--jurisdiction~~, the attorney general, and the dean of the school of law in the university shall hold office as members of the council during the time they occupy their respective official positions. The retired judges of the supreme and district courts shall hold office as members of the council during retirement from their respective official positions. The term of office of ~~the county--judges--of--courts--without--increased--jurisdiction,-county justices,-and~~ municipal judges who shall be appointed by the supreme court, and of the members of the bar who shall be appointed by the state bar association of North Dakota, shall be two years, commencing on the first Monday of January of odd-numbered years. A vacancy shall be filled by the authority originally selecting the member.

SECTION 59. AMENDMENT. Section 27-15-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-10. COMPENSATION - EXPENSES. No member of the council shall receive compensation for any services rendered by him in such capacity, but any necessary expenses incurred by any judge of the district or county court ~~with-increased-jurisdiction,-district,-and~~, or justice of the supreme ~~courts~~ court, in the discharge of his duties as a member shall be deemed expenses incurred in the performance of the duties of his office and shall be paid as such. The necessary expenses of all other judges or justices shall be paid from funds appropriated for the purposes of the judicial council from the supreme court budget. The expenses of all other members of the council shall be audited and paid from the state bar fund in the same manner as other claims against such fund are paid except that in the matter of mileage expenses, the retired judges who are members of the council shall be paid such only for travel within the state.

SECTION 60. AMENDMENT. Subsection 2 of section 27-23-01 of the 1979 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 district court, a judge of a county court ~~with increased--jurisdiction,-a-judge-of-a-county-court-without increased-jurisdiction,-a-county-justice~~, a judge of a municipal court, and, in the case provided in section 29-01-14, a small claims court referee.

SECTION 61. AMENDMENT. Section 27-23-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-23-02. CREATION AND COMPOSITION OF COMMISSION, TERMS OF OFFICE, APPOINTMENT, AND POWERS. A commission on judicial qualifications is hereby created to consist of one judge of the district court, one judge of the county court ~~of---increased jurisdiction~~, one lawyer who is licensed to practice law in this state, and four citizens who are not judges, retired judges, or lawyers. Members representing the district and county courts shall be appointed by their respective state associations and the lawyer member shall be appointed by the executive committee of the state bar association of North Dakota. The citizen members shall be appointed by the governor. ~~An-appointment-not-made-within-forty-five-days-after-July-1,-1975-shall-be-made--by--the--supreme--court.~~ The term of each member shall be three years. Initially, two members shall serve for three years, two members shall serve for two years, and three members shall serve for one year; as determined by lot. No member shall serve more than two full three-year terms. Membership terminates if a member ceases to hold the position that qualified him for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. Any appointment to fill a vacancy not made within forty-five days after the vacancy occurs or the term of office ends shall be made by the supreme court. The commission shall select one of its members as chairman.

The commission has the power to investigate complaints against any judge in the state and to conduct hearings concerning the discipline, removal, or retirement of any judge.

SECTION 62. AMENDMENT. Section 28-20-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-19. DOCKETING OF ~~JUSTICE'S~~ COUNTY COURT JUDGMENTS - EFFECT. A certified abstract of a judgment rendered by a county ~~justice~~ judge may be filed in the office of the clerk of the district court of the county in which the judgment was rendered, and ~~such~~ the clerk ~~thereupon must~~ will then enter ~~such~~ the judgment in the judgment book and upon the judgment docket, and from the time of the docketing thereof, it becomes a judgment of the district court, for purposes of execution, and a lien upon real property owned by the debtor, and a certified transcript of the docket of ~~such~~ the judgment may be filed, and the judgment docketed accordingly, in any other county with like effect in every respect as if the judgment had been rendered in the district court where such judgment is filed.

SECTION 63. AMENDMENT. Section 28-20-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-22. AFFIDAVIT OF RENEWAL - WHERE FILED - ENTRY. If the judgment was rendered in a district court of this state, or was entered upon a transcript or abstract from a county court ~~with~~

~~increased jurisdiction, or upon an abstract of a judgment of a justice of the peace~~, the affidavit for renewal shall be filed with the clerk of the district court where such judgment was first docketed. If the judgment filed and docketed was a foreign judgment, the affidavit for renewal may be filed with the clerk of any district court where the same has been docketed. The clerk of the district court immediately shall enter the affidavit for renewal at length in the judgment book in the same manner and with the same effect as the original judgment, and he shall enter in his judgment docket, after a statement of the original judgment, the fact of renewal, the date of renewal, and the amount for which the judgment is renewed. A copy of the affidavit of renewal and the docket entries thereon, certified by the clerk of the district court wherein the same is filed, may be filed and docketed in any other county of the state in which a transcript of the original judgment was filed.

SECTION 64. AMENDMENT. Section 28-26-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-26-07. WHEN COSTS ALLOWED TO PLAINTIFF. Costs shall be allowed of course to the plaintiff upon a recovery in the following cases:

1. In an action for the recovery of real property or when a claim of title to real property arises on the pleadings or is certified by the court to have come in question at the trial;

2. In an action to recover the possession of personal property;

~~3. In any action of which a justice's court has no jurisdiction, and~~

~~4. In an action for the recovery of money when the plaintiff shall recover fifty dollars.~~

SECTION 65. AMENDMENT. Section 28-26-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-26-19. TAXING COSTS. In all actions, motions, and proceedings in the supreme, district, or county~~, or justice's~~ courts, the costs of the parties shall be taxed and entered on record separately.

SECTION 66. AMENDMENT. Section 29-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-01-01. HOW CRIMES PROSECUTED - EXCEPTIONS. Every public offense must be prosecuted by information or indictment unless it is one in which:

1. A proceeding is had for the removal of a civil officer of the state or an officer of some political subdivision thereof;

2. There is a breach of military discipline arising in the militia, when in actual service, and in the land and naval forces in time of war or public danger, or which this state may keep, with the consent of Congress, in time of peace; or

3. Trial may be had in ~~justice, police,~~ municipal or county court.

SECTION 67. AMENDMENT. Subsection 4 of section 29-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Upon a judgment of a ~~justice's~~ municipal court, or such other court as is or may be created by law for cities, or a county court ~~exercising--increased--jurisdiction--as provided-in-section-111-of-the-constitution~~, in a case in which such judgment may be lawfully given without the intervention of a jury; or

SECTION 68. AMENDMENT. Section 29-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-01-14. WHO ARE MAGISTRATES. The following officers are magistrates:

1. The judges of the supreme court, with authority to act as such throughout the state;

2. The judges of the district courts, with authority to act as such throughout the judicial districts for which they respectively are elected; and

3. As limited by law directing the place of exercising their jurisdiction and authority, county ~~justices,~~ judges, or any qualified person appointed by the county judge pursuant to section 8 of House Bill No. 1060, municipal judges, and small claims court referees who are licensed to practice law and authorized by the county commissioners in case of an emergency ~~and, when authorized by law, the judges of the county courts, including those with increased jurisdiction~~, each with authority to act as magistrate throughout the county or the city for which he is elected or appointed.

SECTION 69. AMENDMENT. Section 29-01-15 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-01-15. JURISDICTION OF ~~JUSTICES,~~ MUNICIPAL JUDGES, SMALL CLAIMS COURT REFEREES, AND COUNTY COURTS. Any ~~county--justice,~~ municipal judge, or judge of the county court mentioned in section 29-01-14, subsection 3, may:

1. Act as committing magistrate, provided that this subsection shall not apply to municipal judges who are not attorneys currently licensed under chapter 27-11.

2. Hear, try, and determine misdemeanors and infractions when jurisdiction has been conferred by the Constitution and this and other laws.

3. Adjudge and impose the punishment prescribed by law, upon conviction, in all cases within his jurisdiction to hear, try, and determine.

4. Grant temporary protection orders under the particular circumstances and for the limited duration set forth in section 14-07.1-08.

A small claims court referee authorized pursuant to subsection 3 of section 29-01-14 may act as a committing magistrate. Any person appointed by the county judge pursuant to section 8 of House Bill No. 1060 shall have the authority to act to the extent allowed by rules promulgated by the supreme court.

SECTION 70. AMENDMENT. Section 29-02-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-02-13. ACCUSED COMMITTED - HOW DISCHARGED - UNDERTAKING TRANSMITTED TO DISTRICT COURT. If a person complained of for threatening to commit an offense against the person or property of another is committed for not giving security, he, upon giving the same, may be discharged by any ~~county-justice,-police-magistrate,~~ municipal judge or judge of the county court of the county or political subdivision who is authorized to act as a committing magistrate, or by the judge of the district court of the county. Any undertaking so accepted must be transmitted by the acting magistrate to the district court of the county for disposition at the next term.

SECTION 71. AMENDMENT. Section 29-05-31 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-05-31. UNIFORM TRAFFIC COMPLAINT AND SUMMONS. There is hereby established a uniform complaint and summons which may be used in cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles. Whenever the complaint and summons established by this section is used, the provisions of rule 5 of the North Dakota Rules of Criminal Procedure relating to arrests without warrants shall not apply, and the magistrates or state's attorneys shall not be required to make another complaint of

the offense charged in the uniform complaint and summons. The uniform complaint and summons established herein shall be in substantially the following form:

State of North Dakota)
) ss
County of _____) In _____ Court,
Before Hon. _____;

The undersigned, being duly sworn, upon his oath deposes and says that, on the _____ day of _____ 19____

_____
First Name Middle Name Last Name Street City State
did unlawfully operate a motor vehicle upon a public highway, namely _____, _____ N E S W of _____ and did then
Location City
and there commit the following offense:_____
MPH in_____
MPH Zone_____
_____
_____
_____
_____
All in violation of the Sec. _____ of the N.D. Century Code as amended and against the peace and dignity of the state of N.D.

Officer _____ LET A WARRANT ISSUE HEREIN Sworn to and subscribed before me this _____ day of _____ 19____.

_____ _____
Judge State's Attorney

DESCRIPTION OF DEFENDANT AND VEHICLE

Mo. _____Day _____Yr. _____Race _____Sex _____Wt. _____Ht. _____
Birth date
Hair _____Dr. Lic: State _____No. _____Motor Vehicle:
PSC
Make _____Reg. No. _____State _____Year _____ICC No. ____

CLAIMED CONDITIONS OF THE VIOLATION

SLIPPERY SURFACE
_____ Rain _____ Snow _____ Ice
DARKNESS
_____ Night _____ Fog _____ Snow
OTHER TRAFFIC PRESENT
_____ Cross _____ Oncoming _____ Pedestrian
_____ Same direction
IN ACCIDENT
_____ Ped. _____ Vehicle _____ Intersection
_____ Right angle _____ Head on _____ Rear end
_____ Ran off road _____ Other

_____
Area: _____ School _____ Rural _____ Business
_____ Industrial _____ Residential
Highway: _____ 2 Lane _____ 4 Lane _____ 4 Lane Divided

Type
_____ Gravel _____ Dirt
OFFENSE CONTRIBUTED MATERIALLY TO ACCIDENT
_____ Yes _____ No

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED DEFENDANT

You are hereby summoned to appear at the time and place designated below to answer to the charge above indicated to be made against you

_____

_____

Appearance
Before: Municipal Judge-~~County-Justice~~-County Ct._____
_____ A.M./P.M.
Location Month Day Year Time
Dated this _____ day of _____ 19____
Officer _____

PROMISE TO APPEAR

I hereby consent and promise to appear at the time and place specified in the above summons, the receipt of a copy of which is hereby acknowledged, and I expressly waive earlier hearing.
Dated this _____ day of _____19_____
Defendant _____

SECTION 72. AMENDMENT. Section 29-07-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-07-06. CHANGE OF PLACE OF HEARING - PROCEDURE. Whenever a person accused of a public offense is brought before a ~~police magistrate~~ municipal judge for examination, and, at any time before such examination is commenced, he files with such ~~police--magistrate~~ municipal judge his affidavit stating that by reason of the bias or prejudice of said ~~police-magistrate~~ municipal judge he believes he cannot have a fair or impartial examination before him, such ~~police magistrate~~ municipal judge must transfer said action, and all the papers therein, including a certified copy of his docket entries, to a county ~~justice~~ judge for the same county. The state's attorney, or his assistant, in the same manner and for the same reasons as the defendant, may obtain a transfer of such action from the ~~police magistrate~~ municipal judge before whom the action was commenced, or from the county ~~justice~~ judge to whom it has been transferred on the application of the state, in which event it shall be transferred to the next nearest county ~~justice~~ judge. The place of examination cannot be changed more than once by each party under this section.

SECTION 73. AMENDMENT. Section 29-10.1-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-10.1-38. TRANSCRIPT DEMAND - WAIVER OF TRANSCRIPT AND PRELIMINARY EXAMINATION, WHEN. Within five days after his first appearance before a magistrate, a person against whom an indictment

has been found and presented may make a written demand to the district judge for a copy of the transcript of the testimony given before the grand jury as it relates to him and the charges against him. Upon receipt of such written demand, the judge shall issue an appropriate order. If the judge for any reason determines that a copy of a transcript of the testimony cannot be obtained, the person indicted shall be entitled, but not otherwise, to a preliminary examination, as provided by the statutes or rules of criminal procedure for persons otherwise charged with a crime. Under such conditions the preliminary examination shall be had before a judge of a county court~~,-if-it-has-increased-jurisdiction,~~ or a district judge, of the county in which the crime was committed or is triable. Failure to make such demand within the time prescribed constitutes a waiver of the right to the transcript or to a preliminary examination.

SECTION 74. AMENDMENT. Section 29-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-22-01. RETIREMENT OF JURORS. After hearing the charge, the jurors shall retire for deliberation to a room which must be provided for them by the board of county commissioners. Such room must be supplied with ~~suitable-furniture,~~ heat, light, and other conveniences. If a room is not provided by such board, the court may order the sheriff to provide one and the expenses incurred in complying with such order, when certified by the court, are a charge against the county.

SECTION 75. AMENDMENT. Section 29-22-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-22-02. CUSTODY OF JURORS. The jurors shall retire in charge of one or more officers who must be sworn to keep them together in some private and convenient place until they have rendered their verdict. Such officer or officers shall furnish food and other necessaries to the jurors, at the expense of the county for county court and at the expense of the state for district court, as directed by the court, and shall not speak to nor communicate with such jurors or any of them nor permit any other person so to do except by order of the court. Men and women jurors may retire, when rest or sleep or propriety requires it, to separate rooms.

SECTION 76. AMENDMENT. Subsection 6 of section 30.1-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Court" means the court having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the county court ~~or-county-court-of-increased-jurisdiction~~.

SECTION 77. AMENDMENT. Section 31-01-16 of 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 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 be paid out of the county treasury of the proper county except that district court witness fees and expenses shall be paid by the state. In no event shall prisoners be compensated as witnesses under the provisions of this section.

SECTION 78. AMENDMENT. Section 31-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-01-18. EXPENSES OF WITNESS PAID BY COUNTY OR STATE UPON COURT ORDER IN CRIMINAL ACTION. When a person, as a witness in a criminal action, attends 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 county treasurer in county court cases to pay the witness a reasonable sum to be specified in the order for the necessary expenses of his attendance. Upon the production of the order or a certified copy thereof, the county treasurer must pay ~~such~~ 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 79. AMENDMENT. Section 31-01-19 of 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 COUNTY OR STATE UNDER COURT ORDER IN CRIMINAL ACTION. If it appears to the court before which a criminal action is about to be tried that the defendant is unable to pay the witnesses in his 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 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 80. AMENDMENT. Section 31-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-09-05. CERTIFIED TRANSCRIPT OF ~~JUSTICE'S~~ JUDGE'S RECORD ADMISSIBLE IN COURTS OF COUNTY. A transcript of the docket record of a county ~~justice~~ judge in an action or proceeding, when certified by ~~such justice~~ the judge or his successor in office, shall be evidence to prove the facts contained in ~~such~~ that transcript in any action or other proceeding in the county wherein ~~such~~ the record was made.

SECTION 81. AMENDMENT. Section 31-09-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-09-06. CERTIFIED TRANSCRIPT OF ~~JUSTICE'S~~ COUNTY JUDGE'S RECORD ADMISSIBLE IN COURTS OF OTHER COUNTIES. A transcript of the docket record of a county ~~justice~~ judge in an action or proceeding, when certified by such ~~justice~~ judge or his successor in office, may be read in evidence in another county if there is attached thereto a certificate of the clerk of the district court of the county in which such record was made, under the seal of the court, to the effect that the person certifying such transcript was at the date thereof a county ~~justice~~ judge of the county, and in addition, if such docket record was made by another, that such other at the time of the making of the same was a county ~~justice~~ judge of the county.

SECTION 82. AMENDMENT. Section 31-09-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-09-07. CLERK OF COURT - CERTIFICATE TO OFFICIAL ACTS OF ~~JUSTICE~~ JUDGE. The bond and oath of office of a county ~~justice~~ judge when filed in the office of the clerk of the district court for the county are sufficient authority for the clerk to certify to the official acts and signature of the county ~~justice~~ judge.

SECTION 83. AMENDMENT. Section 32-22-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-22-18. INFORMAL COMMITMENT FROM COUNTY ~~JUSTICE~~ JUDGE. If the person is committed to prison, or is in custody of an officer on a criminal charge, by virtue of a warrant of commitment of a county ~~justice~~ judge, such person must not be discharged on the ground of any mere defect of form in the warrant of commitment.

SECTION 84. AMENDMENT. Section 32-24-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-24-01. WHEN QUESTION MAY BE CERTIFIED. Where any cause is at issue, civil or criminal, in any district court or county court ~~with--increased-jurisdiction~~ in this state and the issue of the same will depend principally or wholly on the construction of the law

applicable thereto, and such construction or interpretation is in doubt and vital, or of great moment in the cause, the judge of any such court, on the application of the attorney for the plaintiff or defendant in a civil cause, and upon the application of the attorneys for the plaintiff and defendant in a criminal cause, may halt all proceedings until such question shall have been certified to the supreme court and by it determined.

SECTION 85. AMENDMENT. Section 32-29-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-29-05. ATTENDANCE OF WITNESSES BEFORE ARBITRATORS COMPELLED. Witnesses may be compelled to appear before such arbitrators by subpoena to be issued by any county ~~justice~~ judge, in the same manner and with like effect, and subject to the same penalties for disobedience, as in cases of trials before county ~~justices~~ judges.

SECTION 86. AMENDMENT. Section 33-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-06-01. WHEN FORCIBLE DETAINER MAINTAINABLE. An action of forcible detainer to recover the possession of real estate is maintainable in the proper county ~~justice~~ court when:

1. A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual possession of real property of another and detains the same.

2. A party, after entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in possession.

3. A party, by force or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise.

4. A lessee, in person or by subtenant, holds over after the termination of his lease or expiration of his term, or fails to pay his rent for three days after the same shall be due.

5. A party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process and after the expiration of the time fixed by law for redemption, or after the execution and delivery of a deed, or after the cancellation and termination of any contract for deed, bond for deed, or other instrument for the future conveyance of real estate or equity therein.

6. A party continues wrongfully in possession after a judgment in partition or after a sale under an order or decree of a county court.

SECTION 87. AMENDMENT. Section 33-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-06-03. LEGAL REPRESENTATIVES MAY BRING FORCIBLE DETAINER ACTIONS. Executors and administrators may bring actions of forcible detainer in the county ~~justice~~ courts in the same manner as their testators and intestates, as the case may be.

SECTION 88. AMENDMENT. Section 33-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-06-04. FORCIBLE DETAINER ACTIONS NOT JOINABLE WITH OTHER ACTIONS - EXCEPTION - WHEN COUNTERCLAIMS ONLY INTERPOSABLE. An action of forcible detainer cannot be brought in a county ~~justice~~ court in connection with any other action, except for rents and profits accrued or for damages arising by reason of the defendant's possession. No counterclaim can be interposed in such action, except as a setoff to a demand made for damages or for rents and profits.

SECTION 89. AMENDMENT. Section 36-01-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-17. BOARD, MEMBERS, AND AGENTS TO HAVE SAME POWERS AS COUNTY ~~JUSTICE~~ JUDGE IN EXAMINATIONS. The state livestock sanitary board, and any member or duly authorized agent thereof, may examine or cause to be examined under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination, or the danger of dissemination, of disease among domestic animals. For this purpose, the board, and any member or authorized agent thereof, shall have all the powers vested by this code in county ~~justices~~ judges to take depositions, to compel witnesses to attend and testify, and to administer oaths. Such witnesses shall receive the same fees for attendance and travel as witnesses before the district courts, and said fees shall be paid by the board from moneys appropriated to it.

SECTION 90. AMENDMENT. Section 36-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-18. INSPECTION OF LIVESTOCK IN TRANSIT - EXECUTION OF ORDERS OF BOARD BY PEACE OFFICERS - POWERS OF OFFICERS - PENALTY. Authorized representatives of the state livestock sanitary board, for purposes of inspecting livestock in transit for health or ownership identification, may stop vehicles transporting livestock on public highways of this state. When signaled by such representative to stop, the operator of any vehicle shall stop the same and cause to be shown any health or identification forms which are required to be carried in transportation of livestock, and to permit such inspector to make an inspection of the livestock being transported if deemed by the inspector to be necessary. Failure to stop when so directed constitutes a class A misdemeanor. Any vehicle used for such purposes shall be clearly identified in

letters not smaller than three inches [7.62 centimeters] and is authorized to use a stop signal.

The state livestock sanitary board may call any sheriff, deputy sheriff, or constable to execute its orders, and such officers shall obey the orders of said board. Any peace officer may arrest and take before any county ~~justice~~ judge of the county any person found violating any of the provisions of this chapter, and such officers shall notify the state's attorney immediately of such arrest, and the state's attorney shall prosecute the person so offending.

SECTION 91. AMENDMENT. Section 36-11-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-11-10. TRESPASSING ANIMALS MAY BE DISTRAINED - NOTICE TO OWNER - SECURITY FOR RELEASE. The person suffering damages by reason of the trespass of any livestock may take up the offending animal or animals. He shall notify the owner, or the person in possession of the livestock at the time of the trespass, of the seizure of such animal or animals without unnecessary delay, if the owner or person in possession is known to him and is a resident of, and present within, the county in which the trespass occurred. He may retain such animal or animals in his custody until:

1. The damages sustained by reason of such trespass and the costs in the action to recover such damages have been paid; or

2. Good and sufficient security for the payment of such damages and costs is given, such security to be approved by a county ~~justice~~ judge of the county in which the livestock is taken up.

If the owner of the offending animal or animals elects to give security, he shall give to the person holding the livestock notice that security will be given and the date and hour when such security will be submitted to the county ~~justice~~ judge for approval. Such notice shall be given at least one day prior to the date set for the submission of the security to the ~~justice~~ judge. The cost of serving notices required under this section may be taxed as costs in the action. Where applicable, the provisions of section 36-11-07 may be raised as an affirmative defense in any proceedings under this section, and the owner or person entitled to possession of such livestock may apply to a court of competent jurisdiction for the return of the livestock. If the court shall find that such livestock have been wrongfully distrained, the person who causes such livestock to be wrongfully distrained shall be liable for all damages suffered by the owner or person entitled to possession of such livestock, together with the costs of the action and reasonable attorney's fees.

SECTION 92. AMENDMENT. Section 36-11-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-11-11. PROCEDURE WHEN SECURITY GIVEN. When security for the payment of damages and costs is approved by the county ~~justice~~ judge, ~~such--justice~~ the judge shall issue an order directed to the person holding the livestock ~~forthwith~~ to deliver such stock to the person entitled thereto, and the officer receiving such order shall take such livestock and deliver the same to such person. The cost of ~~such~~ the proceedings may be charged as a part of the costs in the action to determine the rights of the parties regarding the livestock distrained for the trespass.

SECTION 93. AMENDMENT. Section 39-06-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-16. LICENSE TO BE CARRIED AND EXHIBITED ON DEMAND. Every licensee shall have his operator's license or permit in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any district court, municipal court, a county ~~justice~~ court, a patrolman, peace officer, or a field deputy or inspector of the highway department. However, no person charged with violating this section shall be convicted or assessed any court costs if he produces in court, to the chief of police or in the office of the arresting officer an operator's license or permit theretofore issued to him and valid and not under suspension, revocation, or cancellation at the time of his arrest.

SECTION 94. AMENDMENT. Subsection 7 of section 39-06.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. As used in sections 39-06.1-02, 39-06.1-03, and 39-06.1-04, the word "official" means a district judge, a judge of a county court ~~with-increased-jurisdiction,-a county-justice~~, a municipal judge, or, when provided by statute, a person appointed by a district judge to serve as such official for all or a specified part of a judicial district.

SECTION 95. AMENDMENT. Section 40-13-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-13-02. BONDS OF MUNICIPAL OFFICIALS - REQUIREMENTS - APPROVALS - ADDITIONAL BONDS. The ~~treasurer,~~ auditor, municipal judge, ~~county--justice,~~ and assessor of each municipality, the city manager of any city, and such other officers as the governing body may direct, before entering upon the discharge of the duties of their respective offices, shall execute and deliver to the municipality their separate bonds payable to the municipality, conditioned for the honest and faithful performance of their official duties. Such bond shall be in an amount fixed by the governing body of the municipality. The bond of the ~~treasurer~~ auditor shall be set by resolution of the governing body of the municipality at a regular meeting in April of each year; in an amount at least equal to twenty-five percent of the average amount of money that has been subject to the ~~treasurer's~~ auditor's control

during the preceding fiscal year, as determined by the total of the daily balances of the ~~treasurer~~ auditor for the calendar year divided by the figure three hundred or the sum of two hundred fifty thousand dollars whichever is least. All official bonds shall be approved by the executive officer of the municipality and filed in the office of the city auditor. Such bonds shall conform to the provisions of law applicable to the bonds of state officers and employees except that no personal surety shall be accepted on any bond. No municipality shall pay the premium on any bond except a bond written in the state bonding fund or a bond procured to replace a bond canceled by the state bonding fund. The governing body at any time may require new and additional bonds of any officer.

SECTION 96. AMENDMENT. Section 40-18-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-01. JURISDICTION OF MUNICIPAL JUDGE. The municipal judge within a city having a population of three thousand or more shall 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 ~~justice~~ judge and municipal judge may not be held by the same person. In a city with a population of less than three thousand, the municipal judge may be, but need not be, an attorney licensed to practice law in this state, nor shall he be required to be a resident of the city in which he is to serve.

SECTION 97. 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 ~~or village~~. An appointee shall qualify, and he shall hold office until the next city ~~or village~~ election, and until his successor is elected and qualified. ~~During the temporary absence, interest, disqualification, or disability of the municipal judge or temporary vacancy in the office of municipal judge, any county justice designated by the executive officer shall act as municipal judge until the municipal judge is available in the trial of causes triable before the municipal judge. In any city within a county having a court of increased jurisdiction, the~~ 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 alternate shall 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 municipal judge.

SECTION 98. 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. A municipal judge shall have the power to enforce due obedience to his orders and judgments. He may fine or imprison for civil contempt offered to him while holding court, or to process issued, or orders made by him, ~~in the same manner and to the same extent as is provided by the laws of this state in the case of a county justice~~. 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 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 or adjudge him guilty and may punish by fine or imprisonment or both. The fine in any case shall not be more than one hundred dollars and the imprisonment shall not be more than one day.

* SECTION 99. AMENDMENT. Section 40-18-19 of the 1979 Supplement to 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 ~~to~~ the county court ~~of increased jurisdiction as provided for in section 27-08-21~~ from a judgment of conviction in a municipal ~~judge's~~ court ~~in the same form and manner as appeals are taken and perfected from a judgment of conviction of a defendant in county justice court, and in accordance with sections 33-12-34, 33-12-35, and 33-12-39, and shall be tried in the district court or county court of increased jurisdiction in accordance with sections 33-12-40 and 33-12-41, and bail shall be taken in accordance with sections 33-12-36 and 33-12-37, and witnesses may be placed under bond as provided for in section 33-12-38~~ in accordance with the North Dakota Rules of Criminal Procedure. 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 ~~judge's~~ 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 conviction for the violation of a municipal ordinance.

SECTION 100. AMENDMENT. Section 42-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

42-01-07. PUBLIC NUISANCE - REMEDIES AGAINST. The remedies against a public nuisance are:

1. Indictment;

* NOTE: Section 40-18-19 was also amended by section 30 of House Bill No. 1069, chapter 91, and by section 1 of Senate Bill No. 2423, chapter 414.

2. Filing an information;

3. Bringing a criminal action before a county ~~justice~~ judge, who shall have authority to bind the defendant over to the district court;

4. A civil action; or

5. Abatement.

SECTION 101. AMENDMENT. Section 42-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

42-03-01. WHEN DOGS ARE A PUBLIC NUISANCE. Any dog that habitually molests persons traveling peaceably on the public road, or street, is a public nuisance. Upon complaint, in writing, made to a county ~~justice~~ or ~~police magistrate~~ municipal judge, containing a description of such dog, and giving his name and that of his owner, if known, and, if not, so stating, and that such dog is a public nuisance, the ~~justice~~ county or ~~police magistrate~~ municipal judge shall give notice to the owner of such dog that a complaint has been filed in his office that such dog has been molesting certain persons and that the owner shall take the necessary action to prevent the dog from any further violations of this chapter. If the ~~justice~~ county or ~~police magistrate~~ municipal judge receives a further complaint regarding such dog after notice has been given to the owner that his dog has been molesting certain people, the county ~~justice~~ or ~~police magistrate~~ municipal judge shall issue a summons, if such owner is known, commanding him to appear before the ~~justice~~ county or ~~police magistrate~~ municipal judge at his office at a time therein stated, in the same manner as other ~~justice~~ county or ~~police magistrate~~ municipal judge court summonses.

SECTION 102. AMENDMENT. Section 42-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

42-03-03. HEARING - JUDGMENT - EXECUTION. On the day of hearing the ~~justice~~ county or ~~police--magistrate~~ municipal judge shall hear the evidence in the case, and, if he shall find therefrom that such dog is a public nuisance, he shall enter judgment accordingly, and thereupon shall order any peace officer to kill and bury the dog, which order the peace officer shall forthwith execute.

SECTION 103. AMENDMENT. Section 44-05-01 of 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 of the supreme court, each judge of the district court, the clerk of the supreme court, and his 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 county.

3. Each county commissioner, and public administrator, ~~and county justice,~~ within his 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 own city or township.

6. Each sheriff and his deputy within his county in the cases prescribed by law.

7. Other officers in the cases prescribed by law.

SECTION 104. AMENDMENT. Section 44-08-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-09. FEES PAID IN ADVANCE OR SECURITY GIVEN. The clerk of the supreme court, the clerk of each district court, the county judge, sheriff, ~~county justice,~~ constable, or register of deeds, in all cases, may require the party for whom any service is to be rendered to pay the fees in advance of the rendition of such service, or to give security for the same, to be approved by the officer.

SECTION 105. AMENDMENT. Section 44-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-09-01. IMPEACHMENTS - REASONS - OFFICERS SUBJECT. The governor and other state and judicial officers of the state, except county judges, ~~county justices,~~ and municipal judges, shall be subject to impeachment, and may be impeached for habitual drunkenness, crimes, corrupt conduct, malfeasance, or misdemeanor in office. The articles of impeachment may contain charges and specifications, or either, predicated upon or on account of any crime, corrupt conduct, malfeasance, or misdemeanor in office committed by the accused during any previous term of the same office.

SECTION 106. AMENDMENT. Section 44-11-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-11-12. POWERS OF COMMISSIONER - SUBPOENAS - SERVICE - FEES. Upon having taken and filed such oath, the commissioner shall have authority to issue subpoenas for persons and subpoenas duces tecum, and to administer oaths to witnesses the same as now is conferred upon county ~~justices~~ judges. Such subpoenas may be directed to any sheriff, constable, or chief of police, who immediately shall serve the same. Such officer shall be entitled,

for his services in serving the same, to such fees as now are allowed to constables for serving subpoenas in county ~~justice~~ court. Such fees shall be paid in the same manner as is provided in this chapter for witness fees and commissioner's fees. The procedure in taking the testimony shall be the same as is provided by law in the district court as to admissibility of testimony. Such commissioner, upon taking and filing his oath, shall have the same powers as now are conferred upon district judges and shall rule on, admit, or exclude testimony accordingly. He shall have the power to punish for contempt in the same manner as is provided by law for contempt in the district court.

SECTION 107. AMENDMENT. Section 46-04-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-04-01. OFFICIAL DISTRIBUTION OF STATE LAWS - SECRETARY OF STATE TO CONTROL. Each member of the legislative assembly for himself and each constitutional officer of the state and each judge of the supreme and district courts for the use of their respective offices and departments shall be entitled to receive from the state a copy of any publication of the laws of the state and of any compilation or codification thereof published under authority of the state. The district court in every county in the state shall be entitled to a copy of such publications. The codification of laws of the state received by each member of the legislative assembly is subject to section 54-03-23. The secretary of state shall designate other offices and agencies of the state that shall be entitled to receive copies of any such publication of the laws for the use of such state offices and agencies and also shall determine the number of copies of any publication to be received by any recipient in a distribution under the provisions of this section, if more than one copy shall be needed by such recipient for official use.

SECTION 108. AMENDMENT. Section 46-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-04-05. DISTRIBUTION OF SESSION LAWS, COMPILATIONS, AND CODIFICATIONS TO COUNTY OFFICERS. The board of county commissioners of each county, immediately after the publication of any session laws, codes, or compilations, shall cause a copy thereof to be furnished to the following county officers:

1. Auditor.
2. State's attorney.
3. Clerk of court.
4. Sheriff.
5. County judge.

~~6.--The district court of such county.~~

If any of such offices legally have been combined in such county, only one copy of the session laws, codes, or compilations need be furnished for the offices so combined.

Provided, however, that such codifications and copies of the session laws shall remain the permanent property of the county.

SECTION 109. AMENDMENT. Section 47-19-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-19-14. ACKNOWLEDGMENT AND PROOF - LIMITED TO DISTRICT OF OFFICER. The proof or acknowledgment of an instrument may be made in this state within the judicial district, county, subdivision, or city for which the officer was elected or appointed, before:

1. A judge or clerk of a court of record;

2. A mayor of a city;

3. A register of deeds;

~~4. A county justice;~~

~~5.~~ A United States commissioner;

~~6.~~ 5. A county auditor; or

~~7.~~ 6. A township clerk or a city auditor.

SECTION 110. AMENDMENT. Section 47-19-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-19-37. ACKNOWLEDGMENT BEFORE ~~JUSTICE~~ COUNTY JUDGE - CERTIFICATE OF CLERK OF COURT. The certificate of proof or acknowledgment, if made before a county ~~justice~~ judge when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the district court of the county in which the ~~justice~~ judge resides, setting forth:

1. That such ~~justice~~ judge, at the time of taking such proof or acknowledgment, was authorized to take the same;

2. That the clerk is acquainted with his handwriting; and

3. That the clerk believes that the signature to the original certificate is genuine.

SECTION 111. REPEAL. Section 28-26-03 of the North Dakota Century Code is hereby repealed.

SECTION 112. REPEAL. Section 27-20-05.1 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 113. EFFECTIVE DATE. Sections 1 through 51, 53 through 73, 76, and 80 through 111 shall become effective on January 1, 1983.

Approved April 6, 1981

CHAPTER 321

HOUSE BILL NO. 1653
(Kretschmar)
(Approved by the Committee on Delayed Bills)

SALARIES OF COUNTY JUDGES

AN ACT to create and enact a new section to chapter 27-08 of the North Dakota Century Code, relating to the salaries of judges of county courts of increased jurisdiction; to amend and reenact section 27-08-08 of the North Dakota Century Code, relating to the salaries of judges of county courts of increased jurisdiction; and to provide a contingent effective date.

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

* SECTION 1. AMENDMENT. Section 27-08-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08-08. SALARIES OF JUDGES OF COUNTY COURTS OF INCREASED JURISDICTION - AMOUNT AND PAYMENT. A county judge of a county court of this state having increased jurisdiction shall receive the following salary: twenty-one thousand dollars in counties having a population not exceeding ten thousand inhabitants; twenty-one thousand five hundred dollars in counties having a population exceeding ten thousand inhabitants but not exceeding eighteen thousand inhabitants; twenty-two thousand eight hundred dollars in counties having a population exceeding eighteen thousand inhabitants but not exceeding forty thousand inhabitants; and twenty-seven thousand six hundred dollars in counties having a population exceeding forty thousand inhabitants. Such salary shall be payable by the county in equal monthly installments and shall be full remuneration for all official duties, including all fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies. All fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies, shall be deposited by the court into the county treasury of the county in which the court is located. On July 1, ~~1979~~ 1981, the salary of each judge of a county court of increased jurisdiction shall be increased ~~six-and-one-half~~ nineteen percent over the total base salary and discretionary increase actually being paid such judge as of June 30, ~~1979~~ 1981, provided,

* NOTE: Section 27-08-08 was also amended by section 2 of Senate Bill No. 2377, chapter 137, and chapter 27-08 was repealed by section 51 of House Bill No. 1060, chapter 319.

however, that in no event shall the salary of a judge of a county court of increased jurisdiction exceed the salary then in effect for district court judges as provided in section 27-05-03. On July 1, ~~1980~~ 1982, the salary of each judge of a county court of increased jurisdiction shall be increased ~~six-and-one-half~~ eight percent over the total base salary and discretionary increase actually being paid such judge as of June 30, ~~1980~~ 1982, provided, however, that in no event shall the salary of a judge of a county court of increased jurisdiction exceed the salary then in effect for district court judges as provided in section 27-05-03.

SECTION 2. A new section to chapter 27-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

SALARIES OF JUDGES OF COUNTY COURTS OF INCREASED JURISDICTION - AMOUNT. The salary of a judge of a county court of increased jurisdiction:

1. Shall be equal to a minimum of eighty-five percent of the salary being paid to district court judges pursuant to section 27-05-03;

2. May be increased by a county or counties to ninety percent of the salary being paid to district court judges pursuant to section 27-05-03; and

3. Is not affected by, and may not be adjusted pursuant to, subsection 4 of section 11-10-10..

SECTION 3. CONTINGENT EFFECTIVE DATE. If House Bill No. 1060 is approved by the forty-seventh legislative assembly, is not vetoed, and is not invalidated for any other reason, then section 2 of this Act is effective on December 31, 1982.

Approved April 6, 1981

CHAPTER 322

HOUSE BILL NO. 1645
(Zimbleman, Crabtree)

SMALL CLAIMS COURT HEARING AND AFFIDAVIT SERVICE

AN ACT to amend sections 27-08.1-02 and 27-08.1-03 of the North Dakota Century Code, relating to the commencement of and filing a counterclaim in a small claims action.

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

SECTION 1. AMENDMENT. Section 27-08.1-02 of 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 ~~same~~ the affidavit on the defendant or mails it to him by certified mail along with an order for appearance setting a hearing. ~~Such~~ The hearing shall be not less than ~~five~~ 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 1979 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 five hundred dollars where the action was commenced in the office of the county justice, and one thousand dollars where the action was commenced in an office of the county court with increased jurisdiction, which shall be delivered to the plaintiff in person 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

* NOTE: Section 27-08.1-03 was also amended by section 54 of House Bill No. 1061, chapter 320.

counterclaims in excess of five hundred dollars in county justice court, and one thousand dollars in county court with increased jurisdiction. 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 the provisions of 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 of two dollars shall be charged for filing the claim affidavit, or counterclaim affidavit, plus one dollar for each defendant served.

Approved March 19, 1981

CHAPTER 323

HOUSE BILL NO. 1425
(Conmy)

JURY NAME SELECTION AND RECORD PRESERVATION

AN ACT to create and enact a new subsection to section 27-09.1-06 of the North Dakota Century Code, relating to the master jury wheel; and to amend and reenact section 27-09.1-13 of the North Dakota Century Code, relating to the preservation of jury records.

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

SECTION 1. A new subsection to section 27-09.1-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

As an alternative procedure to the provisions of subsection 1 of section 27-09.1-05, the jury commission for each county may randomly select names which represent a fair cross section of the population of the county for the master jury wheel directly from the source lists used to compile the master jury list (section 27-09.1-05). In compiling the master jury wheel, the jury commission shall avoid duplication of names.

SECTION 2. AMENDMENT. Section 27-09.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-09.1-13. PRESERVATION OF RECORDS. All records and papers compiled and maintained by the jury commissioner or the clerk in connection with selection and service of jurors shall be preserved by the clerk ~~for four years~~ after the master jury wheel used in their selection is emptied and refilled (section 27-09.1-06) ~~and for any longer period~~ as ordered by the supreme court.

Approved March 16, 1981

CHAPTER 324

HOUSE BILL NO. 1105
(Committee on Judiciary)
(At the request of the Supreme Court)

SUPPLEMENTAL RETIREMENT BENEFITS FOR JUDGES

AN ACT to create and enact section 27-17-01.1 of the North Dakota Century Code, relating to equal benefits for all judges of the same classification; and to provide for an appropriation.

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

SECTION 1. Section 27-17-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

27-17-01.1. SUPPLEMENTAL RETIREMENT BENEFITS.

1. Judges of the same classification who are disqualified from retirement benefits under section 27-17-01 by virtue of subsection 3 of section 27-17-01 are entitled to supplemental benefits which, when added to benefits under chapter 54-52, will be equal to benefits payable to judges who are not disqualified by virtue of subsection 3 of section 27-17-01.

2. Supplemental benefits pursuant to this section shall be vested upon election of a judge to assign one percent of his or her future salary to the judicial retirement fund.

3. The supreme court budget shall hereafter include sufficient sums, as determined actuarially, to permit the payment of benefits payable pursuant hereto.

4. Funds paid into the judicial retirement fund are hereby continuously appropriated for payment of benefits to retired judges or surviving spouses.

SECTION 2. LEGISLATIVE INTENT. It is hereby declared to be the intent of the legislative assembly in adopting this legislation that it shall be operative and effective only until it is amended, modified, or superseded, after a further interim study by the committee on public employees retirement programs of the legislative council. After such study the committee shall prepare all

legislation deemed necessary to reasonably accomplish the goals stated in the title hereof and present it to the forty-eighth legislative assembly for consideration.

SECTION 3. APPLICATION OF ACT. The provisions of this Act shall not apply to any termination, other than by death, during the period of July 1, 1981, to June 30, 1983, or to the provision of any benefit, other than a death benefit, for any termination of employment during that period. No member of the public employees retirement system shall earn or be entitled to any rights or interest, vested or otherwise, in the benefits provided by this Act, except as provided in this section, prior to July 1, 1983.

Approved April 1, 1981

CHAPTER 325

HOUSE BILL NO. 1107
(Committee on Judiciary)
(At the request of the Supreme Court)

RETIRED JUDGE SERVICE AND COMPENSATION

AN ACT to amend and reenact section 27-17-03, subsection 1 of section 27-24-01, and subsection 1 of section 27-24-04 of the North Dakota Century Code, relating to the services and compensation of retired justices and judges and the appointment and compensation of temporary judges; and declaring an emergency.

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

SECTION 1. AMENDMENT. Section 27-17-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-17-03. ~~DUTIES~~ SERVICES AND COMPENSATION OF RETIRED JUSTICES AND JUDGES.

1. Upon ~~the~~ retirement of a ~~judge~~ justice of the supreme court or a judge of the district court, the chief justice of the supreme court may appoint ~~him~~ the retired justice or judge to serve as a ~~commissioner~~ surrogate judge of ~~that~~ the supreme court to aid and assist the court in the performance of ~~such~~ judicial duties within the unified judicial system as may be assigned ~~to him~~ by the chief justice with ~~his~~ the retired justice's or judge's consent.

2. An appointment under this section does not become effective until the appointee subscribes and files in the office of the secretary of state an oath or affirmation substantially as follows: "I do solemnly swear (or affirm) that I will support the Constitutions of the United States and the state of North Dakota, and that I will faithfully discharge the duties of the office of surrogate judge of the state of North Dakota to the best of my ability."

3. Subject to subsection 4, a surrogate judge is entitled to receive compensation for services rendered for each day actually engaged in the performance of judicial duties in

an amount equal to five percent of the gross monthly salary of a regularly elected or appointed and qualified justice or judge of the court to which the services are rendered, or one-half of that daily compensation for services of one-half day or less.

4. A surrogate judge is not entitled to receive as compensation for services rendered in the performance of judicial duties during any calendar year a sum of money which when added to any judicial retirement benefits received by the surrogate judge for that year exceeds the annual salary of a justice or judge of the court from which the justice or judge retired. The compensation shall be paid upon the certificate of the surrogate judge showing that the services were performed for the number of days claimed in the certificate. Services of a surrogate judge under this section and receipt of compensation therefore do not reduce or otherwise affect the amount of any retirement benefits to which the judge otherwise would be entitled.

5. In addition to daily compensation, a surrogate judge is entitled to receive reimbursement for travel expenses necessarily incurred in the performance of judicial duties under the assignment, as regularly elected or appointed and qualified justices and judges are entitled to receive.

6. ~~Any--such~~ A retired ~~judge--shall~~ justice of the supreme court or a retired judge of the district court is also ~~be~~ eligible to serve as a ~~referee~~ master and to be compensated for services rendered in any civil case or other judicial proceeding when so designated by the court having power to appoint ~~referees~~ masters; ~~he--may--also~~ a retired justice or judge, when requested, is also eligible to serve as legal counsel and to be compensated for services rendered in the office of the attorney general, in any executive department, commission, or bureau of the state, and for any committee of the legislative assembly.

SECTION 2. AMENDMENT. Subsection 1 of section 27-24-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The supreme court may appoint any eligible person to serve as temporary judge in any court other than the supreme court, whenever the supreme court determines that the appointment is reasonably necessary and will promote the more efficient administration of justice. A person, except a retired justice of the supreme court or a retired judge of the district court, is eligible for appointment if the person is a resident of this state and has been engaged in the active practice of law in this state for a period of at least three years next preceding the appointment.

SECTION 3. AMENDMENT. Subsection 1 of section 27-24-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A temporary judge appointed as provided in section 27-24-01 shall receive as compensation for each day of service in the performance of duties under the appointment an amount equal to five percent of the gross monthly salary of a regularly elected or appointed judge of the court in which the temporary judge is to serve, or one-half of that daily compensation for services of one-half day or less. ~~The daily compensation of any temporary judge who is receiving retirement benefits from a retirement program funded in all or part by the state, excluding federal social security benefits, shall be reduced by an amount equal to five percent of the gross monthly benefits received from any such retirement program.~~ The compensation shall be paid upon the certificate of the temporary judge that the services were performed for the number of days shown in the certificate, and shall be paid in the same manner as the salaries of the regularly elected or appointed judges are paid.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 2, 1981

CHAPTER 326

HOUSE BILL NO. 1473
(Richie)

COURT AUTHORITY OVER JUVENILE OFFENSE

AN ACT to amend and reenact sections 27-20-02 and 27-20-09 of the North Dakota Century Code, relating to the jurisdiction of adult court over traffic offenses committed by a child.

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

SECTION 1. AMENDMENT. Section 27-20-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-02. DEFINITIONS. As used in this chapter:

1. "Child" means an individual who is:

   a. Under the age of eighteen years and is neither married and cohabiting with spouse nor in the military service of the United States; or

   b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years.

2. ~~"Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection 4 and is not a traffic offense as defined in subsection 10.~~

3. ~~"Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.~~

4. ~~"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,-or~~

~~c.--Has--committed--an-offense-applicable-only-to-a-child, and~~

~~d.--In--any--of--the--foregoing-is-in-need-of-treatment-or rehabilitation.~~

~~5.--"Deprived-child"-means-a-child-who:~~

~~a.--Is---without---proper---parental---care---or--control, subsistence,-education-as-required-by--law,--or--other care-or-control-necessary-for-his-physical,-mental,-or emotional-health,-or-morals,-and--the--deprivation--is not--due--primarily--to-the-lack-of-financial-means-of his-parents,-guardian,-or-other-custodian;~~

~~b.--Has--been--placed-for-care-or-adoption-in-violation-of law;-or~~

~~c.--Has--been-abandoned-by-his-parents,-guardian,-or-other custodian.~~

~~6.--"Shelter---care"--means--temporary--care--of--a--child--in physically-unrestricted-facilities.~~

~~7.--"Protective--supervision"-means-supervision-ordered-by-the court-of-children-found-to-be-deprived-or-unruly.~~

8. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.

~~9.--"Juvenile-court"-means-the-district-court-of-this-state.~~

~~10.--"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-negligent-homicide--in--violation--of section--12.1-16-03--and--manslaughter--resulting-from-the operation-of-a-motor-vehicle.~~

3. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall

under subdivision c of subsection 10 and is not a traffic offense as defined in subsection 9.

4. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.

5. "Deprived child" means a child who:

   a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for one child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of one child's parents, guardian, or other custodian;

   b. Has been placed for care or adoption in violation of law; or

   c. Has been abandoned by one child's parents, guardian, or other custodian.

6. "Juvenile court" means the district court of this state.

7. "Protective supervision" means supervision ordered by the court of children found to be deprived or unruly.

8. "Shelter care" means temporary care of a child in physically unrestricted facilities.

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 negligent homicide in violation of section 12.1-16-03 and manslaughter resulting from the operation of a motor vehicle.

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

e. In any of the foregoing instances is in need of treatment or rehabilitation.

SECTION 2. AMENDMENT. Section 27-20-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-09. TRANSFER FROM OTHER COURTS. If it appears to the court in a criminal proceeding, except for an offense transferred under section 27-20-34, that the defendant is a child subject to the jurisdiction of the juvenile court, the court shall ~~forthwith~~ immediately transfer the case to the juvenile court together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. It shall order that the defendant be taken ~~forthwith~~ immediately to the juvenile court or to a place of detention designated by the juvenile court, or release ~~him~~ the defendant to the custody of ~~his~~ the defendant's parent, guardian, custodian, or other person legally responsible for ~~him~~ the defendant, to be brought before the juvenile court at a time designated by that court. The accusatory pleading may serve in lieu of a petition in the juvenile court unless that court directs the filing of a petition.

Approved April 6, 1981

CHAPTER 327

HOUSE BILL NO. 1547
(Eagles)

JUVENILE COURT JURISDICTION

AN ACT to amend and reenact section 27-20-04, subsection 1 of section 27-20-16, and sections 27-20-28 and 27-20-35 of the North Dakota Century Code, relating to juvenile court concurrent jurisdiction of proceedings to treat or commit a mentally retarded or mentally ill child, place of detention, child investigation and report, and disposition of a mentally ill or retarded child; and providing for juvenile court concurrent jurisdiction of proceedings to treat or commit an alcohol or drug abusing child.

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

SECTION 1. AMENDMENT. Section 27-20-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-04. CONCURRENT JURISDICTION. The juvenile court has concurrent jurisdiction with the county courts of increased jurisdiction of proceedings to treat or commit a mentally retarded or mentally ill child or an alcohol or drug abusing child otherwise subject to the jurisdiction of the juvenile court.

SECTION 2. AMENDMENT. Subsection 1 of section 27-20-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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; or

d. Any other suitable place or facility, including a medical facility for the treatment of mental illness, alcoholism, or drug addiction, designated or operated by the court. The child may be detained in 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 that public safety and protection reasonably require detention, and it is so ordered.

SECTION 3. AMENDMENT. Section 27-20-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-28. INVESTIGATION AND REPORT.

1. If the allegations of a petition are admitted by a party or notice of a hearing under section 27-20-34 has been given, the court, prior to the hearing on need for treatment or rehabilitation and disposition, may direct that a social study and report in writing to the court be made by the juvenile supervisor or other person designated by the court, concerning the child, his family, his environment, and other matters relevant to disposition of the case. If the allegations of the petition are not admitted and notice of a hearing under section 27-20-34 has not been given, the court shall not direct the making of the study and report until after the court has heard the petition upon notice of hearing given pursuant to this chapter and the court has found that the child committed a delinquent act or is an unruly or deprived child.

2. During the pendency of any proceeding the court may order the child to be examined at a suitable place by a physician ~~or~~, psychologist, or certified addiction counselor and may also order medical or surgical treatment of a child who is suffering from a serious physical condition or illness, or alcohol or drug abuse, which in the opinion of a licensed physician requires prompt treatment, even if the parent, guardian, or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of his refusal to consent to the treatment.

SECTION 4. AMENDMENT. Section 27-20-35 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-35. DISPOSITION OF MENTALLY ILL ~~OR~~, MENTALLY RETARDED, ALCOHOL, OR DRUG ABUSING CHILD.

1. If, at a dispositional hearing of a child found to be a delinquent or unruly child or at a hearing to transfer a child to another court under section 27-20-34, the evidence indicates that the child may be suffering from mental retardation or mental illness, or alcohol or drug abuse, the court before making a disposition shall commit the child for a period not exceeding sixty days to an appropriate institution, agency, or individual for study and report on the child's mental or physical condition.

2. If it appears from the study and report that the child is committable under the laws of this state as a mentally retarded or mentally ill child, the court shall order the child detained and direct that within ten days after the order the court resume proceedings in the juvenile court for the child's commitment to an appropriate institution or agency.

3. If it does not so appear or the child is found not to be committable, the court shall proceed to the disposition or transfer of the child as otherwise provided by this chapter.

Approved March 11, 1981

CHAPTER 328

SENATE BILL NO. 2389
(Senator Albers)
(Representative Vander Vorst)

JUVENILE COURT JURISDICTION

AN ACT to amend and reenact sections 12-46-13, 12.1-04-01, 12.1-32-13, 27-20-33, and 27-20-34 of the North Dakota Century Code, relating to transfer of juvenile jurisdiction to adult court.

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

* SECTION 1. AMENDMENT. Section 12-46-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-13. WHO MAY BE SENT TO STATE INDUSTRIAL SCHOOL - COURT PROCEDURE. Whenever a person under the age of eighteen years is found guilty in any district court or county court with increased jurisdiction of a crime or public offense, ~~other--than--murder,~~ the court ~~instead--of--entering-judgment-against-such-person,-if-in-its judgment-the-accused-is-a-proper-subject--therefor,--may--direct--an order-entered-in-the-minutes-of-the-court-that~~ may in its discretion order the person be first committed to the state industrial school, however the court shall order that the person be first committed to the state industrial school ~~until-the--person--attains--the--age--of eighteen--years.---If--the-person-so-committed-is-of-the-age-that-he will-not-have-been-committed--for--at--least--two--years--before--he attains--the--age--of--eighteen--years,--the--court--may--extend-the commitment-beyond-the-date-he-attains-the-age-of-eighteen-years,-but the--entire-commitment-shall-not-exceed-a-period-of-two-years~~ if the person is under 16 years of age. A person so committed attaining the age of eighteen years shall be transferred to a penal institution or detention facility to serve the balance of his sentence. A person so committed who attains the age of sixteen years may be transferred after the person has been given an administrative hearing to determine if the safety of other residents or the general public justifies the transfer. A person sentenced under this section shall have all the rights to sentence reduction for good and meritorious conduct and all the pardon and parole rights of an adult sentenced to a penal institution.

* NOTE: Section 12-46-13 was also amended by section 26 of House Bill No. 1061, chapter 320.

SECTION 2. AMENDMENT. Section 12.1-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-04-01. JUVENILES. Persons under the age of seven years ~~shall be~~ are deemed incapable of commission of an offense defined by the constitution or statutes of this state. The prosecution of any person as an adult ~~shall be~~ is barred if the offense was committed ~~when~~ while the person was less than ~~sixteen~~ fourteen years of age.

SECTION 3. AMENDMENT. Section 12.1-32-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-32-13. MINOR CONVICTED OF FELONY, SENTENCING. Whenever a minor is convicted of a felony, the sentencing court may, in its discretion, ~~sentence the person so convicted to a county jail or~~ commit the person so convicted to the state industrial school as provided in this title. Provided, however, that a minor over the age of sixteen who is convicted of a felony may be sentenced to a penal institution or detention facility.

SECTION 4. AMENDMENT. Section 27-20-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-33. ORDER OF ADJUDICATION - NONCRIMINAL.

1. An order of disposition or other adjudication in a proceeding under this chapter is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment. A child shall not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of a crime.

2. The disposition of a child and evidence adduced in a hearing in juvenile court may not be used against him in any proceeding in any court other than a juvenile court, whether before or after reaching majority, except for impeachment or in dispositional proceedings after conviction of a felony for the purposes of a presentence investigation and report.

SECTION 5. AMENDMENT. Section 27-20-34 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-34. TRANSFER TO OTHER COURTS.

1. After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances or resolutions of this state, the court before hearing the petition on its merits may transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:

a. The child is over ~~seventeen~~ sixteen or more years of age and requests the transfer; or

b. (1) The child was ~~sixteen~~ fourteen or more years of age at the time of the alleged conduct;

(2) A hearing on whether the transfer should be made is held in conformity with sections 27-20-24, 27-20-26, and 27-20-27;

(3) Notice in writing of the time, place, and purpose of the hearing is given to the child and his parents, guardian, or other custodian at least three days before the hearing; and

(4) The court finds that there are reasonable grounds to believe that:

(a) The child committed the delinquent act alleged;

(b) The child is not amenable to treatment or rehabilitation as a juvenile through available ~~facilities~~ programs;

(c) The child is not treatable in an institution for the mentally retarded or mentally ill; ~~and~~

(d) The interests of the community require that the child be placed under legal restraint or discipline~~.~~; and

(e) If the child is fourteen or fifteen years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm.

2. The transfer terminates the jurisdiction of the juvenile court over the child with respect to the delinquent acts alleged in the petition.

3. No child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age, shall be prosecuted for an offense previously committed unless the case has been transferred as provided in this section.

4. Statements made by the child ~~after--being--taken-into custody-and-prior-to-a--request--under--subdivision--a--of subsection-1,-or-the-service-of-notice-under-subdivision-b of-subsection-1,-or~~ at the hearing under this section are not admissible against him over objection in the criminal proceedings following the transfer except for impeachment.

5. If the case is not transferred the judge who conducted the hearing shall not over objection of an interested party preside at the hearing on the petition. If the case is transferred to a court of which the judge who conducted the hearing is also a judge he likewise is disqualified over objection from presiding in the prosecution.

Approved March 31, 1981

CHAPTER 329

HOUSE BILL NO. 1133
(Committee on Judiciary)
(At the request of the Social Service Board)

JUVENILE COURT DISPOSITION ORDERS

AN ACT to amend and reenact section 27-20-36 and subsection 2 of section 27-20-47 of the North Dakota Century Code, relating to limitations of time on orders of disposition made by the juvenile court.

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

SECTION 1. AMENDMENT. Section 27-20-36 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-36. LIMITATIONS OF TIME ON ORDERS OF DISPOSITION.

1. An order terminating parental rights is without limit as to duration.

2. An order of disposition committing a delinquent or unruly child to the state industrial school continues in force for two years, excluding any period of time the child is on parole from the institution, or until the child is sooner discharged by the institution. The court which made the order may extend its duration for additional two-year periods subject to like discharge, if:

   a. A hearing is held upon motion of the institution, or on the court's own motion, prior to the expiration of the order;

   b. Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and

   c. The court finds that the extension is necessary for the treatment or rehabilitation of the child.

3. ~~Any--other-order-of-disposition-continues-in-force-for-not more-than-two-years.---The~~ An order of disposition pursuant

to which a child is placed in foster care continues in force for not more than eighteen months. Any other order of disposition continues in force for not more than two years.

4. Except as provided in subsection 1, the court may sooner terminate ~~its~~ an order of disposition or extend its duration for further periods. An order of extension may be made if:

a. A hearing is held prior to the expiration of the order upon motion of a party or on the court's own motion;

b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;

c. The court finds that the extension is necessary to accomplish the purposes of the order extended; and

d. The extension does not exceed eighteen months from the expiration of an order limited by subsection 3 or two years from the expiration of ~~the--prior~~ any other limited order.

~~4.~~ 5. Except as provided in subsection 2, the court may terminate an order of disposition or extension prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished. If a party may be adversely affected by the order of termination the order may be made only after reasonable notice and opportunity to be heard have been given to him.

~~5.~~ 6. Except as provided in subsection 1, when the child attains the age of twenty years, all orders affecting him then in force terminate and he is discharged from further obligation or control.

~~6.~~ 7. If an order of disposition is made with respect to a child under the age of ten years pursuant to which the child is removed from the care, custody, and control of his parent, guardian, or other custodian without terminating parental rights and the parent and child relationship, the court, before extending the duration of the order, shall determine upon the extension hearing whether the child is adoptable and whether termination of those rights and that relationship is warranted under section 27-20-44 and is in the best interest of the child. In that case the notice of the extension hearing must also inform the parties affected that the court will determine whether the child is adoptable and whether termination of their parental rights and the parent and child relationship is warranted and in the best interest of the child and that a further order of disposition may be made by the court placing said

child with a view to adoption. If the court determines that the child is adoptable and that termination of parental rights and the parent and child relationship is warranted and is in the best interest of the child, the court shall make a further order of disposition terminating those rights and that relationship and committing the child under section 27-20-47.

SECTION 2. AMENDMENT. Subsection 2 of section 27-20-47 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If the child is not adopted within ~~two years~~ eighteen months after the date of the order and a guardian or conservator of the child has not been appointed by the county court, the child shall be returned to the court for entry of further orders for the care, custody, and control of the child.

Approved March 2, 1981

CHAPTER 330

HOUSE BILL NO. 1411
(Representative Kretschmar)
(Senator Fritzell)

JUDICIAL NOMINATING COMMITTEE

AN ACT to create a judicial nominating committee to make nominations in the event of a vacancy in the position of supreme court justice or district judge.

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. "Candidate" means any person under consideration by the committee to fill a judicial vacancy.

2. "Chairman" means the chairman of the committee and includes any acting chairman.

3. "Committee" means the judicial nominating committee, consisting of six members in the event of a vacancy in the office of supreme court judge and nine members in the event of a vacancy in the office of a district court judge.

4. "Judge" means a justice of the supreme court or a judge of district court.

5. "Nominee" means any candidate selected by the committee for inclusion on the list of candidates submitted to the governor.

6. "Permanent member" means a person appointed to serve on the committee for all vacancies in the office of judge during that member's term.

7. "Temporary member" means a person appointed to serve on the committee only for the time necessary to fill a vacancy in the office of district judge in that member's district.

SECTION 2. CREATION AND COMPOSITION OF COMMITTEE - TERMS OF OFFICE - APPOINTMENT - VACANCIES.

1. A judicial nominating committee is hereby created to consist of six permanent members and three temporary members.

2. The governor, the chief justice, and the president of the state bar association each shall appoint two permanent members to the committee, one of whom is a judge or an attorney authorized to practice law in the state and one of whom is not a judge, former judge, or attorney. The term of each member shall be three years. Initially, as determined by lot, two members shall serve for two years, and two members shall serve for one year. At the end of the member's term, the appointing authority shall appoint a successor for a full three-year term. No member shall serve for more than two three-year terms. A vacancy shall be filled by the appointing authority for the remainder of the term. The governor shall designate one of the members as chairman of the committee.

3. Each appointing authority shall appoint an additional temporary member, from the judicial district having a vacancy, to serve on the committee for the time necessary to fill the vacancy. If two or more vacancies in the office of district judge occur in one district at the same time, the committee may submit a combined list to the governor.

4. The judicial nominating committee for vacancies in the office of supreme court judge shall be composed of the six permanent members. If two or more vacancies occur in the office of the supreme court judge at the same time, the committee may submit a combined list of candidates to the governor.

5. The executive director of the state bar association shall serve as nonvoting secretary of the committee.

SECTION 3. SUBMISSION OF NOMINEE LIST TO GOVERNOR. The committee shall submit to the governor a list of not fewer than two nor more than seven nominees for appointment within sixty days after receipt of written notice from the governor that a vacancy in the office of judge exists. No list of nominees submitted to the governor by the committee shall be valid unless concurred in by a majority of its members and certified by the chairman. If the committee fails to submit a list of at least two nominees within the time prescribed by this section, the governor may direct that the committee be reconvened or proceed according to subsection 3 of section 4 of this Act. If the committee fails to submit a list of at least two nominees to the governor within sixty days after receipt of written notice from the governor directing the committee

to reconvene, the governor shall proceed according to subsection 3 of section 4 of this Act.

SECTION 4. GOVERNOR TO APPOINT OR CALL SPECIAL ELECTION. Within thirty days after receipt of the list of nominees, the governor shall do any of the following:

1. Fill the vacancy by appointment from the list of nominees submitted by the committee. The appointment shall continue only until the next general election, when the office shall be filled by election for the remainder of the term.

2. Return the list of nominees and direct the committee to reconvene.

3. Call a special election to fill the vacancy for the remainder of the term.

If the governor determines to call a special election to fill the vacancy, the governor shall issue a writ of election to the auditors of the counties in the district in which the district vacancy occurs commanding them to notify the boards of election in the counties to hold a special election at a time designated by the governor. If the governor determines to call a special election within sixty days of the time of the next general election, the special election shall be held at the same time as the general election.

SECTION 5. POWERS AND DUTIES. The committee shall:

1. Seek out qualified judicial candidates and may solicit judicial candidate nominations from any citizen.

2. Make such inquiry into the qualifications of each candidate, including legal knowledge and ability, judicial temperament, experience, and moral character, as the committee deems appropriate in order to secure a list of the most highly qualified nominees.

SECTION 6. SUBMISSION OF NAMES BY CITIZENS - WITHDRAWAL. A person may submit a name of any qualified citizen for consideration as a candidate. Submission shall be in writing on forms provided by the committee. Any candidate may withdraw from consideration by written request to the chairman of the committee.

SECTION 7. COMMITTEE MEMBERS INELIGIBLE FOR VACANCY APPOINTMENT. No member of the committee shall be considered as a candidate or nominee during the member's term on the committee.

SECTION 8. EXPENSES OF COMMITTEE. Committee members shall be allowed expenses for travel, board, and lodging incurred in the performance of their duties as provided in sections 44-08-04 and 54-06-09.

SECTION 9. COMMITTEE BUDGET. The supreme court shall prepare and present to the legislative assembly a proposed biennial budget for the committee.

Approved March 31, 1981

JUDICIAL PROCEDURE, CIVIL

CHAPTER 331

SENATE BILL NO. 2256
(Stenehjem)

MALPRACTICE ACTION LIMITATION

AN ACT to amend and reenact subsection 4 of section 28-01-18 of the North Dakota Century Code, relating to actions having two-year limitations.

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

SECTION 1. AMENDMENT. Subsection 4 of section 28-01-18 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. An action for injuries done to the person of another, when death ensues from such injuries, and the cause of action shall be deemed to have accrued at the time of the death of the party injured; provided, however, that when death ensues as the result of malpractice, the cause of action shall be deemed to have accrued at the time of the discovery of the malpractice. However, the limitation will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or hospital.

Approved March 18, 1981

CHAPTER 332

HOUSE BILL NO. 1619
(Wentz, C. Anderson)

MEDICAL PROFESSIONAL NEGLIGENCE ACTION

AN ACT to require expert opinion before initiating an action based upon medical professional negligence, except in obvious cases.

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

SECTION 1. EXPERT OPINION REQUIRED TO MAINTAIN AN ACTION BASED UPON ALLEGED MEDICAL NEGLIGENCE EXCEPT IN OBVIOUS CASES. Any action for injury or death against a physician, nurse, or hospital licensed by this state based upon professional negligence shall be dismissable on motion unless the claimant has obtained an admissible expert opinion to support the allegation of professional negligence within three months of the commencement of the action or at such later date as set by the court. This Act shall not apply to alleged lack of informed consent, unintentional failure to remove a foreign substance from within the body of a patient, or performance of a medical procedure upon the wrong patient, organ, limb, or other part of the patient's body, or other obvious occurrence.

Approved March 26, 1981

CHAPTER 333

HOUSE BILL NO. 1119
(Unhjem)

ORDER OF TRIAL AND CONDUCT OF JURORS

AN ACT to amend and reenact sections 28-14-10 and 28-14-18 of the North Dakota Century Code, relating to the order of trial and the conduct of jurors in retirement.

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

SECTION 1. AMENDMENT. Section 28-14-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-14-10. ORDER OF TRIAL. When the jurors have been sworn, the trial must proceed in the following order, unless the judge for special reasons directs otherwise:

1. The plaintiff after stating the issue and ~~his~~ the plaintiff's case must produce the evidence on ~~his~~ the plaintiff's part;

2. The defendant then may open ~~his~~ the defendant's defense and offer ~~his~~ the defendant's evidence in support thereof;

3. The parties then respectively may offer rebutting evidence only, unless the court for good reasons in furtherance of justice permits them to offer evidence upon their original case;

4. ~~When the evidence is concluded, unless~~ The court may charge the jury when the evidence is concluded or after the argument, if any, of the plaintiff and defendant;

5. Unless the case is submitted to the jury on either or both sides without argument, the plaintiff must commence and may conclude the argument; and

~~5.~~ 6. If several defendants having separate defenses appear by different counsel, the court must determine their relative order in the evidence and argument~~, and~~

~~6.--The court then may charge the jury.~~

SECTION 2. AMENDMENT. Section 28-14-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-14-18. CONDUCT OF JURORS IN RETIREMENT. When the case finally is submitted to the jurors, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place under charge of an officer, until they agree upon a verdict, are temporarily dismissed by the court, or are permanently discharged by the court. Unless, by order of the court, the officer having the jurors under ~~his~~ the officer's charge must not suffer any communication to be made to them, or to make any himself except to ask them if they have agreed upon a verdict, and ~~he~~ the officer, before the verdict is rendered, must not communicate to ~~any person~~ anyone the state of their deliberations or the verdict agreed upon. Where the jurors have not agreed upon a verdict by twelve midnight of any day of deliberations, the trial judge may temporarily dismiss the jurors from twelve midnight to eight a.m. that day when the jurors shall resume deliberations. Where a trial jury contains both ~~men~~ male and ~~women~~ female members, the trial judge~~,--if--he--deems--it--proper,~~ may direct that the ~~women~~ female members of the jury be placed in charge of a ~~woman~~ female bailiff and permitted to retire to a suitable place for rest, and the ~~men~~ male members of the jury placed in charge of a ~~man~~ male bailiff for a similar purpose. In all cases where the jurors are ~~permitted to be~~ dismissed or separated, as above stated, the trial judge shall admonish the members thereof that they must not in any manner discuss the case ~~among themselves~~ with anyone, nor permit anyone to discuss it with them, while they are so dismissed or separated, and that they must discuss and consider the case only in the room when all members of the jury are present.

Approved March 2, 1981

CHAPTER 334

HOUSE BILL NO. 1426
(Conmy)

INTEREST RATE ON JUDGMENTS

AN ACT to amend and reenact section 28-20-34 of the North Dakota Century Code, relating to the interest rate allowable on judgments.

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

SECTION 1. AMENDMENT. Section 28-20-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-34. INTEREST RATE ON JUDGMENTS. Interest shall be payable on judgments recovered in the courts of this state at the same rate as is provided in the original instrument upon which the action resulting in the judgment is based, which rate shall not exceed the maximum rate provided in section 47-14-09. If such original instrument contains no provision as to an interest rate, or if the action resulting in the judgment was not based upon an instrument, interest shall be payable at the ~~legal rate as provided in section 47-14-05. Such interest~~ rate of twelve percent per annum and shall not be compounded in any manner or form. Interest on all judgments recovered in the courts of this state before July 1, ~~1961~~ 1981, shall remain at the rate ~~of two percent~~ per annum which was legally prescribed at the time the judgments were entered, and such interest must not be compounded in any manner or form.

Approved March 18, 1981

CHAPTER 335

SENATE BILL NO. 2429
(Senators Fritzell, Goodman)
(Representative Vander Vorst)

BANKRUPTCY EXEMPTIONS

AN ACT to create and enact two new sections to chapter 28-22 of the North Dakota Century Code, relating to the availability of federal bankruptcy exemptions.

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

SECTION 1. Two new sections to chapter 28-22 of the North Dakota Century Code are hereby created and enacted to read as follows:

NONAVAILABILITY OF FEDERAL BANKRUPTCY EXEMPTIONS. In accordance with the provisions of section 522(b) of the Bankruptcy Reform Act of 1978 (Pub. L. 95-598; 92 Stat. 2586; 11 U.S.C. 522(b)), residents of this state shall not be entitled to the federal exemptions provided in section 522(d) of the Bankruptcy Reform Act of 1978. The residents of this state shall be limited to claiming those exemptions allowable by North Dakota law.

ADDITIONAL BANKRUPTCY EXEMPTIONS. In addition to the exemptions provided herein, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.

2. A motor vehicle exemption not to exceed one thousand two hundred dollars.

3. Accrued dividend, interest, or cash value of an unmatured life insurance policy not to exceed four thousand dollars.

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.

Approved March 19, 1981

CHAPTER 336

HOUSE BILL NO. 1043
(Legislative Council)
(Interim Administrative Rules Committee)

AGENCIES SUBJECT TO ADMINISTRATIVE PROCEDURES

AN ACT to create and enact sections 4-09.1-06, 4-26-08.1, and 19-01-19 of the North Dakota Century Code, relating to appeals from decisions of the state seed commissioner and the state laboratories department; and to amend and reenact sections 4-09-21, 4-11-19, 4-11-20, 4-26-08, 19-01-02, 19-02-14, 19-03.1-15, 19-03.1-26, 19-07-02, 19-08-03, 19-10-02, 19-14-06, 19-16.1-06, 19-17-04, 19-18-05, 19-21-05, 23-09-02.1, 24-17-10, 24-17-15, and 39-21-44 of the North Dakota Century Code, relating to exempting interest rate regulations of the state banking board from the notice and hearing requirements of Administrative Agencies Practice Act and subjecting the seed commission, laboratories department, highway corridor board, and hazardous materials regulations of the motor vehicle department to the requirements of the Administrative Agencies Practice Act; and to repeal sections 24-17-13 and 24-17-14 of the North Dakota Century Code, relating to hearing and rule publication requirements of the highway corridor board.

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

SECTION 1. AMENDMENT. Section 4-09-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-21. ENFORCEMENT - HEARING BY COMMISSIONER - ~~ADMINISTRATION OF OATHS AND TAKING TESTIMONY~~ APPLICATION OF CHAPTER 28-32. The commissioner shall ~~be charged with the enforcement of the provisions of~~ enforce this chapter and ~~of~~ the regulations made thereunder. Whenever the commissioner ~~shall be~~ is of the opinion that a violation of this chapter or of the regulations made thereunder exists, he shall ~~designate a time and place for a hearing and give notice thereof to the person involved. The hearing shall be private, and the person involved shall have the right to introduce evidence in person, or by agent or attorney~~ hold a hearing as provided by chapter 28-32. If after ~~said~~ the hearing, or without hearing, if the person involved fails or refuses to appear, the commissioner decides that the evidence warrants prosecution, he

shall proceed as hereinafter provided. ~~The commissioner and his agents may administer oaths and take testimony for any purpose required to carry out the provisions of this chapter.~~ Any proceeding under this chapter for adopting or modifying rules and regulations and determining compliance with rules and regulations of the commissioner shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 2. Section 4-09.1-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

4-09.1-06. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Any proceeding under this chapter for issuing or modifying rules and determining compliance with rules of the commission or commissioner shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 3. AMENDMENT. Section 4-11-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-11-19. RULES AND REGULATIONS ~~--COMMISSIONER TO MAKE~~. The commissioner ~~shall make, publish, and amend uniform~~ may adopt rules and regulations, ~~not inconsistent~~ consistent with ~~the provisions of~~ this chapter, to enforce ~~the provisions of~~ this chapter ~~and~~, to govern the rates charged by, and the buying, selling, advertising, and trading practices of wholesale potato dealers, and ~~shall make and publish~~ to provide necessary definitions of terms and conditions relative to this chapter. ~~The commissioner may alter or suspend such rules, regulations, and definitions when necessary. Such rules, regulations, and definitions shall be approved by the attorney general as to form and legality, shall be filed in the office of the commissioner, and shall be published once in a newspaper of general circulation designated by the commissioner, published in the city where the commissioner's office is located. Thereafter, such~~ Any rules and regulations ~~shall have the force and effect of law. An affidavit of such publication setting forth the contents of the same, made by the publisher or manager of such newspaper, shall be kept on file 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 such rules and regulations~~ adopted by the commissioner shall be adopted pursuant to chapter 28-32.

SECTION 4. AMENDMENT. Section 4-11-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-11-20. CONDUCTING HEARINGS AND CANCELING LICENSES - ~~PROCEDURE - PUNISHMENT FOR CONTEMPT~~ APPLICATION OF CHAPTER 28-32. The commissioner may receive complaints against any person dealing in, shipping, transporting, storing, or selling potatoes, and may make any and all necessary investigations relative to the handling of, storing, shipping, or dealing in potatoes at wholesale, and he and his agents, at all times, shall have access to all buildings,

yards, warehouses, storage, and transportation facilities, and railway cars in which any potatoes are kept, stored, handled, or transported, and may take any necessary samples. The commissioner, upon complaint being filed with him for any alleged violation of the provisions of this chapter or the regulations issued thereunder, or upon information furnished by any of his agents or by any other person, forthwith may suspend and, upon ten days' notice and an opportunity to be heard, may revoke and cancel any license or any agent's identification card issued by him. ~~The commissioner may issue subpoenas requiring the attendance of witnesses before him or his agent, and may compel the disclosure by such witnesses of all facts known to them relative to the matter under investigation, and he may compel the production before him or his agents of all necessary books, papers, and other documents, articles, or instruments. He or his agents may administer oaths and take testimony for the purposes of this chapter. The commissioner or his agent shall give the complainant a written report of the investigation, which shall be prima facie evidence of the matters therein contained. All parties disobeying the orders or subpoenas of the commissioner or his duly authorized agents shall be guilty of contempt as in proceedings in district courts of the state and may be punished in like manner.~~ Any hearing held on any complaint or information received by the commissioner shall be conducted pursuant to chapter 28-32. Any party may appeal a decision of the commissioner to the district court in the manner provided by chapter 28-32.

SECTION 5. AMENDMENT. Section 4-26-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-26-08. REGULATIONS. ~~For the purpose of carrying into effect the provisions of this chapter, the~~ The seed commissioner may ~~make~~ adopt such regulations pursuant to the provisions of chapter 28-32 as he considers necessary or advisable to implement the provisions of this chapter. The power of the seed commissioner to make regulations under this section shall extend to:

1. Defining, redefining, reducing, or extending the limits of a seed potato control area~~;~~.

2. Prescribing additional powers and duties of committees under this chapter~~;~~.

3. Prescribing of minimum requirements which must be met in the seed selection, seed treatment, field isolation, cultural practices and in disease removal and insect control~~;~~.

4. Prescribing the methods of seed potato control work to be followed by the committee in respect to any seed potato control area~~;~~.

5. ~~The prescribing~~ Prescribing and authorizing of the quality of seed to be grown within a seed potato control area~~;~~.

6. ~~The--canceling~~ Canceling of any or all seed potato control areas~~;~~.

7. Providing for the inspection, testing, and approval of the seed to be planted and grown in the area~~;--and~~.

8. ~~To-prescribe-such~~ Prescribing any other regulations as may be expedient or necessary to carry out the purposes and provisions of this chapter.

SECTION 6. Section 4-26-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

4-26-08.1. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Any proceeding under this chapter for issuing or modifying rules and regulations and determining compliance with rules and regulations of the commissioner shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 7. 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 - MEMBERS, DUTIES, MEETINGS, QUORUM. The state laboratories department shall be maintained as one of the departments of the state. The management, control, and supervision of such department 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. The commission ~~shall~~ may adopt rules and regulations pursuant to chapter 28-32 as may be necessary for the full and complete enforcement of the regulatory laws of the state under its jurisdiction~~;--but-such rules-and-regulations-shall-not-be-inconsistent-with-the--provisions of-the-Uniform-Controlled-Substances-Act~~. 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. ~~A--majority--of--the--members--of--the--commission--shall constitute-a-quorum-for-the-transaction-of-business.~~

SECTION 8. Section 19-01-19 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-01-19. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Any proceeding under this title for issuing or modifying rules and regulations and determining compliance with rules and regulations of the department shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 9. AMENDMENT. Section 19-02-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02-14. SALE IN DECEPTIVE PACKAGES PROHIBITED - ~~DEPARTMENT MAY-ESTABLISH~~ RULES RELATING TO SIZE AND WEIGHT OF PACKAGES OF FOODS

AND DRUGS. No person, firm, or corporation shall manufacture, sell, or expose for sale, any article of food or drug in any package or container, the size or shape of which may deceive or tend to deceive the purchaser of such product as to the contents of said package or container. In order to prevent fraud and deception, the department may ~~establish, publish, and enforce~~ adopt rules and regulations pursuant to chapter 28-32 relative to the size, weight, or style of package of all drug and food commodities, except lard and bread~~, and such rules and regulations shall have the force and effect of law~~.

SECTION 10. AMENDMENT. Section 19-03.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-15. RULES. The ~~state laboratories~~ department may ~~promulgate~~ adopt rules pursuant to chapter 28-32 and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

SECTION 11. AMENDMENT. Section 19-03.1-26 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-26. DISPOSING OF NEEDLES AND PARAPHERNALIA. Any registrant who shall use, administer, dispense or cause to be used, administered, or dispensed any drug or controlled substance in a manner requiring the use of any type of syringe, needle, eyedropper or other similar paraphernalia shall destroy and dispose of said syringe, needle, eyedropper, or other similar paraphernalia in a manner that will prevent its reuse by any person other than the registrant. The state laboratories department may ~~promulgate~~ adopt rules and regulations pursuant to chapter 28-32 setting out the specific manner in which the provisions of this section shall be carried out. Any registrant who ~~shall violate~~ violates the provisions of this section ~~shall be~~ is guilty of a class A misdemeanor.

SECTION 12. AMENDMENT. Section 19-07-02 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-07-02. RULEMAKING POWER. The department ~~shall~~ may adopt ~~and publish~~, only upon approval of the commissioner of agriculture, appropriate regulations pursuant to chapter 28-32 to establish standards for candling, grading, and inspecting eggs as to size, quality, purity, strength, holding requirements, and sanitation, and shall be guided in establishing such standards by United States department of agriculture regulations governing the grading and inspecting of eggs.

SECTION 13. AMENDMENT. Section 19-08-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-08-03. REQUIREMENTS FOR LABELING - STANDARDS OF PURITY AND QUALITY. The requirements for labeling and standards of purity and quality of all beverages included in this chapter shall be the same as those required under chapter 19-02, together with such other standards, rules, and regulations as the department may ~~establish~~ adopt pursuant to chapter 28-32 to carry out the intent of this chapter. ~~Such--standards,--rules,--and--regulations-shall-have-the force-and-effect-of-law.~~

SECTION 14. AMENDMENT. Section 19-10-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-02. DEPARTMENT TO ENFORCE LAW - REGULATION OF PETROLEUM PRODUCTS. The provisions of this chapter shall be enforced by the department. The department may ~~promulgate~~ adopt rules and regulations pursuant to chapter 28-32 for the interpretation of the provisions and intent of this chapter~~,-and-the-same-shall-have-the force-and-effect-of-law~~.

SECTION 15. AMENDMENT. Section 19-14-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-14-06. DEPARTMENT MAY ~~MAKE~~ ADOPT RULES AND REGULATIONS, TAKE TESTIMONY, GRANT PUBLIC HEARINGS. The department may ~~make~~ adopt rules and regulations pursuant to chapter 28-32 governing applications for registration, the submission of samples for analysis, and all other matters necessary to give effect to this chapter, but no such rule or regulation shall impose any requirement for registration other than is provided by section 19-14-03. It may take expert and other testimony whenever it deems such testimony advisable and, upon request, shall grant a public hearing prior to the cancellation of a registration and also to any manufacturer or distributor whose request for registration of any livestock medicine has been denied.

SECTION 16. AMENDMENT. Section 19-16.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-16.1-06. RULES AND REGULATIONS. The department ~~is-hereby empowered--to--promulgate--and~~ may adopt such reasonable rules, regulations, and standards pursuant to chapter 28-32 as may be necessary in order to secure the efficient administration of this chapter.

SECTION 17. AMENDMENT. Section 19-17-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-17-04. ENFORCEMENT.

1. The commissioner ~~is--hereby--charged--with--the--duty-of enforcing-the-provisions-of~~ shall enforce this chapter and he ~~is--hereby--authorized--and-directed-to-make,-amend-or rescind~~ may adopt rules, regulations, and orders pursuant

to chapter 28-32 for the efficient enforcement of this chapter.

2. Whenever the vitamin and mineral requirements set forth in sections 19-17-02 and 19-17-03 are no longer in conformity with the legally established standards governing the interstate shipments of enriched flour and enriched white bread or enriched rolls, the commissioner, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of this chapter, ~~is authorized and directed to~~ shall modify or revise such requirements to conform with amended standards governing interstate shipments.

3. In the event of findings by the commissioner that there is an existing or imminent shortage of any ingredient required by sections 19-17-02 and 19-17-03, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this chapter, the commissioner shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredients from flour or white bread or rolls, and if he finds it necessary or appropriate, excepting such foods from labeling requirements until the further order of the commissioner. Any such findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such order of the appropriate federal agency or factual information supplied by it, the commissioner on his own motion may, and upon receiving the sworn statements of ten or more persons subject to this chapter that they believe such a shortage exists or is imminent shall, within twenty days thereafter hold a public hearing with respect thereto at which any interested person may present evidence; and shall make findings based upon the evidence presented. The commissioner shall publish notice of any such hearing at least ten days prior thereto. Whenever the commissioner has reason to believe that such shortage no longer exists, he shall hold a public hearing, after at least ten days' notice shall have been given, at which any interested person may present evidence, and he shall make findings based upon the evidence so presented. If his findings be that such shortage no longer exists, he shall issue an order to become effective not less than thirty days after the publication thereof, revoking such previous order; provided, however, that undisposed floor stocks of flour on hand at the effective date, of such revocation order, or flour manufactured prior to such effective date, for sale in this state may thereafter be lawfully sold or disposed of.

4. ~~All orders, rules and regulations adopted by the commissioner pursuant to this chapter shall be published~~

~~in--the--manner--hereinafter--prescribed,--and,-within-the limits-specified-by-this-chapter,-shall--become--effective upon-such-date-as-the-commissioner-shall-fix.~~

~~5.--Whenever--under--this--chapter--publication-of-any-notice, order,-rule-or-regulation-is--required,--such--publication shall--be--made--at--least--twice--in--at--least-one-daily newspaper-of-general-circulation-printed-and-published--in this-state.~~

~~6.~~ For the purpose of this chapter, the commissioner, or such officers or employees under his supervision as he may designate, 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 19-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-05. DETERMINATIONS - RULES AND REGULATIONS - UNIFORMITY. The commissioner is authorized, after opportunity for a hearing:

1. To declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances~~;~~.

2. To determine whether economic poisons are highly toxic to man and whether the use thereof should be restricted~~;-and~~.

3. To determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of subsection 4 of section 19-18-03.

The commissioner~~,---after--due--public--hearing,~~ may ~~make~~ adopt appropriate rules and regulations pursuant to chapter 28-32 for carrying out the provisions of this chapter, including rules and regulations providing for the collection and examination of samples of economic poisons or devices, and also may adopt such regulations, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States department of agriculture with respect to economic poisons in order that there may be uniformity between the requirements of the several states and the federal government.

SECTION 19. AMENDMENT. Section 19-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-21-05. REGULATIONS ~~AND--HEARINGS~~. The department ~~is authorized, after public hearing following due notice, to promulgate~~ may adopt regulations pursuant to chapter 28-32 for the efficient enforcement of this chapter. If the department finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, it shall ~~promulgate~~ adopt regulations exempting the substance from these requirements, to an extent consistent with adequate protection of the public health and safety.

If the department finds that an article subject to this chapter cannot be labeled adequately to protect the public health and safety, or the article presents an imminent danger to the public health and safety, it may declare the article to be a banned hazardous substance and require its removal from commerce.

The department shall cause the regulations ~~promulgated~~ adopted under this chapter to conform with the regulations established pursuant to the Federal Hazardous Substances Act.

SECTION 20. AMENDMENT. Section 23-09-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-02.1. SMOKE DETECTION DEVICES OR OTHER APPROVED ALARM SYSTEMS - ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Each hotel, motel, and lodginghouse shall install smoke detection devices or other approved alarm systems of a type and in the number approved by the state laboratories department, in cooperation with the state fire marshal. The ~~laboratories~~ department, in cooperation with the state fire marshal, shall adopt ~~and promulgate~~ reasonable rules and regulations pursuant to chapter 28-32 governing the spacing and minimum specifications for approved smoke detection devices or other approved alarm systems. The ~~laboratories~~ department and state fire marshal shall provide all reasonable assistance required in complying with the provisions of this section. Any proceeding under this section for issuing or modifying rules and regulations and determining compliance with rules and regulations of the department shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 21. AMENDMENT. Section 24-17-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-17-10. RULES AND REGULATIONS ~~HAVE THE FORCE AND EFFECT OF LAW~~. All determinations, rules, regulations, and promulgations by the board shall be ~~filed with the commissioner and shall have the force and effect of law upon such filing~~ adopted pursuant to chapter 28-32.

SECTION 22. AMENDMENT. Section 24-17-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-17-15. APPEALS TO DISTRICT COURT - APPLICATION OF CHAPTER 28-32. Any person, or persons, jointly and severally, aggrieved by a decision of the board under this chapter, may appeal therefrom to the district court ~~and to the supreme court in accordance with sections 28-32-15 through 28-32-21, provided, however, that no other sections in~~ pursuant to chapter 28-32 ~~shall be applicable to any proceedings of the board~~.

SECTION 23. AMENDMENT. Section 39-21-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-44. VEHICLE TRANSPORTING EXPLOSIVES OR HAZARDOUS MATERIALS - ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Any person operating any vehicle transporting any explosive or hazardous material as a cargo or part of a cargo upon a highway shall ~~at all times~~ comply with ~~the provisions of~~ this section.

1. The vehicle shall be marked or placarded on each side and the rear with the word "Explosives" or the words "Hazardous Materials" as appropriate in letters not less than eight inches [20.32 centimeters] high, or there shall be displayed on the rear of the vehicle a red flag not less than twenty-four inches [60.96 centimeters] square marked with the word "Danger" in white letters six inches [15.24 centimeters] high.

2. The vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle.

~~3.~~

The department shall ~~promulgate~~, pursuant to chapter 28-32, adopt such rules as may be necessary for the safe transportation of hazardous materials. Rules shall duplicate or be consistent with current hazardous materials regulations of the United States department of transportation. The department is authorized to adopt the hazardous materials regulations by reference and any adoption shall be construed to incorporate amendments as may be made from time to time. Any proceeding under this section for issuing or modifying rules and regulations and determining compliance with rules and regulations of the department shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 24. REPEAL. Sections 24-17-13 and 24-17-14 of the North Dakota Century Code are hereby repealed.

Approved February 16, 1981

CHAPTER 337

HOUSE BILL NO. 1042
(Legislative Council)
(Interim Administrative Rules Committee)

"ADMINISTRATIVE AGENCY" DEFINED

AN ACT to amend and reenact subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the definition of administrative agency as used in the law governing the procedure and practice of administrative agencies.

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 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Administrative agency" or "the agency" ~~includes--any officer,--board,--commission,---bureau,---department,---or tribunal-other-than-a-court,-having-statewide-jurisdiction and-authority-to-make-any-order,--finding,--determination, award,-or-assessment-which-has-the-force-and-effect-of-law and-which-by-statute-is-subject-to-review-in-the-courts-of this---state.~~ 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 department of accounts and purchases except with respect to rules relating to the central personnel system as authorized under section 54-44.3-07 and rules relating to state purchasing practices as required under section 54-44.4-04.

   b. The adjutant general with respect to the division of disaster emergency services.

* NOTE: Section 28-32-01 was amended by section 2 of Senate Bill No. 2044, chapter 341.

c. The council on the arts.

d. The state auditor.

e. The business and industrial development commission.

f. The dairy products 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 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 postsecondary education commission.

r. 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.

s. The state board of public school education while administering the state school construction fund.

t. The social service board with respect to its rules under the family subsidy program.

u. The state fair association.

v. The state toxicologist.

w. The board of university and school lands.

x. The administrative committee on veterans affairs.

y. The wheat commission.

Approved March 31, 1981

CHAPTER 338

HOUSE BILL NO. 1044
(Legislative Council)
(Interim Administrative Rules Committee)

"RULE" DEFINED

AN ACT to amend and reenact subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to the definition of rules as that term is used with respect to the law governing the practice and procedure of administrative agencies.

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

* SECTION 1. AMENDMENT. Subsection 2 of section 28-32-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. ~~"Rules and regulations" include rules, regulations, orders, and amendments thereto, of general application, issued by any officer, board, commission, bureau, or department interpreting, regulating the application of, or regulating the procedure under, the statutes which they are charged respectively with administering. Such term shall not apply to rules or regulations adopted or orders made by an administrative agency relating solely to the internal operation of the agency, nor to rules or regulations adopted or orders made relating to the management, admission, expulsion, or graduation of students from educational institutions, nor to rules or regulations adopted or orders made relating to the management, confinement, discipline, or release of inmates of any penal or charitable institution.~~ "Rule" means the whole or a part of an agency statement of general applicability that implements, interprets, or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The term includes the amendment, repeal, or suspension of an existing rule. The term does not include:

   a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.

* NOTE: Section 28-32-01 was amended by section 2 of Senate Bill No. 2044, chapter 341.

b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the state.

c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.

d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.

e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.

f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.

g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.

h. An agency budget.

i. An opinion of the attorney general.

Approved March 3, 1981

CHAPTER 339

SENATE BILL NO. 2043
(Legislative Council)
(Interim Administrative Rules Committee)

RULE APPROVAL BY ATTORNEY GENERAL

AN ACT to amend and reenact section 28-32-02 of the North Dakota Century Code, relating to the rulemaking power of an agency under the law governing the practice and procedure of administrative agencies.

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

SECTION 1. AMENDMENT. Section 28-32-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* 28-32-02. RULEMAKING POWER OF AGENCY - NOTICE - ATTORNEY GENERAL'S OPINION. Every administrative agency ~~shall--have--the authority~~ is authorized to ~~promulgate~~ adopt, and from time to time to amend or repeal, reasonable rules ~~and-regulations~~ in conformity with the provisions of any statute administered or ~~to--be administered,~~ enforced ~~or-to-be-enforced,~~ by ~~such~~ the agency, and to prescribe methods and procedure required in connection therewith. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

~~1.--Adopt~~ 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.

~~2.~~ Every rule ~~or--regulation~~ proposed by any administrative agency shall 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.

Approved March 6, 1981

* NOTE: Section 28-32-02 was also amended by section 3 of Senate Bill No. 2044, chapter 341, and by section 1 Senate Bill No. 2288, chapter 340.

CHAPTER 340

SENATE BILL NO. 2288
(Redlin)

RULE APPROVAL BY ATTORNEY GENERAL

AN ACT to amend and reenact section 28-32-02 of the North Dakota Century Code, relating to the rulemaking power of an agency under the law governing the practice and procedure of administrative agencies.

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

* SECTION 1. AMENDMENT. Section 28-32-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-02. RULEMAKING POWER OF AGENCY - NOTICE - ATTORNEY GENERAL'S OPINION. Every administrative agency ~~shall--have--the authority~~ is authorized to ~~promulgate~~ adopt, and from time to time to amend or repeal, reasonable rules ~~and-regulations~~ in conformity with the provisions of any statute administered or ~~to--be administered,~~ enforced ~~or-to-be-enforced,~~ by ~~such~~ the agency, and to prescribe methods and procedure required in connection therewith. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

~~1.--Adopt~~ 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.

~~2.~~ Every rule ~~or--regulation~~ proposed by any administrative agency shall 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 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 19, 1981

* NOTE: Section 28-32-02 was also amended by section 3 of Senate Bill No. 2044, chapter 341, and by section 1 of Senate Bill No. 2043, chapter 339.

CHAPTER 341

SENATE BILL NO. 2044
(Legislative Council)
(Interim Administrative Rules Committee)

ADMINISTRATIVE RULES EFFECTIVE DATE

AN ACT to amend and reenact sections 4-18.1-21, 28-32-01, 28-32-02, 28-32-03, 28-32-03.1, 28-32-03.2, 28-32-04, and 28-32-07 of the North Dakota Century Code, relating to judicial review of rulemaking by the milk stabilization board, rulemaking powers of administrative agencies, filing and effect of rules, and publication of the administrative code.

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

SECTION 1. AMENDMENT. Section 4-18.1-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-18.1-21. JUDICIAL REVIEW OF RULEMAKING ACTION BY THE BOARD.

1. The validity or applicability of any action taken by the board in its rulemaking capacity may be determined in a suit for declaratory judgment in the district court ~~for the county of Burleigh~~.

2. Any such suit must be filed within thirty ~~(30)~~ days after the date on which ~~a copy of the notice of such~~ the action ~~and the attorney general's opinion thereon are mailed~~ by the board ~~to the secretary of the state bar association~~ becomes effective pursuant to section 28-32-03.

3. The court shall declare the board action invalid if ~~it~~ the court finds that the action in question violates constitutional provisions or exceeds the statutory authority of the board or was adopted without substantial compliance with rulemaking procedures. The board shall be made a party to the suit.

4. No stay of a board stabilization plan or regulation properly adopted may be granted prior to final determination of any such matter by the court having jurisdiction thereof.

* SECTION 2. AMENDMENT. Section 28-32-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise provides:

1. "Administrative agency" or "~~the~~ agency" includes any officer, board, commission, bureau, department, or tribunal other than a court, having statewide jurisdiction and authority to make any order, finding, determination, award, or assessment which has the force and effect of law and which by statute is subject to review in the courts of this state.

2. ~~"Rules---and---regulations"--include--rules,--regulations,--orders,--and--amendments~~ "Rule" includes any rule, regulation, order, and amendment thereto, of general application, ~~issued~~ adopted by any officer, board, commission, bureau, or department interpreting, regulating the application of, or regulating the procedure under, the statutes which they are charged respectively with administering. Such term ~~shall~~ does not apply to ~~rules--or--regulations~~ any rule, regulation, or order adopted ~~or--orders--made~~ by an administrative agency relating solely to the internal operation of the agency, nor to ~~rules--or--regulations~~ any rule, regulation, or order adopted ~~or--orders---made~~ relating to the management, admission, expulsion, or graduation of students from educational institutions, nor to ~~rules--or--regulations~~ any rule, regulation, or order adopted ~~or--orders--made~~ relating to the management, confinement, discipline, or release of inmates of any penal or charitable institution.

3. "Person" includes an individual, association, partnership, corporation, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.

4. "Contested case" means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

5. "Party" means each person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

6. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-05; and any administrative agency which, when authorized by law, files such a complaint before such agency or any other agency.

* NOTE: Subsection 1 of section 28-32-01 was also amended by section 1 of House Bill No. 1042, chapter 337, and subsection 2 of section 28-32-01 was also amended by section 1 of House Bill No.1044, chapter 338.

* SECTION 3. AMENDMENT. Section 28-32-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-02. RULEMAKING POWER OF AGENCY - NOTICE - ATTORNEY GENERAL'S OPINION. Every administrative agency ~~shall--have--the authority~~ is authorized to ~~promulgate~~ adopt, and from time to time to amend or repeal, reasonable rules ~~and-regulations~~ in conformity with the provisions of any statute administered or ~~to--be administered,~~ enforced ~~or-to-be-enforced,~~ by ~~such~~ the agency, and to prescribe methods and procedure required in connection therewith. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

~~1.--Adopt~~ 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.

~~2.~~ Every rule ~~or--regulation~~ proposed by any administrative agency shall 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.

SECTION 4. AMENDMENT. Section 28-32-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03. FILING OF RULES ~~AND-REGULATIONS~~ - FORCE AND EFFECT OF RULES - FORM AND STYLE OF RULES.

1. ~~A-copy-of-each-rule-and-regulation-promulgated-and-adopted by-an-administrative-agency-shall-be-filed-in--the--office of--the--attorney--general,-and-when-filed,-shall-have-the force-and-effect-of-law-until-amended-or-repealed--by--the agency--or--until--the-same-is-declared-invalid-by-a-final court-decision.~~ A copy of each rule ~~and--regulation~~ adopted by ~~any~~ an administrative agency, and the attorney general's opinion thereon, shall ~~also~~ be filed ~~in~~ with the office of the legislative council ~~prior-to-final-printing or-duplication-by-an-agency~~ for publication in the North Dakota Administrative Code. ~~Each-administrative-agency extensively-amending-or-revising-its-rules-and-regulations after--July--1,--1977,--as-determined-by-the-office-of-the legislative--council,--shall---submit---such---rules---and regulations--in--the-proper-format,-style,-and-arrangement prescribed-under-subsection-3-for-publication-in-the-North Dakota---Administrative--Code.---Extensive--amendments--or revisions-of-administrative-rules-and-regulations-shall-be published--in-the-administrative-code-by-the-office-of-the legislative--council--as---soon---as---practicable---after submission--by--an--agency.---Prior--to--July-1,-1978,-all~~

* NOTE: Section 28-32-02 was also amended by section 1 of Senate Bill No. 2043, chapter 339, and by section 1 of Senate Bill No. 2288, chapter 340.

~~administrative--agencies--shall--revise--their--rules--and regulations-not-previously-published-in-the-administrative code-for-publication-in-the--administrative--code.---After July--1,--1978~~ Except as provided in section 28-32-03.1, rules ~~and-regulations~~ not published in the administrative code shall be invalid.

2. Rules ~~and-regulations~~ approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council ~~at-the time-of-or-after-initial-publication--of--the--code~~ shall become effective ~~ten-days~~ the first day of the month after the month of publication as provided for in section 28-32-03.1, except that:

   a. If a later date is required by statute or specified in the rule, the later date shall be the effective date.

   b. Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon approval by the attorney general, or at a stated date less than ten days following publication in the code or code supplement, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefore shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them. ~~Emergency--rules--shall--have--the force-and-effect-of-law.~~

3. Upon becoming effective, rules ~~and-regulations~~ shall have the force and effect of law until amended or repealed by the agency or declared invalid by a final court decision.

~~3.~~ 4. The office of the legislative council may prescribe a format, style, and arrangement for rules ~~and--regulations~~ which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules ~~and-regulations~~ for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, and punctuation of the rules ~~and-regulations~~ as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which shall be open to public inspection during office hours. ~~and--shall--provide-copies-of-any-rule-upon-the-request-of any--person--or--agency.---Unless--otherwise--provided--by statute,-the-office-of-the-legislative-council-may-require the-payment-of-the-cost-of-providing-such-copies.~~

* SECTION 5. AMENDMENT. Section 28-32-03.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03.1. ADMINISTRATIVE CODE AND CODE SUPPLEMENT.

1. The office of the legislative council shall~~,--as-soon-as practicable--after--July--1,--1977,~~ compile, index, and publish all rules ~~and-regulations~~ filed pursuant to this chapter in a publication which shall be known as the North Dakota Administrative Code, ~~herein~~ in this chapter referred to as the code. The code shall be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise the code, or any part thereof, as often as the legislative council deems necessary.

2. The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement, ~~herein~~ in this chapter referred to as the code supplement, ~~each~~ the month after the month that rules ~~and--regulations~~ are submitted to the office of the legislative council for publication.

   a. The code supplement shall contain all rules filed with the office of the legislative council since the compilation and publication of the preceding issue of the code supplement. The office of the legislative council may establish a due date by which rules ~~and regulations~~ must be submitted by an agency for publication during any month.

   b. The code supplement shall be printed or duplicated in the same style as the code ~~shall-be-set-up~~ so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.

3. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.

4. The code shall be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the office of the legislative council for the printing of as many copies of such separate portions of the code as it may require. The

* NOTE: Section 28-32-03.1 was also amended by section 1 of Senate Bill No. 2042, chapter 343.

cost of any such separate portions shall be paid by the agency.

* SECTION 6. AMENDMENT. Section 28-32-03.2 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03.2. PRINTING, SALES, AND DISTRIBUTION OF CODE AND CODE SUPPLEMENT.

1. The secretary of state shall distribute the code and code supplement, and shall distribute copies of the code, revisions thereto, and the code supplement without charge to the following:

   a. Governor, one copy.

   b. Attorney general, one copy.

   c. Each supreme court judge, one copy.

   d. Each district court judge, one copy.

   e. Each county auditor of this state, for the use of county officials and the public, one copy.

   f. Supreme court library, one copy.

   g. State library, one copy.

   h. Law library of the university of North Dakota, one copy.

   i. Secretary of state, one copy.

   j. North Dakota legislative council, two copies.

   k. Each member of the legislative assembly, one copy, upon request.

2. The office of the legislative council, each county auditor in the state, and the librarians for the supreme court library, the state library, and the university of North Dakota law library shall maintain a complete, current set of the code, including revisions thereto and additions or changes published in the code supplement.

3. The secretary of state shall make copies of and subscriptions to the code, revisions thereto, and the code supplement available to any person at prices fixed to cover publication and distribution costs.

4. The office of the legislative council shall determine the cost of supplying copies of the code, revisions thereto,

* NOTE: Subsections 1 and 2 of section 28-32-03.2 were also amended by section 1 of House Bill No. 1402, chapter 342.

and the code supplement. Such cost shall be the approximate cost of ~~printing--or--duplicating~~ publication and ~~distributing~~ distribution. However, a uniform price per page or group of pages may be established without regard to differences in the cost of ~~printing~~ publishing different parts of the code, revisions thereto, and the code supplement.

5. All fees collected by the secretary of state shall be deposited in the general fund of the state treasury.

6. The administrative code, revisions thereto, and the code supplement shall be considered sixth-class printing under sections 46-02-04 and 46-02-09.

SECTION 7. AMENDMENT. Section 28-32-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-04. PETITION FOR RECONSIDERATION OF RULE ~~OR REGULATION~~ - HEARING BY AGENCY. Any person substantially interested in the effect of a rule ~~or--regulation--promulgated~~ adopted by an administrative agency may petition such agency for a reconsideration of any such rule ~~or regulation~~ or for an amendment or ~~modification~~ repeal thereof. Such petition shall state clearly and concisely the petitioners' alleged grounds for such reconsideration, or for the proposed ~~modification~~ repeal or amendment of such rule ~~or regulation~~. The agency in its discretion may grant the petitioner a public hearing upon such terms and conditions as the agency may prescribe.

SECTION 8. AMENDMENT. Section 28-32-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-07. CONSIDERATION OF INFORMATION NOT PRESENTED AT A FORMAL HEARING. If an administrative agency ~~shall desire~~ desires to avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by such agency, in addition to the evidence presented at any formal hearing, it may do so after first transmitting a copy of such information or evidence or an abstract thereof to each party of record in the proceeding, and after affording each such party, upon written request, an opportunity to examine such information or evidence and to present evidence in connection therewith and to cross-examine the person furnishing such information at a further public hearing to be called and held upon at least ten days' notice given by registered or certified mail. Nothing contained in this section ~~shall prevent~~ prevents any administrative agency from taking notice of any fact or facts set forth in its duly ~~established regulations~~ adopted rules or any facts which are judicially noticed by the courts of this state.

Approved March 6, 1981

CHAPTER 342

HOUSE BILL NO. 1402
(Representative Wentz)
(Senator Nething)

ADMINISTRATIVE CODE DISTRIBUTION

AN ACT to amend and reenact subsections 1 and 2 of section 28-32-03.2 of the North Dakota Century Code, relating to distribution and maintenance of the North Dakota Administrative Code and code supplements.

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

* SECTION 1. AMENDMENT. Subsections 1 and 2 of section 28-32-03.2 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The secretary of state shall distribute the code and code supplement, and shall distribute copies of the code, revisions thereto, and the code supplement without charge to the following:

   a. Governor, one copy.

   b. Attorney general, one copy.

   c. Each supreme court judge, one copy.

   d. Each district court judge, one copy.

   e. Each county auditor of this state, for the use of county officials and the public, one copy.

   f. Supreme court library, one copy.

   g. State library, one copy.

   h. Law library of the university of North Dakota, one copy.

   i. Each of the five depository libraries in this state, one copy, upon request.

* NOTE: Section 28-32-03.2 was also amended by section 6 of Senate Bill No. 2044, chapter 341.

j. Secretary of state, one copy.

~~j.~~ k. North Dakota legislative council, two copies.

~~k.~~ l. Each member of the legislative assembly, one copy, upon request.

2. The office of the legislative council, each county auditor in the state, and the librarians for the supreme court library, the state library, ~~and~~ the university of North Dakota law library, and the five depository libraries as designated according to subsection 1 and section 54-24-09 shall maintain a complete, current set of the code, including revisions thereto and additions or changes published in the code supplement.

Approved March 11, 1981

CHAPTER 343

SENATE BILL NO. 2042
(Legislative Council)
(Interim Administrative Rules Committee)

RULE OBJECTION AUTHORITY

AN ACT to create and enact section 28-32-03.3 of the North Dakota Century Code, relating to the effect of an objection by the committee on administrative rules to a rule adopted by an administrative agency; and to amend and reenact sections 28-32-03.1 and 54-35-02.6 of the North Dakota Century Code, relating to the publication of the administrative code and administrative code supplement and the responsibility of the committee on administrative rules.

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

* SECTION 1. AMENDMENT. Section 28-32-03.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03.1. ADMINISTRATIVE CODE AND CODE SUPPLEMENT.

1. The office of the legislative council shall~~,--as-soon-as practicable--after--July--1,--1977,~~ compile, index, and publish all rules ~~and-regulations~~ filed pursuant to this chapter in a publication which shall be known as the North Dakota Administrative Code, ~~herein~~ in this chapter referred to as the code. The code shall also contain all objections filed with the office of the legislative council by the committee on administrative rules pursuant to section 28-32-03.3. The code shall be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise the code, or any part thereof, as often as the legislative council deems necessary.

2. The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement, ~~herein~~ in this chapter referred to as the code supplement, ~~each~~ the month after the month that rules ~~and--regulations~~ are submitted to the office of the legislative council for publication.

* NOTE: Section 28-32-03.1 was also amended by section 5 of Senate Bill No. 2044, chapter 341.

a. The code supplement shall contain all rules filed with the office of the legislative council since the compilation and publication of the preceding issue of the code supplement. The office of the legislative council may establish a due date by which rules ~~and regulations~~ must be submitted by an agency for publication during any month.

b. The code supplement shall contain all objections filed with the office of the legislative council by the committee on administrative rules pursuant to section 28-32-03.3.

c. The code supplement shall be printed or duplicated in the same style as the code ~~shall be set up~~ so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.

3. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.

4. The code shall be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the office of the legislative council for the printing of as many copies of such separate portions of the code as it may require. The cost of any such separate portions shall be paid by the agency.

SECTION 2. Section 28-32-03.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

28-32-03.3. COMMITTEE ON ADMINISTRATIVE RULES - OBJECTION TO RULES - EFFECTS OF OBJECTION.

1. If the legislative council's committee on administrative rules objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file that objection in certified form in the office of the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.

2. The office of the legislative council shall attach to each objection a certification of the time and date of its filing and as soon as possible shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The office of the legislative council shall also maintain a permanent register of all committee objections.

3. The office of the legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.

4. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

5. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs. These court costs shall include a reasonable attorney's fee and shall be payable from the appropriation of the agency which adopted the rule in question.

SECTION 3. AMENDMENT. Section 54-35-02.6 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-35-02.6. RULES REFERRED TO INTERIM COMMITTEE - COMMITTEE RESPONSIBILITY. The chairman of the legislative council may assign proposed and existing rules and regulations of administrative agencies, as defined by section 28-32-01, and written complaints received concerning such rules to the committee. The committee shall study and review assigned rules to determine whether:

1. Administrative agencies are properly implementing legislative purpose and intent.

2. There are court or agency expressions of dissatisfaction with state statutes or with rules of administrative agencies promulgated pursuant thereto.

3. The court opinions or rules indicate unclear or ambiguous statutes.

The committee may make rule change recommendations to the adopting agency and may make recommendations to the legislative council for the amendment or repeal of enabling legislation serving as authority for rules. The committee's failure to review proposed rules prior to publication in the North Dakota Administrative Code shall not prevent rules from taking effect~~,-nor-shall~~. Except for objections pursuant to section 28-32-03.3, the recommendations or opinions of the committee shall not affect the legality of any rule as determined by the attorney general.

Approved March 6, 1981

CHAPTER 344

HOUSE BILL NO. 1384
(Representative Wentz)
(Senator H. Christensen)

INTERPRETER FOR DEAF PERSON

AN ACT to create and enact a new subsection to section 28-33-02 of the North Dakota Century Code, relating to when an interpreter is required for deaf persons.

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

SECTION 1. A new subsection to section 28-33-02 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Whenever any deaf person is a party to any proceedings involving, or is receiving any services from, any agency under the authority of the state or any political subdivision, the agency shall inform the deaf person of his right to a qualified interpreter to interpret or translate the action of any personnel providing such service and to assist the deaf person in communicating with each other person. The interpreter shall be appointed, at the expense of the agency, upon the request of the deaf person or the deaf person's parent or guardian, if the deaf person is a minor.

Approved March 26, 1981

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 345

SENATE BILL NO. 2225
(Vosper, Olin, Erickson)

WARRANTLESS ARREST AUTHORITY

AN ACT to amend and reenact section 29-06-15 of the North Dakota Century Code, relating to the power of a peace officer or officer in the United States customs service or the immigration and naturalization service, without a warrant, to arrest a person.

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

SECTION 1. AMENDMENT. Section 29-06-15 of 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:

~~1.~~ a. For a public offense, committed or attempted in ~~his~~ the officer's presence; and for the purpose of this subsection a crime shall be deemed committed or attempted in ~~his~~ the officer's presence when what the officer observes through ~~his~~ the officer's senses reasonably indicates to ~~him~~ the officer that a crime was in fact committed or attempted in ~~his~~ the officer's presence by the person arrested.

~~2.~~ b. When the person arrested has committed a felony, although not in ~~his~~ the officer's presence.

~~3.~~ c. When a felony in fact has been committed, and ~~he~~ the officer has reasonable cause to believe the person arrested to have committed it.

~~4.~~ d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.

~~5.~~ e. For ~~such~~ the public offenses, not classified as felonies and not committed in ~~his~~ the officer's presence as provided for under section 29-06-15.1.

~~6.~~ 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.

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 of subdivision b of this subsection, 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 12-61.

Approved March 11, 1981

CHAPTER 346

SENATE BILL NO. 2313
(Stenehjem)

CHANGE OF JUDGE

AN ACT to amend and reenact sections 27-07-23, 27-08-27, 27-08-38, subsections 4, 6, 7, 8, and 9 of section 29-15-21, and sections 33-03-05 and 33-03-11 of the North Dakota Century Code, relating to assignment of judges and change of venue.

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

* SECTION 1. AMENDMENT. If House Bill No. 1060 is not approved by the forty-seventh legislative assembly, then section 27-07-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07-23. CHANGE OF JUDGE - WHEN PERMITTED - HOW OBTAINED - AUTHORITY AND DUTIES OF OTHER JUDGE. If the judge of the county court of any county is disqualified, is necessarily absent from this state, or is ill and unable to act, ~~he~~ the judge shall request ~~in writing the county judge of an adjoining county to act in his place and stead, provided, however, that should the county judge become incapacitated or incompetent because of illness to the extent that he is unable to make a request in writing, then the district court having jurisdiction of said county shall in writing request the county judge of an adjoining county to act in the place and stead of the incapacitated county judge~~ that the presiding judge of the judicial district in which the county is situated assign another judge in the district to act in the county judge's place. If another judge in the judicial district is unavailable for assignment, the presiding judge shall request the chief justice to assign a judge to fill the temporary vacancy. When acting pursuant to ~~such request~~ the assignment, the ~~county judge of such adjoining county~~ assigned judge shall possess all the powers and shall have all the jurisdiction of the county judge for whom ~~he~~ the assigned judge acts~~, and the judge so requested shall attend for the purpose of acting for such judge at such time as may be necessary~~.

SECTION 2. If House Bill No. 1060 is not approved by the forty-seventh legislative assembly, then section 27-08-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Chapter 27-07 was repealed by section 51 of House Bill No. 1060, chapter 319.

27-08-27. CHANGE OF JUDGE FOR TRIAL OF CIVIL ACTION IN COUNTY COURT ~~HAVING~~ OF INCREASED JURISDICTION. If a party to a civil action in a county court ~~having~~ of increased jurisdiction, after issue is joined ~~therein~~ and before the opening of ~~a--term--of--such court-at-which-the-cause-is-to-be-tried~~ the trial, shall file ~~his~~ an affidavit, corroborated by the affidavit of his attorney and that of at least one other reputable person, stating that there is good reason to believe that ~~such~~ the party cannot have a fair and impartial trial of ~~said~~ the action by reason of the prejudice, bias, or interest of the judge ~~of--such--court,--such,~~ the judge shall proceed no further in ~~such~~ the action, but~~,-forthwith,~~ shall ~~certify all-proceedings-therein-to-the-district--court--of--the--county--for trial-or-shall-request,-arrange-for,-and-procure-the-county-judge-of some-other-county-court-having-increased-jurisdiction-to-preside--at the--trial--thereof--in--the--county--in-which-the-action-is-pending~~ immediately forward the request for a change of judge to the presiding judge of the judicial district in which the county is situated. The presiding judge of the judicial district shall assign another judge in the district to act in the place of the disqualified judge. If another judge of a county court of increased jurisdiction in the judicial district is not available for assignment, then the presiding judge shall request the chief justice to assign a judge to act in the place of the disqualified judge. The actual expenses of ~~such~~ the assigned judge while in attendance upon the trial of the cause for which the change was had and the extra expense of the court and jury incurred by reason of such change shall be paid ~~in-advance-by-the-person-asking-for-the-change, or-such-person-shall-give-a-bond-for-the-payment-thereof.--If-a-bond is--given,-the-same-shall-be-approved-by-the-clerk-of-such-court-and the-amount-thereof-shall-be-fixed-by--the--presiding--judge~~ by the county in which the case originated. Not more than one such change shall be granted on the application of either party, and a failure to file ~~such~~ an affidavit of prejudice within the time specified shall constitute a waiver of all objections to the trial of ~~such~~ the action by the presiding judge of such county court.

SECTION 3. AMENDMENT. If House Bill No. 1060 is not approved by the forty-seventh legislative assembly, then section 27-08-38 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08-38. CHANGE OF JUDGE FOR TRIAL OF CRIMINAL ACTION IN COUNTY COURT ~~HAVING~~ OF INCREASED JURISDICTION. If the state or a defendant in a criminal action in a county court ~~having~~ of increased jurisdiction, before the opening of a term of such court at which such action is to be tried, or if a trial thereof has been had without a verdict, at the term at which said trial was had and before another trial of the action is begun, shall file with the clerk of the court in which the action or proceeding is pending a written demand for change of judge, such judge shall proceed no further in such action, but~~,--forthwith,---shall---certify---all proceedings--in--such-action-to-the-district-court-of-the-county-for trial-or-shall-request,-arrange-for,-and-procure-the-county-judge-of some--other-county-court-having-increased-jurisdiction-to-preside-at~~

~~the trial thereof in the county in which the action is pending~~ shall immediately forward the request for a change of judge to the presiding judge of the judicial district in which the county is situated. The presiding judge shall then assign another judge in the district to act in the place of the disqualified judge. If another judge of a county court of increased jurisdiction in the judicial district is not available for assignment, then the presiding judge shall request the chief justice to assign a judge to act in the place of the disqualified judge. The actual expenses of such judge while traveling to and from the county to which he has been called and during the trial of such action shall be paid by the county in which the action ~~is pending~~ originated. Not more than one such change each shall be granted to the state or the defendant. The procedures set out in subsections 1 through 3 of section 29-15-21 with regard to change of judge in district court shall apply to this section.

SECTION 4. AMENDMENT. Subsections 4, 6, 7, 8, and 9 of section 29-15-21 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Upon the filing of the demand for change of judge, the clerk shall ~~forthwith notify the judge sought to be disqualified by delivering to him a copy of the demand, and promptly forwarding another copy of the demand to the clerk of the supreme court~~ immediately send a copy of the demand for a change of judge to the presiding judge of the judicial district and the judge sought to be disqualified.

6. If a demand for a change of judge has been made and another judge assigned by the ~~supreme court,~~ presiding judge of the judicial district, the ~~supreme court~~ presiding judge may decline to grant another demand for a change of judge made by a party whose interests in the matter are not adverse to those of the party whose demand was granted. A judge assigned by the ~~supreme court~~ presiding judge pursuant to a demand for change of judge is not disqualified upon a subsequent demand for change of judge unless and until the subsequent demand is granted and notice thereof is given to him by the ~~supreme court~~ presiding judge. A subsequent demand for a change of judge may be made only within five days after receiving notice of the assignment of a judge by the ~~supreme court~~ presiding judge pursuant to a previous demand.

7. Upon receipt of a timely filed demand for a change of judge from the clerk of the district court of any county in this state, the ~~supreme court~~ presiding judge of the judicial district shall designate a district judge to act in the place and stead of the judge disqualified.

8. The judge designated, as soon as possible after receiving such notice from the ~~supreme court~~ presiding judge of the judicial district and during the same term unless

agreement to the contrary is made by the parties, shall proceed with the hearing or trial, first giving to the parties or their attorneys reasonable notice of the date of the hearing or trial.

9. Whenever a demand for a change of judge is filed in a criminal action, in accordance with the provisions of this section, and the party also asks for a change of place of trial upon any ground specified in rule 21 of the North Dakota Rules of Criminal Procedure, the ~~court~~ judge against whom the demand for change is filed shall proceed no further in the action and thereupon shall be disqualified to do any further act in said cause. In such case, the application for a change of place of trial shall be heard and determined by the judge designated by the ~~supreme court~~ presiding judge to act in said action.

SECTION 5. AMENDMENT. If House Bill No. 1060 is not approved by the forty-seventh legislative assembly, then section 33-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-03-05. COUNTY JUSTICE MAY CALL IN OTHER COUNTY JUSTICE TO PRESIDE. In case of the sickness, disqualification, disability, or necessary absence of a county justice, ~~on a return of a summons or at the time appointed for a trial before him, another county justice as the parties may agree upon and, if they do not so agree, then the next nearest county justice, may attend in his behalf~~ the presiding judge of the judicial district in which the county is situated shall assign another judge in the district to act in his place. If another judge in the judicial district is unavailable for assignment, the presiding judge shall request the chief justice to assign a judge to fill the vacancy. ~~Such other county justice~~ The judge designated to fill the vacancy shall be vested, ~~for the time being,~~ with the powers of the county justice ~~before whom the summons was returnable~~ for whom the judge acts. ~~In that case, the~~ The proper entry of the proceedings before the ~~attending county justice, subscribed by him,~~ assigned judge must be made in the docket of the county justice ~~before whom the summons was returnable~~ for whom the assigned judge is acting. ~~If the case is adjourned, the county justice before whom the summons was returnable may resume jurisdiction.~~

SECTION 6. AMENDMENT. If House Bill No. 1060 is not approved by the forty-seventh legislative assembly, then section 33-03-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-03-11. CHANGE OF VENUE IN CIVIL AND CRIMINAL ACTIONS IN COUNTY JUSTICE COURT. A county justice court, ~~at any time before the trial of a civil or criminal action, on motion,~~ may change the place of trial in ~~any of the following cases~~ a civil or criminal action pending therein:

~~1.--When,--by--affidavit--of--either--party,-it-appears-to-the satisfaction-of-the-county-justice-before-whom-the--action is--pending--that--such--justice-is-a-material-witness-for either-party.~~

~~2.--When--either--party--makes--and-files-an-affidavit-that-he believes-he-cannot-have-a-fair-and-impartial-trial--before such--county-justice-by-reason-of-the-interest,-prejudice, or-bias-of-the-justice.~~

~~3.--When--from--any--cause--the-county-justice-is-disqualified from-acting.~~

~~4.--When-the-county-justice-is-sick-or-unable-to-act.~~

1. If the county designated in the summons and complaint as the place of trial thereof is not the proper county;

2. If there is reason to believe that an impartial trial of such action cannot be had in the county in which the action presently is pending; or

3. If the convenience of the witnesses and the ends of justice would be promoted by such change.

Approved March 31, 1981

UNIFORM PROBATE CODE

CHAPTER 347

SENATE BILL NO. 2264
(Lashkowitz)

PERSONAL REPRESENTATIVE APPOINTMENT PRIORITY

AN ACT to amend and reenact subsection 1 of section 30.1-13-03 of the North Dakota Century Code, relating to priority among persons seeking appointment as personal representatives.

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

SECTION 1. AMENDMENT. Subsection 1 of section 30.1-13-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-13-03. (3-203) PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE.

1. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

   a. The person with priority as determined by a probated will including a person nominated by a power conferred in a will.

   b. The surviving spouse of the decedent who is a devisee of the decedent.

   c. Other devisees of the decedent.

   d. The surviving spouse of the decedent.

   e. Other heirs of the decedent.

   f. A trust company.

   g. Forty-five days after the death of the decedent, any creditor.

Approved March 11, 1981

CHAPTER 348

SENATE BILL NO. 2229
(Senator Lashkowitz)
(Representative Heigaard)

COURT APPROVAL OF TESTAMENTARY APPOINTMENT

AN ACT to amend and reenact section 30.1-27-02 of the North Dakota Century Code, relating to the testamentary appointment of a guardian for a minor, and providing that the guardian must be approved by the court.

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

SECTION 1. AMENDMENT. Section 30.1-27-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-27-02. (5-202) TESTAMENTARY APPOINTMENT OF GUARDIAN OF MINOR. The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 30.1-27-03, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated and upon approval by the court either after or without a hearing, if, before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile and upon approval by the court either after or without a hearing. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation.

Approved March 11, 1981

JUDICIAL PROOF

CHAPTER 349

HOUSE BILL NO. 1304
(Martinson)

ADDICTION COUNSELOR-CLIENT PRIVILEGE

AN ACT to establish a certified addiction counselor-client privilege for confidential communications.

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

SECTION 1. DEFINITIONS. As used in this Act:

1. "Client" means a person who consults or is examined or interviewed by a counselor.

2. "Confidential communication" means a communication which is not intended to be disclosed to third parties, except persons present to further the interest of the client in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the counselor, including members of the client's family.

3. "Counselor" means an addiction counselor who has been certified by the professional standards and certification committee appointed by the state health officer in accordance with qualifications established by that committee 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.

4. "Privilege" means the counselor-client privilege authorized under sections 1 through 4 of this Act.

SECTION 2. CERTIFIED ADDICTION COUNSELOR - CLIENT GENERAL RULE OF PRIVILEGE. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the client's physical, mental, or emotional condition, including alcohol or drug addiction, among the client, the client's counselor, and

persons who are participating in the diagnosis or treatment under the direction of the counselor, including members of the client's family.

SECTION 3. WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the client, the client's guardian or conservator, or the personal representative of a deceased client. The person who was the counselor at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

SECTION 4. EXCEPTIONS TO THE PRIVILEGE.

1. There is no privilege under this Act for communications relevant to an issue in proceedings to hospitalize the client for mental illness, including alcohol or drug addiction, if the counselor in the course of diagnosis or treatment has determined the client is in need of hospitalization.

2. If the court orders an examination of the physical, mental, or emotional condition of a client, whether a party or a witness, communications made in the course thereof are not privileged under this Act with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

3. There is no privilege under this Act as to a communication relevant to an issue of the physical, mental, or emotional condition of the client in any proceeding in which the client relies on a condition as an element of the client's claim or defense or, after the client's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

Approved March 26, 1981

JUDICIAL REMEDIES

CHAPTER 350

HOUSE BILL NO. 1064
(Legislative Council)
(Interim Judiciary "C" Committee)

GARNISHMENT

AN ACT to create and enact chapter 32-09.1 of the North Dakota Century Code, relating to proceeding by garnishment in state courts; and to repeal chapters 32-09 and 33-05 of the North Dakota Century Code, relating to proceeding by garnishment in state courts and proceeding by garnishment in county justice courts.

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

SECTION 1. Chapter 32-09.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

32-09.1-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

1. "Defendant" means every judgment debtor.

2. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by other law to be withheld.

3. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

4. "Person" includes an individual, an individual's personal representative or other fiduciary, any two or more persons having a joint or common interest, a partnership, an association, a corporation, and any other legal or commercial entity.

5. "Plaintiff" means every judgment creditor.

32-09.1-02. CREDITORS MAY PROCEED BY GARNISHMENT. Any creditor is entitled to proceed by garnishment in any court having

jurisdiction of the subject of the action, against any person, any public corporation, the state of North Dakota, or any institution, department, or agency of the state, indebted to or having any property in possession or under control, belonging to the creditor's debtor after securing a judgment against the debtor in a court of competent jurisdiction, in the cases, upon the conditions, and in the manner prescribed in this chapter.

32-09.1-03. RESTRICTION ON GARNISHMENT OF EARNINGS.

1. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed the lesser of:

   a. Twenty-five percent of disposable earnings for that week.

   b. The amount by which disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended [Pub. L. 95-151; 91 Stat. 1245; 29 U.S.C. 206] or any equivalent multiple thereof prescribed by regulation by the secretary of labor in case of earnings for any pay period other than a week, in effect at the time the earnings are payable.

2. The restrictions of subsection 1 do not apply in the case of:

   a. Any order of any court for the support of any person.

   b. Any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.

   c. Any debt due for any state or federal tax.

3. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:

   a. Where such individual is supporting a spouse or dependent child other than a spouse or child with respect to whose support such order is used, fifty percent of the individual's disposable earnings for that week; and

   b. Where such individual is not supporting a spouse or dependent child other than a spouse or child with respect to whose support such order is used, sixty percent of the individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the fifty percent specified in subdivision a of this subsection shall be deemed to be fifty-five percent and the sixty percent specified in subdivision b of this subsection shall be deemed to be sixty-five percent, if and to the extent that the earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

4. No court of this state may make, execute, or enforce any order or process in violation of this section.

32-09.1-04. NOTICE BEFORE GARNISHMENT OF EARNINGS. At least ten days prior to the issuance of any garnishee summons against the earnings of any person, the creditor shall serve upon the debtor a notice that a garnishee summons may be issued. The notice shall be served personally or by first-class mail. Failure to serve the notice renders any subsequent garnishment void. The notice shall be in substantially the following form:

To: ---------- Date: ----------
Judgment Debtor

Please take notice that a garnishee summons which will require part of your wages to be withheld may be served upon your employer, without any further court proceedings or notice to you, at any time after ten days following the date of this notice. You may wish to contact the undersigned or his attorney in order to arrange for the settlement of the debt, which is $----------.

Judgment Creditor
Address

32-09.1-05. SERVICE ON DEPARTMENT OF ACCOUNTS AND PURCHASES - FEES. Service upon the state of North Dakota, or any institution, department, or agency thereof, as garnishee, may be made upon the director of the department of accounts and purchases in the manner provided by law for service in garnishment proceedings, including the fee to be tendered and paid the department of accounts and purchases for making and filing an affidavit of disclosure in the amount of ten dollars. The fee shall be paid into the state treasury.

32-09.1-06. GARNISHEE SUMMONS. In any action in a court of record for the recovery of money, at any time after judgment, a garnishee summons may be issued against any third person as provided in this chapter. The plaintiff and defendant shall be designated. The person against whom the summons is issued shall be designated garnishee.

32-09.1-07. FORM OF SUMMONS AND NOTICE. The garnishee summons must state that the garnishee must serve upon the plaintiff or plaintiff's attorney within twenty days after service of the garnishee summons, a written disclosure, under oath, of indebtedness to the defendant and answers to all written interrogatories which are served with the garnishee summons. The plaintiff may not require disclosure of an indebtedness or property of defendant in the garnishee's possession or under the garnishee's control in excess of one hundred ten percent of the amount of the judgment which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment which remains unpaid. The garnishee summons must also state that the garnishee must retain property or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff, and must state that after the expiration of the period of time specified in section 32-09.1-20, from the date of service of the garnishee summons, the garnishee must release all retained property and money to the defendant and is discharged and relieved of all liability thereon. The garnishee summons must state that no employer may discharge any employee because the employee's earnings have been subject to garnishment. The garnishee summons must state that any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days prior to the receipt of notice of the first garnishment on the underlying debt is void. The garnishee summons must state the date of the entry of judgment against the defendant.

The garnishee summons and notice to defendant shall be substantially in the following form:

State of North Dakota)
) ss.
County of ----------) In ---------- Court

Plaintiff

against ----------

Defendant

and

Garnishee

Garnishee Summons and Notice to Defendant

The State of North Dakota to the above-named Garnishee:

You are hereby summoned and required to serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, ---------- (Give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed $--------.

(Enter 110 percent of the plaintiff's judgment which remains unpaid.) The amount of the judgment which remains unpaid is $---------. You are required to retain in your possession the defendant's property, money, and effects in an amount not exceeding the amount required to be disclosed by you, or so much thereof as is not exempt.

Failure to disclose and withhold may make you liable to the plaintiff for the sum of $---------. (Enter the lesser of the plaintiff's judgment against the defendant or 110 percent of the amount which remains unpaid.)

You shall retain the defendant's nonexempt property, money, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of 180 days from the date of service of this summons upon you. If no writ of execution has been served upon you, or no agreement has been made for payment, within 180 days, the garnishment shall end and any property or funds held by you shall be returned to the defendant if the defendant is otherwise entitled to their possession.

Any assignment of wages by the defendant, or indebtedness to you incurred by the defendant, within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.

You may not discharge the defendant because the defendant's earnings have been subjected to garnishment.

Dated this ---- day of --------, 19----.
By: ----------

NOTICE TO DEFENDANT

To:----------

The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), which are served upon you, were also served upon ----------, the garnishee.

(Attorneys for Plaintiff)

(Address)

(Telephone)

32-09.1-08. SERVICE. The garnishee summons and notice to defendant shall be served upon the garnishee in the same manner as other summons in that court of record except that service must be personal. The plaintiff shall serve with the garnishee summons a

disclosure form, substantially as set out in this chapter. The plaintiff may also serve interrogatories with the garnishee summons. A copy of the garnishee summons and copies of all other papers served on the garnishee must be served personally upon the defendant not later than five days after service is made upon the garnishee. A single garnishee summons may be addressed to two or more garnishees but must state whether each is summoned separately or jointly.

32-09.1-09. DISCLOSURE. Within the time as limited, the garnishee shall serve upon the plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the garnishment disclosure form and to any written interrogatories which are served upon the garnishee. The amount of the garnishee's disclosure need not exceed one hundred ten percent of the amount of the plaintiff's judgment which remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownerships, or other interests. The written answers may be served personally or by mail. If disclosure is by a corporation, it must be verified by some officer or agent having knowledge of the facts. Disclosure must state:

1. The amount of disposable earnings earned or to be earned within the defendant's pay periods which may be subject to garnishment and all of the garnishee's indebtedness to the defendant.

2. Whether the garnishee held, at the time, the title or possession of or any interest in any personal property or any instruments or papers relating to any property belonging to the defendant or in which the defendant is interested. If the garnishee admits any interest or any doubt respecting the interest, the garnishee shall set forth a description of the property and the facts concerning the property and the title, interest, or claim of the defendant in or to the property.

3. If the garnishee claims any setoff or defense or claim or lien to disposable earnings, indebtedness, or property, the garnishee shall disclose the amount and the facts.

4. Whether the defendant claims any exemption from execution, or any other objection, known to the garnishee or the defendant, against the right of the plaintiff to apply upon demand the debt or property disclosed.

5. If other persons make claims to any disposable earnings, debt, or property of the defendant, the garnishee shall disclose the names and addresses of the other claimants and, so far as known, the nature of their claims.

A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form:

State of North Dakota) In ---------- Court
) ss.
County of ----------) ----------

Plaintiff
vs.

Defendant
and Garnishment Disclosure

Garnishee

I am the ---------- of the garnishee and duly authorized to disclose for the garnishee.

On the ------- day of ---------, 19---, the time of service of garnishee summons on the garnishee, there was due and owing the defendant from the garnishee the following:

1. Earnings. For the purposes of garnishment, "earnings" means compensation payable for personal service whether called wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past pay period and the current pay period.

   a. Enter on the line below the amount of disposable earnings earned or to be earned by the defendant within the defendant's pay periods which may be subject to garnishment.

   ---

   b. Enter on the line below forty times the hourly federal minimum wage times the number of workweeks within the defendant's pay periods which may be subject to garnishment. When pay periods consist of other than a whole number of workweeks, each day of a pay period in excess of the number of completed workweeks shall be counted as a fraction of a workweek equal to the number of workdays divided by the number of workdays in the normal workweek.

   ---

c. Enter on the line below the difference obtained (never less than zero) when line b is subtracted from line a.

---

d. Enter on the line below 25 percent of line a.

---

e. Enter on the line below the lesser of line c and line d.

---

2. Money. Enter on the line below any amounts due and owing defendant, except earnings, from the garnishee.

---

3. Property. Describe on the line below any personal property, instruments, or papers belonging to the defendant and in the possession of the garnishee.

---

4. Setoff. Enter on the line below the amount of any setoff, defense, lien, or claim which the garnishee claims against the amount set forth on lines (1)(e), 2, and 3. Allege the facts by which the setoff, defense, lien, or claim is claimed. (Any indebtedness to a garnishee-employer incurred by the judgment debtor within ten days prior to the receipt of the first garnishment on a debt is void and should be disregarded.)

---

5. Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the defendant's property. State the names and addresses of the persons and the nature of their claim, if known. (Any assignment of wages made by the defendant within ten days prior to the receipt of the first garnishment on a debt is void and should be disregarded.)

6. Enter on the line below the total of lines 4 and 5.

---

7. Enter on the line below the difference obtained (never less than zero) when line 6 is subtracted from the sum of line 1(e), 2, and 3.

---

8. Enter on the line below 110 percent of the amount of the judgment creditor's judgment which remains unpaid.

---

9. Enter on the line below the lesser of line 7 and line 8. As garnishee, you are hereby instructed to retain this amount only if it is $10.00 or more.

Signature----------
Authorized Representative
of Garnishee

Title

Subscribed and sworn to before me this ---------- day of ----------, 19----.

Notary Public

32-09.1-10. DISCLOSURE FEES. In all garnishment proceedings, the plaintiff, when the garnishee summons is served upon the garnishee, shall tender to the garnishee the sum of ten dollars as the fee for making an affidavit of disclosure.

32-09.1-11. EFFECT OF DISCLOSURE. Subject to the provisions of sections 32-09.1-12 and 32-09.1-13, the disclosure is conclusive as to all property of defendant. If the garnishee denies having any indebtedness to the defendant or having any property of the defendant in possession, the filing in court of a copy of the disclosure operates as a full discharge of the garnishee at the end of twenty days from date of service of the disclosure, in the absence of further proceedings as provided for in sections 32-09.1-12 and 32-09.1-13. The filing of objections to the disclosure or the filing of any motion or other proceedings operates as a stay of the discharge. The court may, upon proper showing, relieve the plaintiff from the operation of the discharge after the expiration of twenty days. The garnishee may be discharged where the value of the property of defendant held or indebtedness owing to defendant is less than ten dollars, and the garnishee may apply to the court to be discharged as to any property or indebtedness in excess of the amount which may be required to satisfy plaintiff's judgment.

32-09.1-12. ORAL DISCLOSURE - SUPPLEMENTAL COMPLAINT. Either before or after written disclosure, any party to the garnishment

proceedings may obtain an ex parte order requiring oral disclosure. The order may be obtained upon affidavit showing, upon information and belief, facts justifying the order, and the court shall require the garnishee to appear for oral examination before the court. If the garnishee holds the garnished property by a title that is void as to the defendant's creditors, the garnishee may be charged for the property although the defendant could not have maintained an action against the garnishee for it; but in this, and in all other cases where the garnishee denies liability, the plaintiff may move the court at any time before the garnishee is discharged, on notice to both the defendant and the garnishee, for leave to file a supplemental complaint making the garnishee a party to the action, and setting forth the facts upon which the plaintiff claims to charge the garnishee. If probable cause is shown, the motion shall be granted. The supplemental complaint must be served upon both defendant and garnishee, either or both of whom may answer, and the plaintiff may reply. The issues must be brought to trial and tried as in other actions.

32-09.1-13. THIRD PARTY MAY INTERVENE. If it appears that any person not a party to the action has or claims an interest in any of the garnished property antedating the garnishment, the court may permit that person to appear and maintain that person's rights. If the person does not appear, the court may direct that the person be notified to appear or be barred of the claim. The notice may be served in a manner as the court directs, and the person appearing or notified shall be joined as a party and is bound by judgment against the garnishee.

32-09.1-14. DEFAULT. If any garnishee who is duly summoned fails to serve disclosure as required in this chapter, the court may, upon proof by affidavit, render judgment against the garnishee for an amount not exceeding the plaintiff's judgment against the defendant or one hundred ten percent of the amount which remains unpaid, whichever is the smaller, but the court upon good cause shown may remove the default and permit the garnishee to disclose on terms as may be just.

32-09.1-15. JUDGMENT AGAINST GARNISHEE. Judgment against a garnishee shall be rendered, if at all, for the amount due the defendant, or so much thereof as may be necessary to satisfy the plaintiff's judgment against the defendant, with costs taxed and allowed in the proceeding against the garnishee but not to exceed one hundred ten percent of the amount which remains unpaid. The judgment shall discharge the garnishee from all claims of all the parties named in the process to the property or money paid, delivered, or accounted for by the garnishee by force of the judgment. When any person is charged as garnishee by reason of any property in possession other than an indebtedness payable in money, that person shall deliver the property, or so much thereof as may be necessary, to the officer holding execution, and the property shall be sold and the proceeds accounted for in the same manner as if it had been taken on execution against the defendant. The garnishee shall not be compelled to deliver any specific articles at any time

or place other than as stipulated in the contract with the defendant.

32-09.1-16. MINIMUM JUDGMENT. No judgment may be rendered against a garnishee where the judgment against the defendant is less than twenty-five dollars, exclusive of costs, rather, the garnishee shall be discharged.

32-09.1-17. DISCHARGE NOT A BAR. If any person summoned as a garnishee is discharged, the judgment is no bar to an action brought by the defendant or other claimants against the garnishee for the same demand.

32-09.1-18. DISCHARGE FROM EMPLOYMENT FOR GARNISHMENT OR EXECUTION PROHIBITED. No employer may discharge any employee by reason of the fact that earnings have been subjected to garnishment or execution. If an employer discharges an employee in violation of this section, the employee may within ninety days of discharge bring a civil action for recovery of twice the wages lost as a result of the violation and for an order requiring reinstatement.

32-09.1-19. GARNISHMENTS - MINIMAL AMOUNT - DISCLOSURE. If the amount required to be retained by the garnishee is less than ten dollars, the garnishee shall not retain the sum but shall make the disclosures otherwise required.

32-09.1-20. TERMINATION OF GARNISHMENT. A garnishee summons lapses and the garnishee is discharged of any liability upon the expiration of one hundred eighty days after the service of the summons, or a longer period of time either agreed to in writing by the plaintiff and the defendant or ordered by the court. Immediately upon the lapse of the garnishee summons, all earnings, money, property, and effects which the garnishee has been retaining pursuant to the garnishment shall be returned to the defendant if the defendant is otherwise legally entitled to receipt of them.

32-09.1-21. CONTINUING LIEN ON WAGES. A plaintiff may obtain a sixty-day continuing lien on wages by garnishment. If a lien is to be obtained, the plaintiff shall mark on the caption of the garnishee summons "continuing lien" and all disclosure forms must include the following:

> Garnishee will continue to hold the nonexempt portion of the defendant's earnings as they accrue through the last payroll period ending on or before sixty days from the effective date of the garnishee summons, or until the sum held equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever first occurs.

At the time of the expected termination of the lien, the plaintiff shall mail to garnishee an additional copy of the disclosure form upon which the garnishee within ten days shall make further disclosure.

32-09.1-22. CLAIM OF EXEMPTIONS - HOW MADE. When the defendant c aims that the indebtedness or property, or a part thereof, is exempt from garnishment or from execution, the defendant, at or before twenty days after the service of the garnishee summons, shall file a schedule of all personal property subscribed and sworn to as provided in section 28-22-07.

32-09.1-23. CLAIM OF EXEMPTIONS - WHEN HEARD. In all cases when the defendant claims the debt or property garnished to be exempt, the claim of exemptions may be heard and determined by the court at any time after the claim is made, on three days' notice to the plaintiff.

* SECTION 2. REPEAL. Chapters 32-09 and 33-05 of the North Dakota Century Code are hereby repealed.

Approved March 31, 1981

* NOTE: Chapter 33-05 was also repealed by section 51 of House Bill No. 1060, chapter 319, and section 33-05-01 was amended by section 20 of House Bill No. 1069, chapter 91.

CHAPTER 351

HOUSE BILL NO. 1063
(Legislative Council)
(Interim Judiciary "B" Committee)

POLITICAL SUBDIVISION EMPLOYEE LIABILITY ACTION

AN ACT to amend and reenact section 32-12.1-04 of the North Dakota Century Code, relating to political subdivisions defending actions brought against employees and to the personal liability and indemnification of employees, and providing that an action for injuries proximately caused by the alleged negligence, wrongful act, or omission of an employee within the scope of employment or office shall be brought against a political subdivision.

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

SECTION 1. AMENDMENT. Section 32-12.1-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-04. POLITICAL SUBDIVISION TO ~~DEFEND CLAIM AGAINST EMPLOYEE~~ BE NAMED IN ACTION - PERSONAL LIABILITY OF EMPLOYEES - INDEMNIFICATION OF CLAIMS AND FINAL JUDGMENTS.

1. ~~The governing body of any political subdivision shall defend any claim against an employee thereof where the political subdivision could otherwise be held liable pursuant to subsection 1 of section 32-12.1-03. A claim against an employee shall be brought in the same manner as a claim against a political subdivision and shall be subject to the same limitations. In any~~ An action ~~against an employee of a political subdivision for an~~ for injuries proximately caused by the alleged negligence, wrongful act, or omission of an employee of a political subdivision occurring within the scope of the employee's employment or office, shall be brought against the political subdivision ~~shall be joined as a party to the action, and if~~. If there is any question concerning whether the alleged negligence, wrongful act, or omission occurred within the scope of employment or office of the employee, the employee may be named as a party to the action and the issue may be tried separately. A political subdivision

must defend the employee until the court determines the employee was acting outside the scope of the employee's employment or office.

2. An employee shall not 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 within the scope of the employee's employment or office.

3. 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. 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.

~~3.~~ 4. A political subdivision shall indemnify and save harmless an employee for any claim, whether groundless or not, and final judgment for any act or omission occurring within the scope of employment or office of the employee. The indemnification shall be made in the manner provided by this chapter and shall be subject to the limitations herein.

Approved January 30, 1981

CHAPTER 352

HOUSE BILL NO. 1505
(Goetz)

POLITICAL SUBDIVISION INSURANCE RESERVE FUND CLAIM DEFENSE COSTS

AN ACT to amend and reenact subsection 2 of section 32-12.1-08 of the North Dakota Century Code, relating to the political subdivision insurance reserve fund, and allowing the fund to be used for paying costs incurred in the defense of claims.

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

SECTION 1. AMENDMENT. Subsection 2 of section 32-12.1-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. 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 ~~or~~, judgments rendered against the political subdivision for injuries arising out of risks established by this chapter, or costs incurred in the defense of claims.

Approved March 11, 1981

CHAPTER 353

SENATE BILL NO. 2068
(Legislative Council)
(Interim Judiciary "B" Committee)

EMINENT DOMAIN REQUIREMENTS

AN ACT to create and enact two new sections to chapter 32-15 and a new section to chapter 54-12 of the North Dakota Century Code, relating to eminent domain appraisals and offers to purchase, disclosures, and the attorney general preparing eminent domain pamphlets; and to amend and reenact section 32-15-01 of the North Dakota Century Code, relating to the definition of eminent domain.

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

SECTION 1. A new section to chapter 32-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

DUTY TO NEGOTIATE - JUST COMPENSATION - APPRAISALS.

1. A condemnor shall make every reasonable and diligent effort to acquire property by negotiation.

2. Before initiating negotiations for the purchase of property, the condemnor shall establish an amount which it believes to be just compensation therefor and promptly shall submit to the owner an offer to acquire the property for the full amount so established. The amount shall not be less than the condemnor's approved appraisal or written statement and summary of just compensation for the property.

3. In establishing the amount believed to be just compensation, the condemnor shall disregard any decrease or increase in the fair market value of the property caused by the project for which the property is to be acquired or by the reasonable likelihood that the property will be acquired for that project, other than a decrease due to physical deterioration within the reasonable control of the owner.

4. The condemnor shall provide the owner of the property with a written appraisal, if one has been prepared, or if one has not been prepared, with a written statement and summary, showing the basis for the amount it established as just compensation for the property. If appropriate, the compensation for the property to be acquired and for the damages to remaining property shall be separately stated.

SECTION 2. A new section to chapter 32-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

DISCLOSURES. The condemnor, upon request, shall provide the property owner or the owner's representative with the names of at least ten neighboring property owners to whom offers are being made, or a list of all offerees if fewer than ten owners are affected. A current and relevant map showing all neighboring property affected by a project shall also be provided to the property owner. Upon request by an owner or the owner's representative, the condemnor shall provide the names of any other property owners within that county and adjacent counties whose property may be taken for the project. The owner or the owner's representative shall have the right, upon request, to examine any maps in the possession of the condemnor showing property affected by the project. The owner or the owner's representative may obtain copies of such maps by tendering to the condemnor the reasonable and necessary costs of preparing copies.

SECTION 3. AMENDMENT. Section 32-15-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-15-01. "EMINENT DOMAIN" DEFINED - HOW EXERCISED - "CONDEMNOR" DEFINED.

1. Eminent domain is the right to take private property for public use. Private property shall not be taken or damaged for public use without just compensation first having been made to or paid into court for the owner. In case such property is so taken by a person, firm, or private corporation, no benefit to accrue from the proposed improvement shall be allowed in ascertaining the compensation to be made therefor. Such compensation in all cases shall be ascertained by a jury, unless a jury is waived. The right of eminent domain may be exercised in the manner provided in this chapter.

2. For the purpose of this chapter "condemnor" means a person empowered to take property under the power of eminent domain.

SECTION 4. 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 PREPARE EMINENT DOMAIN PAMPHLETS - COPY TO LANDOWNER. The attorney general, with the cooperation of appropriate state agencies, shall prepare pamphlets in readable format describing the eminent domain laws of this state. The pamphlets shall include the reasons for condemnation, the procedures followed by condemnors as defined by section 32-15-01, how citizens may influence the condemnation process, and the rights of property owners and citizens affected by condemnation. The attorney general shall make copies of the pamphlets available to all condemnors who shall be charged a price for the pamphlets sufficient to recover the costs of production. A condemnor shall present a copy of the pamphlet to a property owner prior to making an offer to purchase and initiating a condemnation action.

Approved March 31, 1981

CHAPTER 354

SENATE BILL NO. 2076
(Legislative Council)
(Interim Judiciary "C" Committee)

EMINENT DOMAIN PLAINTIFF'S JURY COST PAYMENT

AN ACT to repeal section 32-15-14 of the North Dakota Century Code, relating to the payment by nongovernmental plaintiffs exercising the power of eminent domain of the costs of jury fees and mileage and the cost of selecting and summoning jury panels for a trial of the issues.

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

SECTION 1. REPEAL. Section 32-15-14 of the North Dakota Century Code is hereby repealed.

Approved March 11, 1981

CHAPTER 355

HOUSE BILL NO. 1356
(Unhjem)

POWER OF ATTORNEY IN FORECLOSURE

AN ACT to repeal section 32-19-02 of the North Dakota Century Code, relating to a power of attorney in foreclosure.

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

SECTION 1. REPEAL. Section 32-19-02 of the North Dakota Century Code is hereby repealed.

Approved March 3, 1981

CHAPTER 356

HOUSE BILL NO. 1355
(Unhjem)

REDEMPTION PERIOD FOR INADEQUATE NOTICE

AN ACT to amend and reenact section 32-19.1-05 of the North Dakota Century Code, relating to the notice before foreclosure containing a statement as to the time of redemption.

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

SECTION 1. AMENDMENT. Section 32-19.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19.1-05. NOTICE BEFORE FORECLOSURE TO STATE TIME FOR REDEMPTION. When the notice before foreclosure required by section 32-19-20 is served upon the title owner of record of the real estate described in the mortgage, such notice shall, where foreclosure is authorized under this chapter, contain a statement as to the time for redemption after the sheriff's sale. Failure to include such a statement in the notice shall not invalidate the notice ~~for any purpose~~ before foreclosure, but the redemption period shall be one year.

Approved March 3, 1981

CHAPTER 357

SENATE BILL NO. 2388
(Wenstrom)

SHORT-TERM MORTGAGE REDEMPTION PERIOD

AN ACT to create and enact section 32-19.1-08 of the North Dakota Century Code, relating to the redemption period under the Short-Term Mortgage Redemption Act.

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

* SECTION 1. Section 32-19.1-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

REDEMPTION PERIOD TO COMMENCE UPON FILING OF SUMMONS AND COMPLAINT. In the event of foreclosure under this chapter, the period of redemption will commence to run at the time of the filing of the summons and complaint in the office of the clerk of the district court, unless it is determined by the district court that the mortgagee is not entitled to judgment, and in no event will the final date for redemption be earlier than sixty days after the sheriff's sale.

Approved March 11, 1981

* NOTE: This section is codified as section 32-19.1-04.1.

CHAPTER 358

HOUSE BILL NO. 1412
(Representative Kretschmar)
(Senator Stenehjem)

MEDICAL MALPRACTICE CLAIM ARBITRATION PROVISIONS REPEALED

AN ACT to repeal chapter 32-29.1 of the North Dakota Century Code, relating to the arbitration of medical malpractice claims; and to declare an emergency.

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

SECTION 1. REPEAL. Chapter 32-29.1 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 5, 1981

LIENS

CHAPTER 359

HOUSE BILL NO. 1377
(Representatives Martin, Knudson)
(Senator Quail)

THRESHING LIEN FILING PERIOD

AN ACT to amend and reenact section 35-07-02 of the North Dakota Century Code, relating to the time within which a threshing lien must be obtained.

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

SECTION 1. AMENDMENT. Section 35-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-07-02. PROCEDURE TO OBTAIN LIEN - STATEMENT FILED - CONTENTS - WAIVER. Any person entitled to a threshing lien, within ~~thirty~~ ninety days after the threshing or combine threshing is completed, shall file in the office of the register of deeds of the county or counties in which the grain was grown a verified statement in writing stating all of the following:

1. The kind and quantity of grain threshed or combine threshed and harvested.
2. The name of the person for whom the threshing was done.
3. A description of the land upon which the grain was grown.
4. The price agreed upon for threshing or combine threshing and harvesting, whether by the acre [.40 hectare], bushel [35.24 liters], hour, or day, and if no price was agreed upon, the reasonable value of such services.

Unless the statement is filed within ~~thirty~~ ninety days as aforesaid, the person entitled to the lien shall be deemed to have waived his right thereto.

Approved March 3, 1981

CHAPTER 360

SENATE BILL NO. 2408
(Nelson, Thane)

FARM LABORER'S LIEN

AN ACT to repeal chapter 35-11 of the North Dakota Century Code, relating to lien required for farm laborers.

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

SECTION 1. REPEAL. Chapter 35-11 of the North Dakota Century Code is hereby repealed.

Approved March 11, 1981

CHAPTER 361

HOUSE BILL NO. 1124
(Committee on Industry, Business, and Labor)
(At the request of the Secretary of State)

MECHANIC'S LIEN RECORDATION

AN ACT to amend and reenact section 35-27-05, subsection 3 of section 35-27-11, and sections 35-27-12, 35-27-13, and 35-27-25 of the North Dakota Century Code, relating to the filing of mechanic's liens; and to repeal subsection 4 of section 11-17-04 and section 35-27-15 of the North Dakota Century Code, relating to fees collected by the clerk of the district court for filing and indexing mechanic's liens and to the duty of the clerk of the district court in filing mechanic's liens.

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

SECTION 1. AMENDMENT. Section 35-27-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-05. NOTICE OF INTENTION TO CLAIM LIEN - FILING. Any person having a contract for the improvement of land in accordance with section 35-27-02 may ~~file for~~ record, with the ~~clerk of court~~ register of deeds of the county within which the land is situated, a verified notice of intention to claim a mechanic's lien, which notice shall be notice to all of his intention to perfect a lien for the contract price or value of all contributions to such improvement thereafter made by him or at his instance. Such notice of intention to claim a mechanic's lien shall contain all of the following:

1. The name of the person in possession of the land.
2. The description of the property to be charged with the lien.
3. The date of the contract.
4. That a mechanic's lien against the building, improvement, or premises will be perfected according to law unless the account shall have been paid.

The ~~clerk of court~~ register of deeds shall ~~file and~~ record the notice of intention to claim a mechanic's lien as is provided in section 35-27-12.

SECTION 2. AMENDMENT. Subsection 3 of section 35-27-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. ~~File~~ Record with the ~~clerk of the district court~~ register of deeds of the county in which the land, building, or improvement is situated a verified notice in writing signed by the person entitled to the mechanic's lien or by his authorized agent stating all of the following:

   a. The name of the person in possession of the land.

   b. The description of the property to be charged with the lien.

   c. The date of the contract.

   d. That a mechanic's lien against the building, improvement, or premises will be perfected according to law unless the account shall have been paid.

SECTION 3. AMENDMENT. Section 35-27-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-12. ~~CLERK OF COURT~~ REGISTER OF DEEDS TO RECORD NOTICE. The ~~clerk of district court~~ register of deeds shall ~~file and~~ record the verified notice of intention ~~to file a lien in a book entitled "book of mechanic's lien notice". The "book of mechanic's lien notice" shall be indexed according to tracts~~ in the reception book, tract index, and elsewhere according to law.

SECTION 4. AMENDMENT. Section 35-27-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-13. HOW LIEN PERFECTED - ~~ACCOUNT FILED~~ MECHANIC'S LIEN RECORDED. Every person desiring to perfect his lien shall ~~file~~ record with the ~~clerk of the district court~~ register of deeds of the county in which the property to be charged with the lien is situated, within ninety days after all his contribution is done, and having complied with the provisions of this chapter, a ~~true account of the demand due him after allowing all credits and containing a correct description of the property to be charged with a lien, which account shall be verified by affidavit~~ mechanic's lien describing the property and stating the amount due.

SECTION 5. AMENDMENT. Section 35-27-25 of 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 agent,

or contractor, served on the person holding the lien, suit shall be commenced and filed with the clerk of court within thirty days thereafter ~~if the debt for which the lien is security is due, and if not due, within thirty days after the same becomes due,~~ or the lien shall be forfeited. No lien shall be valid or effective as such, nor shall the same be enforced in any case, ~~and the clerk of the district court shall cancel any such lien of record,~~ unless the holder thereof shall assert the same ~~either~~ by complaint ~~or answer~~ filed with the clerk of court within three years after the date ~~of the last item of his claim as set forth in the recorded lien account, or within three years after it becomes due, if the lien account shows that it is not then due~~ of recording of the verified notice of intention to claim a mechanic's lien. If a summons and complaint ~~or answer~~ 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 ~~filed~~ recorded within the ~~limitation herein~~ 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 ~~cancel the lien of~~ record the verified certificate.

SECTION 6. REPEAL. Subsection 4 of section 11-17-04 and section 35-27-15 of the North Dakota Century Code are hereby repealed.

Approved March 5, 1981

LIVESTOCK

CHAPTER 362

SENATE BILL NO. 2142
(Committee on Agriculture)
(At the request of the Agriculture Department)

NONSUFFICIENT FUND CHECKS AND LIVESTOCK DEALERS

AN ACT to amend and reenact subsections 2 and 3 of section 6-08-16.2, subsection 2 of section 36-04-01, and subsection 2 of section 36-04-04 of the North Dakota Century Code, relating to the penalty for issuing an insufficient fund check to a livestock dealer and the licensing and regulation of livestock dealers.

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

* SECTION 1. AMENDMENT. Subsections 2 and 3 of section 6-08-16.2 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Any person who, for himself or as agent or representative of another, issues any check, draft, or order for the payment of money is guilty of a class C felony if that person either has issued an instrument in excess of five thousand dollars as payment for a livestock purchase, or has been previously convicted of issuing an instrument without an account or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:

   a. At the time of issuing the instrument with intent to defraud, the drawer does not have an account with the bank or depository on which the instrument is drawn; or

   b. At the time of issuing the instrument with intent to defraud, or at the time of presentation for payment if made within one week after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation~~;--and~~

   ~~c.--If-the-drawer-has-been-previously-convicted-of-issuing an-instrument-without-an-account-or-without-sufficient~~

* NOTE: Section 6-08-16.2 was also amended by section 2 of Senate Bill No. 2344, chapter 120.

~~funds--in--a--bank--or--depository-pursuant-to-section 6-08-16.~~

The person is also liable for collection fees or costs, not in excess of ten dollars, which are recoverable by civil action by the holder of the instrument.

3. The fact that payment has been refused by a drawee because of insufficient funds or because the drawer has no account with the drawee from which payment could legally be made ~~shall--constitute--prima--facie--evidence~~ constitutes an inference of intent to defraud. ~~However,-if-the-drawer pays-the-holder-of-the-instrument-within-thirty-days-after receiving--written--notice-of-nonpayment-by-certified-mail or-by-personal-service-in-accordance-with-rule-4(d)-of-the North--Dakota--Rules--of--Civil-Procedure,-that-fact-shall constitute--an---affirmative---defense---to---a---criminal prosecution-under-this-section.~~

SECTION 2. AMENDMENT. Subsection 2 of section 36-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Dealer" means any person, copartnership, association, or corporation engaged in the business of buying or dealing in horses, mules, cattle, hogs, goats, sheep, or wool from the producer, terminal market, or livestock auction market for resale, slaughter, or shipment within or without the state, and also resale in the local market.

SECTION 3. AMENDMENT. Subsection 2 of section 36-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The commissioner shall refuse to issue or renew a license if the applicant:

   a. Has not filed a surety bond in the form and amount required under the provisions of this chapter;

   b. Has not satisfactorily demonstrated that his current assets exceed his current liabilities; ~~or~~

   c. Has been found by the commissioner to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions~~.~~ ; or

   d. Has made or caused to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter.

   Whenever the commissioner finds that any livestock dealer has violated the provisions of this subsection, he may suspend or refuse to issue or renew the license of such offender in the manner provided by law.

Approved March 31, 1981

CHAPTER 363

SENATE BILL NO. 2124
(Committee on Agriculture)
(At the request of the Agriculture Department)

BRAND CANCELLATION

AN ACT to amend and reenact section 36-09-06 of the North Dakota Century Code, relating to the cancellation of brands.

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

SECTION 1. AMENDMENT. Section 36-09-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-09-06. CANCELLATION OF BRAND BY COMMISSIONER OF AGRICULTURE. The commissioner of agriculture shall cancel a legally recorded brand only when he receives for filing a bill of sale of such brand properly executed by the record owner as shown by the records in his office or, in instances where it is found that a brand has been issued inadvertently in duplication of a previously recorded brand.

Approved January 30, 1981

MILITARY

CHAPTER 364

SENATE BILL NO. 2271
(Wright)

VETERANS' FUNDS

AN ACT to amend and reenact sections 37-14-03.3, 37-14-06, 37-14-07, 37-14-14, and 37-25-10 of the North Dakota Century Code, relating to the veterans' aid fund, to the time for application for Vietnam veterans' adjusted compensation, and to the veterans' postwar trust fund; to provide a transfer from the Vietnam veterans' adjusted compensation funds; and to provide an appropriation.

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

SECTION 1. AMENDMENT. Section 37-14-03.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-03.3. REVOLVING FUND. Such sum of ~~three~~ seven hundred thousand dollars shall be a permanent revolving fund of the veterans' aid fund and shall not revert to the general fund and shall be used solely for the purpose of making loans to any veteran of the armed forces of the United States who served in World War II, the Korean conflict, or during hostilities in Vietnam, as defined by section 37-01-40.

SECTION 2. AMENDMENT. Section 37-14-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-06. DEPARTMENT MAY PROVIDE AID. If the department of veterans' affairs is satisfied that such applicant has served as a member of the armed forces of the United States for an aggregate time of not less than thirty days during World War II, the Korean conflict, or during hostilities in Vietnam, all as defined by section 37-01-40, that he is a citizen and resident of the state of North Dakota, and that he has not been dishonorably discharged, the department may loan to such applicant, or a guardian of such applicant, a sum from the veterans' aid fund not to exceed the sum of ~~five hundred~~ two thousand dollars.

SECTION 3. AMENDMENT. Section 37-14-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-07. REPAYMENT TO BE MADE TO AID FUND. Upon the granting of such an application and at the time of such disbursement, the applicant, or his legally appointed guardian, shall be required to execute an agreement with the department of veterans' affairs that within a period of two years from the date of the receipt of the last item of such advancement he will repay to the state of North Dakota for the use of the veterans' aid fund the full amount of all advancements made to him ~~without--interest~~ with interest as provided in rules and regulations adopted pursuant to section 37-14-10, but not to exceed ten percent annually. One-half of the interest shall be waived if timely repayment is made to the fund. The department shall have the authority to take necessary legal action to collect loans if in the opinion of the department the veteran has the financial means to repay, and he deliberately refuses to do so.

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

37-14-14. VETERANS' POSTWAR ~~REHABILITATION--RESERVE~~ TRUST FUND. The veterans' postwar ~~rehabilitation-reserve~~ trust fund shall consist of moneys transferred or credited ~~thereto~~ 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 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 5. AMENDMENT. Section 37-25-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-25-10. TIME LIMIT FOR RECEIVING APPLICATIONS. No application for benefits under the provisions of this chapter shall be received after ~~December 31, 1978~~ June 30, 1982. However, in the cases of those veterans who were prisoners of war or missing in action, the deadline for receipt of an application shall be four years from the date upon which they first set foot on American soil or ~~December 31, 1978~~ June 30, 1982, whichever is later.

SECTION 6. TRANSFER OF VIETNAM BONUS FUNDS TO VETERANS' POSTWAR TRUST FUND. All unobligated moneys in the Vietnam veterans' adjusted compensation funds in the state treasury after July 1, 1981, shall be transferred by the state treasurer to the veterans' postwar trust fund. Any obligations of such funds as a result of any amendment of section 37-25-10 by the forty-seventh legislative assembly shall be paid out of the veterans' postwar trust fund and the moneys necessary to meet those obligations are hereby appropriated.

SECTION 7. APPROPRIATION. There is hereby appropriated out of any moneys in the Vietnam veterans' adjusted compensation fund in the state treasury, not otherwise appropriated, the sum of $400,000, or so much thereof as may be necessary, to the veterans' aid fund, for the purpose of increasing the permanent revolving fund as provided for in this Act.

Approved April 3, 1981

MINING AND GAS AND OIL PRODUCTION

CHAPTER 365

HOUSE BILL NO. 1536
(Kloubec)

RESOURCE MANAGEMENT

AN ACT to provide for the assumption of certain functions of the water commission by the state engineer; to create and enact two new sections to chapter 38-08 of the North Dakota Century Code, relating to the enforcement of that chapter and to the transfer of certain equipment and functions from the state geologist to the industrial commission; to amend and reenact sections 38-08-04, 38-08-05, 38-08-07, and 61-14-03 of the North Dakota Century Code, relating to powers and duties of the industrial commission and the issuance of irrigation permits; and to repeal chapter 54-49.1 and section 61-02-20 of the North Dakota Century Code, relating to the establishment of the natural resources council and construction of dams; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 38-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-04. JURISDICTION OF COMMISSION. The commission has continuing jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. ~~The state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the crude petroleum oil and natural gas resources of this state and the provisions of this chapter.~~ The commission has authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other 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. 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 and the state geologist 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~~;~~ and 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.

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, the pollution of fresh water supplies by oil, gas, or salt water, 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 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.

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, or processes oil or gas in this state shall 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.

2. To regulate:

   a. The drilling, producing, and plugging of wells, and all other operations for the production of oil or gas.

   b. The shooting and chemical treatment of wells.

   c. The spacing of wells.

   d. Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations.

   e. Disposal of salt water and oil field wastes.

3. To limit and to allocate the production of oil and gas from any field, pool, or area and to establish and define as separate marketing districts those contiguous areas within the state which supply oil and gas to different markets, and to limit and allocate the production of oil and gas for each separate marketing district.

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

5. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of this chapter.

SECTION 2. AMENDMENT. Section 38-08-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-05. DRILLING PERMIT REQUIRED. It shall be unlawful to commence operations for the drilling of a well for oil or gas without first giving to the ~~state geologist~~ industrial commission notice of intention to drill, or without first obtaining a permit ~~from the state geologist~~, under such rules ~~and regulations~~ as may be prescribed by the commission and paying to the commission a fee for each such well in an amount to be prescribed by the commission.

SECTION 3. AMENDMENT. Section 38-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-07. COMMISSION SHALL SET SPACING UNITS. The commission shall set spacing units as follows:

1. When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission shall establish spacing units for a pool. Spacing units when established shall be of uniform size and shape for the entire pool, except that when found to be necessary for any of the purposes above mentioned, the

commission is authorized to divide any pool into zones and establish spacing units for each zone, which units may differ in size and shape from those established in any other zone.

2. The size and shape of spacing units are to be such as will result in the efficient and economical development of the pool as a whole.

3. An order establishing spacing units for a pool shall specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonably uniform spacing plan. Upon application, if the ~~state--geologist~~ commission finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the ~~state-geologist~~ commission is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; however, the ~~state geologist~~ commission shall include in the order suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool. ~~Any-such-order-of-the-state-geologist allowing-exceptions-to-the-established-spacing-pattern-may be--appealed-within-a-reasonable-time-to-the-commission-by filing-such-an--appeal--with--the--commission.---Upon--the filing--of--such--an--appeal--and-after-a-due-hearing,-the commission-may-affirm-or-repeal-the--order--of--the--state geologist.~~

4. An order establishing units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the commission from time to time to include additional areas determined to be underlaid by such pool. When found necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing spacing units in a pool may be modified by the commission to increase or decrease the size of spacing units in the pool or any zone thereof, or to permit the drilling of additional wells on a reasonably uniform plan in the pool, or any zone thereof, or an additional well on any spacing unit thereof.

SECTION 4. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

INDUSTRIAL COMMISSION - PERSONNEL - EQUIPMENT TRANSFER. The industrial commission is authorized to appoint a chief enforcement officer and to set his salary within the limits of legislative appropriations. The industrial commission may designate the state geologist as the chief enforcement officer. With the approval of the industrial commission, the state geologist may appoint an

assistant to have primary responsibility for rule enforcement. The industrial commission, within the limits of legislative appropriations, may make arrangements with the board of higher education, subject to the approval of the emergency commission, to transfer equipment, personnel, and material between the commission and the state geologist as necessary to carry out this chapter.

SECTION 5. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

STATE GEOLOGIST TO ASSIST COMMISSION. The state geologist shall furnish the industrial commission with such technical services and assistance as the duties of the office permit.

SECTION 6. STATE ENGINEER TO BE SUBSTITUTED FOR THE WATER COMMISSION.

1. Whenever the term "water conservation commission", "water commission", or "commission", or any derivative of those terms, which when used in context, indicates an intention to refer to that commission regarding those duties specified in sections 61-04-01, 61-04-03, and 61-04-04 and chapters 61-16 and 61-20, shall appear in the North Dakota Century Code, the term "state engineer", or "engineer", as the case may be, shall be substituted therefor. The state engineer shall be substituted for, shall take any action previously to be taken by, and perform any duties previously performed by the water commission under sections 61-04-01, 61-04-03, and 61-04-04 and chapters 61-16 and 61-20.

2. Any legislative measure, enacted by the forty-seventh legislative assembly and referring to the terms "water conservation commission", "water commission", or "commission" and amending any section or chapter cited in subsection 1 of this section, shall be construed as granting full administrative and enforcement authority to the state engineer.

SECTION 7. Section 61-14-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-14-03. AMOUNT OF WATER FOR IRRIGATION. In the issuance of a permit to appropriate water for irrigation or in the adjudication of the rights to the use of water for such purpose, the amount allowed shall not be in excess of the rate of one cubic foot [28.32 liters] of water per second for each eighty acres [32.37 hectares], for a specified time in each year, or the equivalent thereof, delivered on the land. Provided, that the state engineer may allow a higher rate of diversion where the method of irrigation stipulated in the permit or the type of soil to which the water is to be applied so requires, but in such event, the total amount allowed shall not be in excess of two acre-feet per acre [2,466.96 cubic

meters per .40 hectare] delivered to the land for any one irrigation season, and in no case more than can be used beneficially, except that during periods of sufficient water supply the state engineer, ~~with--the--approval--of-the-state-water-commission-and~~ in accordance with the method of irrigation being used, the type of soil to which the water is to be applied, and other criteria established by the state engineer, may increase the amount of water allowed to three acre-feet per acre [3,700.45 cubic meters per .40 hectare], per irrigation season, for a specified period of time which in no event shall be of greater duration than the period of sufficient water supply.

SECTION 8. REPEAL. Chapter 54-49.1 and section 61-02-20 of the 1979 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 9. EMERGENCY. Sections 1 through 7 of this Act are hereby declared to be an emergency measure and shall be in effect from and after the passage and approval of this Act.

Approved April 13, 1981

CHAPTER 366

SENATE BILL NO. 2437
(Nething)
(Approved by Committee on Delayed Bills)

OIL EXTRACTION TAX RESPONSIBILITIES

AN ACT to create and enact a new section to chapter 54-17 of the North Dakota Century Code, relating to the responsibilities of the industrial commission under initiated measure No. 6 as approved in the 1980 general election; to amend and reenact subsections 4 and 5 of section 38-08-04 of the North Dakota Century Code, relating to the authority of the industrial commission and the state geologist to classify oil and gas wells; to provide an appropriation; 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 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 of stripper well property as defined in subsection 2 of section 4 of initiated measure No. 6 as approved in the 1980 general election.

5. To ~~promulgate~~ adopt and to enforce rules~~,~~ ~~regulations,~~ and orders to effectuate the purposes and the intent of this chapter and of subsections 2 and 3 of section 4 of initiated measure No. 6 as approved in the 1980 general election.

SECTION 2. A new section to chapter 54-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

OIL EXTRACTION TAX TRUST FUND - INDUSTRIAL COMMISSION RESPONSIBILITIES.

1. The industrial commission may, within the limits of legislative appropriations, enter into contracts with

institutions of higher education in this state, or with other parties, for the following purposes:

a. Studies on the development of cogeneration systems.

b. Studies on the promotion and development of energy conservation programs and renewable energy sources.

c. Studies of the feasibility of developing waste products utilization.

2. The industrial commission may, within the limits of legislative appropriations, provide for the making of grants in aid of those persons or entities doing research or development with respect to energy conservation, renewable energy sources, cogeneration, or waste products utilization. Grants under this subsection shall be made to persons or entities residing, located, or doing business, in this state. No grant made pursuant to this subsection shall exceed ten thousand dollars in amount, and grants shall not be made for time periods which run beyond any fiscal biennium during which the grant is made. As used in this subsection, "entity" means any firm, partnership, corporation, cooperative, association, or other business entity, and any governmental entity.

3. The industrial commission may adopt rules to implement its power to make grants and enter into contracts pursuant to this section. Any rules shall be adopted in accordance with chapter 28-32.

SECTION 3. APPROPRIATION. There is hereby appropriated out of the interest and income accrued to the special trust fund created by subsection 2 of section 7 of initiated measure No. 6 as approved in the 1980 general election, the sum of $150,000, or so much thereof as may be necessary, to the industrial commission for use in carrying out the provisions of section 2 of this Act for the biennium beginning July 1, 1981, and ending June 30, 1983.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 31, 1981

CHAPTER 367

HOUSE BILL NO. 1179
(Committee on Natural Resources)
(At the request of the Industrial Commission)

CIVIL PENALTY FOR VIOLATING OIL AND GAS PROVISIONS

AN ACT to amend and reenact section 38-08-16 of the North Dakota Century Code, relating to penalties imposed upon violators of rules, regulations, or orders 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. Section 38-08-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-16. CIVIL PENALTY. Any person who violates any provision of this chapter, or any rule, regulation, or order of the commission shall be subject to a civil penalty ~~of~~ not ~~more than one thousand dollars for each violation and for each day that such violation continues~~ to exceed twelve thousand five hundred dollars for each offense, and each day's violation shall be a separate offense, unless the penalty for ~~such~~ the violation is otherwise specifically provided for and made exclusive in this chapter. The penalties provided in this section shall be recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of ~~any such~~ the penalty shall not operate to legalize any illegal oil, illegal gas, or illegal product involved in the violation for which the penalty is imposed, or to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of ~~such~~ the violation.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 11, 1981

CHAPTER 368

HOUSE BILL NO. 1444
(Representative Wald)
(Senator Lee)

GEOPHYSICAL EXPLORATION REQUIREMENTS

AN ACT to create and enact three new sections to chapter 38-08.1 of the North Dakota Century Code, relating to the filing of a surety bond before engaging in geophysical exploration and the issuance of an exploration permit; and to amend and reenact subsection 1 of section 38-08.1-01 and sections 38-08.1-02, 38-08.1-03, 38-08.1-04, and 38-08.1-05 of the North Dakota Century Code, relating to definitions, persons required to comply with certain requirements, filing a notice of intention to engage in geophysical exploration, and filing a record of work performed.

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

SECTION 1. AMENDMENT. Subsection 1 of section 38-08.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. ~~"Drilling" means making any opening in the earth's surface by drilling or boring, and shall include inserting any object into any part of the earth's surface, for the purpose of subsurface mineral exploration. This chapter, with the exception of section 38-08.1-06, shall not apply to holes drilled in the earth for the purpose of obtaining water, sand, gravel, stone, clay, scoria, and holes drilled in an operating coal mine to trace the coal seam.~~ "Geophysical exploration" means any method of obtaining petroleum-related geophysical surveys.

SECTION 2. AMENDMENT. Section 38-08.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-02. PERSONS REQUIRED TO COMPLY WITH CHAPTER. Any person in this state engaged in ~~drilling~~ geophysical exploration or engaged as a subcontractor of a person engaged in geophysical exploration shall comply with the following provisions of this chapter; provided, however, that compliance with the provisions of this chapter by a ~~drilling~~ crew or its employer shall constitute

compliance herewith by that person who has engaged the service of such crew, or its employer, as an independent contractor.

SECTION 3. AMENDMENT. Section 38-08.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-03. DEEMED DOING BUSINESS WITHIN STATE - RESIDENT AGENT. A person shall be deemed doing business within this state when engaged in ~~drilling~~ geophysical exploration within the boundaries of this state, and shall, if not already qualified to do business within the state under chapter 10-22, prior to such ~~drilling~~ exploration, file with the secretary of state an authorization designating an agent for the service of process.

SECTION 4. A new section to chapter 38-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

SURETY BOND - CERTIFICATE - RELEASE.

1. A person desiring to engage in geophysical exploration in this state shall also file with the industrial commission a good and sufficient surety bond in the amount of fifteen thousand dollars for a single geophysical crew or a blanket surety bond in the amount of thirty thousand dollars for all geophysical crews operating within the state for such person. The bond shall be in a form prescribed by the industrial commission and shall indemnify all owners of property within the state, including the state and its political subdivisions, against physical damages to property which may result from geophysical exploration. The bond shall cover a period of one year and shall be automatically renewed unless the industrial commission and the person covered thereby receive notice sixty days prior to any anniversary date of the surety's intent not to renew the bond.

2. The bond shall remain on file with the industrial commission so long as the exploration is carried on or engaged in within the state, plus an additional one year thereafter; provided, however, that the aggregate liability of the surety shall in no event exceed the amount of the bond.

3. A bond filed pursuant to this section shall be the sole bond required of persons engaging in geophysical exploration within the state of North Dakota and shall supersede any bonds which may be required by the individual counties. Upon compliance with the provisions of this Act, any bond which may previously have been filed in any county shall be released; provided, however, that the surety of any such bond shall remain liable under its contract for all actions of its principal prior to the date of compliance with this section.

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, 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 a certificate showing that the bond has been filed and showing the name of the person designated resident agent for service of process.

SECTION 5. AMENDMENT. Section 38-08.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-04. FILING OF NOTICE OF INTENTION TO ENGAGE IN ~~DRILLING~~ GEOPHYSICAL EXPLORATION. Any person desiring to engage in ~~drilling~~ geophysical exploration within this state must, prior to actually engaging in such ~~drilling~~ exploration, file a notice of intention to engage in ~~drilling~~ geophysical exploration with the county ~~register of deeds~~ commission in each county in which ~~drilling~~ exploration is to be carried on. The notice of intention shall include the name of the person who intends to ~~drill~~ 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 ~~drilling~~ exploration will commence; the township, range, section, and quarter section in which ~~drilling~~ the exploration is to be carried on; and the estimated depth of the drill hole, if any. Notices filed with the county ~~register--of--deeds~~ commission 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.

SECTION 6. A new section to chapter 38-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

EXPLORATION PERMIT.

1. Upon filing a notice of intention to explore pursuant to section 38-08.1-04 and the certificate issued by the industrial commission pursuant to section 4 of this Act, the county commission or their 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.

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 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 be signed by the chairman of the county commission or his designee and shall bear the official county seal. The permit shall be 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 or a photostatic copy thereof shall be carried at all times by a member of the crew during the period of geophysical exploration and shall be exhibited upon demand of the landowner or tenant operator or county or state official or respective surface owner.

SECTION 7. A new section to chapter 38-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

COUNTY COMMISSION TO NOTIFY COMMISSION OF ISSUANCE OF PERMIT. The county commission of any county in which a permit is issued shall immediately forward notice of the issuance of a permit to the industrial commission. The county commission may revoke the permit of any person engaging in geophysical exploration upon a showing that that person has violated county ordinances or any other applicable requirement pertaining to geophysical exploration. The county commission shall notify that person, by the most effective written means, of the permit revocation. Upon notification, the person engaging in geophysical exploration may, within fifteen days, request a hearing before the board of county commissioners, at its next regular or special meeting, on the matter. The board of county commissioners shall either affirm, modify, or deny the permit revocation. The board of county commissioners may also suspend the permit temporarily in those cases where climate and physical conditions are such as to cause harm or damage to roads, bridges, pastures, crops, or similar factors that could cause undue stress to the normal physical well-being within the county. However, the permit suspension time period shall not be included in the one-year permit period.

SECTION 8. AMENDMENT. Section 38-08.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-05. DUTY TO FILE RECORD SHOWING WHERE WORK PERFORMED - REQUEST TO FILE LOCATION OF ~~DRILL-SITE~~ WORKSITE - COMPLAINT OF PROPERTY OWNER. Within thirty days following any calendar month in which ~~drilling~~ geophysical exploration is begun by any person within this state, such person shall file with the county ~~register-of-deeds~~ commission in each county in which ~~drilling~~ work is begun, and shall send to the owner or occupier of any land upon which ~~drilling~~ work is begun, a record showing the township, range, section, and quarter section in the county in which such ~~drilling~~ work was performed and the date upon which such ~~drilling~~ work was commenced. Upon written request by the owner or occupier of the land upon which the ~~drilling~~ work has occurred, any person who has performed ~~drilling~~ work within the state shall send to such landowner or occupier a record showing the date ~~of-drilling~~ and a legal description of the ~~drill--site~~ worksite sufficiently exact to permit location and identification of the ~~drill-hole~~ site. This shall include the actual shot point location and the amount of explosive charge, if any, in each drill hole. The request must be based upon a written complaint of the property owner or occupier that physical damage to such property has occurred or is reasonably believed to have occurred by reason of the ~~drilling~~ work. The written complaint shall designate the name and address of the complaining person and shall state the approximate date of the alleged damage. The required record of operations in response to the written demand therefor shall be supplied within ten days from the date on which such written demand is received.

Approved April 1, 1981

CHAPTER 369

SENATE BILL NO. 2139
(Committee on Natural Resources)
(At the request of the Public Service Commission)

COAL EXPLORATION DATA

AN ACT to amend and reenact subsection 2 of section 38-12.1-03, subdivision b of subsection 1 of section 38-12.1-04, and subsection 3 of section 38-14.1-13 of the North Dakota Century Code, relating to definitions for coal exploration data, delivery of exploration data to the state geologist, and coal mining permit applications.

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

SECTION 1. AMENDMENT. Subsection 2 of section 38-12.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Coal exploration" means ~~the~~:

a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or aid in determining the quantity and quality of coal present. It shall include drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or

b. Environmental data gathering activities which substantially disturb the natural land surface and which are conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 shall not be applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed.

SECTION 2. AMENDMENT. Subdivision b of subsection 1 of section 38-12.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted shall be confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality shall, upon application, be extended for one-year periods by the state geologist, ~~and in no event shall the period of confidentiality exceed seven years~~ for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, his successors, and assigns, who delivered such basic data to the state geologist. The basic data shall include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:

(1) Sample cuts.

(2) Drillers' logs, 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 required by the state geologist.

SECTION 3. AMENDMENT. Subsection 3 of section 38-14.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Upon request by the permit applicant, the commission, in its discretion, may designate specific information included in the plans required by subdivisions c and d of subsection 1 as exempt from disclosure under section 44-04-18, provided such specific information pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental contents which is potentially toxic in the environment). Each request shall be accompanied by a statement specifying the need for nondisclosure, which statement shall be considered part of the permit application to be filed for public inspection as specified in subsection 2. The confidential information shall be exempt for a period not to exceed ~~seven~~ ten years subsequent to the date on which the request for nondisclosure was filed, unless it is demonstrated by the permit applicant that such period should be further extended in order to prevent possible resulting harm to the permit applicant, his successors and assigns.

Approved March 18, 1981

CHAPTER 370

SENATE BILL NO. 2287
(Senator Lee)
(Representative A. Hausauer)

EXTENDED MINING PLAN REQUIREMENTS

AN ACT to amend and reenact subsection 5 of section 38-14.1-02 and sections 38-14.1-14 and 38-14.1-15 of the North Dakota Century Code, relating to the definition of extended mining plan, permit application requirements for mining and reclamation requirements, and requirements for the extended mining plan.

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

SECTION 1. AMENDMENT. Subsection 5 of section 38-14.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Extended mining plan" means a ~~detailed~~ written statement setting forth the matters specified in section 38-14.1-15, and covering the estimated life of the surface coal mining operation. ~~The purpose of such plan shall be to inform the commission of conditions existing in the area proposed for mining sufficiently in advance of the commencement of operations to allow the commission to accurately assess the effects of such proposed operations.~~

SECTION 2. AMENDMENT. Section 38-14.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.1-14. PERMIT APPLICATIONS - MINING AND RECLAMATION PLANS.

1. The permit application shall be submitted in a manner satisfactory to the commission and shall contain among other things:

   a. A legal description of the land for which a permit is sought, so that it may be identified and distinguished from other lands.

   b. An identification of all lands, interests in lands, or options on such interests (both surface and

subsurface) held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit.

c. The names and addresses of all of the following:

(1) The permit applicant.

(2) Every legal or equitable owner of record (surface and subsurface) of the property for which a permit is sought.

(3) The holders of record (surface and subsurface) of any leasehold interest in the property.

(4) Any purchaser of record (surface and subsurface) of the property under a real estate contract.

(5) The operator, if he is a person different from the permit applicant.

(6) If any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent.

d. The names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area as prescribed by the commission by regulation.

e. If the applicant is a partnership, corporation, association or other business entity, the following where applicable:

(1) The names and addresses of every officer, partner, director, or person performing a function similar to a director, of the permit applicant.

(2) The name and address of any person owning of record ten percent or more of any class of voting stock of the applicant.

(3) A list of all names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation within the state of North Dakota within the five-year period preceding the date of the application.

f. A statement of any current or previous surface coal mining permits in the state of North Dakota held by the applicant and the permit identification for said permits and for each pending application.

g. A schedule listing any and all notices of violation of this chapter and any law or regulation of the state of North Dakota or of any department or agency of the state of North Dakota pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation.

h. A statement of whether the permit applicant, any subsidiary, affiliate, or persons controlled by or under common control with the permit applicant, has ever held any federal or state mining permit which in the five-year period prior to the date of submission of the application has been suspended or revoked, or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved.

i. A copy of the permit applicant's advertisement as required in section 38-14.1-18.

j. A map or plan, to an appropriate scale, clearly showing the land to be affected within the permit area upon which the applicant has the legal right to enter and commence surface coal mining operations.

k. A copy of those documents upon which the permit applicant bases his legal right to enter and commence surface coal mining operations and whether that right is the subject of pending court litigation.

l. A description of the type and method of surface coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used.

m. The anticipated or actual starting and termination dates of each phase of the mining operations.

n. The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged, including the drainage permit application to the state engineer, if required, pursuant to other applicable state law.

o. A determination by the permit applicant of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of

sufficient data for the mine site and surrounding areas so that an assessment can be made by the commission of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability.

p. The climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges.

q. Topographic maps to an appropriate scale, as prescribed by the commission by regulation, clearly showing the land to be affected as of the date of the application. Such a map, among other things specified by the commission, shall show all of the following information:

(1) All manmade features.

(2) All significant known archaeological sites existing on the date of application.

(3) All boundaries of the land to be affected.

(4) The boundary lines and names of present owners of record of all surface areas abutting the permit area.

(5) The location of all buildings within one-half mile [804.67 meters] of the permit area.

r. Cross-section maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting all of the following information:

(1) The nature and depth of the various strata of overburden.

(2) The location of subsurface water, if encountered, and its quality.

(3) The nature and thickness of any coal or rider seam above the coal seam to be mined.

(4) The nature of the stratum immediately beneath the coal seam to be mined.

(5) All mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected.

(6) Existing or previous surface mining limits.

(7) The location and extent of known workings of any underground mines, including mine openings to the surface.

(8) The location of aquifers.

(9) The estimated elevation of the water table.

(10) The location of spoil, waste, or refuse areas, suitable plant growth material stockpiling areas and, if necessary, stockpiling areas for other suitable strata.

(11) The location of all impoundments for waste or erosion control.

(12) Any settling or water treatment facility.

(13) Constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto.

(14) Profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the applicant's proposed reclamation plan.

s. A statement by the applicant of the result of test borings or core samplings from the permit area including logs of the drill holes, the thickness of the coal seam found, an analysis of the chemical properties of such coal, the sulfur content of any coal seam, chemical analysis of potentially toxic forming sections of the overburden, and chemical analysis of the stratum lying immediately underneath the coal to be mined. The provisions of this subdivision may be waived by the commission with respect to the specific application by a written determination that such requirements are unnecessary.

t. A soil survey of all the suitable plant growth material within the permit area. Such survey shall also locate and identify prime soils in the permit area. The survey shall be made by a professional soil classifier as described in subsection 2 of section 43-36-01.

~~u.---Such---other--requirements--as--the--commission--shall prescribe-by-regulation.~~

2. Each applicant for a permit shall submit as part of the permit application a reclamation plan that shall include, in the degree of detail necessary to demonstrate that reclamation as required by this chapter can be accomplished, a statement of:

   a. The condition of the land to be covered by the permit prior to any mining including all of the following:

      (1) The uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining.

      (2) The capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, vegetative cover and the soil survey prepared pursuant to subdivision t of subsection 1.

      (3) The productivity of the land prior to mining, including appropriate identification of prime farmlands, as well as the average yield of food, fiber, and forage products from such lands obtained under high levels of management.

   b. The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, the surface owner's preferred use, and the comments of state and local governments or agencies thereof, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

   c. The consideration which has been given to maximize the utilization and conservation of the coal being recovered so that reaffecting the land in the future can be minimized.

   d. The consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans, and applicable state and local land use plans and programs.

   e. The consideration which has been given to developing the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions, including the use made of hydrologic and

geochemical information in addressing problems of subsurface drainage and stability.

f. A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use.

g. The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment.

h. Plans for:

(1) The control of surface water drainage and of water accumulation.

(2) Backfilling, soil stabilization, compacting, grading, and appropriate revegetation.

(3) Soil reconstruction, replacement, and stabilization, pursuant to the performance standards in subsections 5 and 6 of section 38-14.1-24.

i. A detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

(1) The quality of surface and ground water systems, both onsite and offsite, from adverse effects of the mining and reclamation process.

(2) The rights of present users to such water.

(3) The quantity of surface and ground water systems, both onsite and offsite, from adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured.

j. The steps to be taken to comply with applicable air quality and water quality and quantity laws and regulations and any applicable health and safety standards.

k. A detailed estimated timetable for the accomplishment of each major step in the reclamation plan.

l. An estimate of the cost per acre [.40 hectare] of the reclamation, including a statement as to how the applicant plans to comply with each of the requirements set out in section 38-14.1-24.

m. The results of test borings which the applicant has made of the area to be covered by the permit, or other equivalent information and data, in a form satisfactory to the commission, including the location of subsurface water and an analysis of the chemical properties including toxic forming properties of the mineral and overburden.

~~n.--Such---other--requirements--as--the--commission--shall prescribe-by-regulation.~~

3. Each applicant for a permit shall submit to the commission as part of the permit application a certificate issued by an insurance company authorized to do business in the state of North Dakota certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which such permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons, except employees covered by workmen's compensation insurance pursuant to chapter 65-01, damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of state law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations. The policy shall include a rider requiring that the insurer notify the commission whenever substantive changes are made in the policy, including any termination or failure to renew. All operations must cease if the policy is terminated or is not renewed.

4. Each applicant for a surface coal mining and reclamation permit shall submit to the commission as part of the permit application a blasting plan which shall outline the procedures and standards by which the permittee will meet the provisions of subsection 13 of section 38-14.1-24.

SECTION 3. AMENDMENT. Section 38-14.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.1-15. PERMIT APPLICATIONS - EXTENDED MINING PLAN.

1. An applicant shall submit as part of a permit application a plan identifying the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits will be sought. ~~The-following--information--shall be--included,--in--such--form--and-detail-as-prescribed-by commission-regulations.~~

~~a.--A--legal--description--of--the-land,-so-that-it-may-be identified-and-distinguished-from-other-lands;~~

~~b.--Available--hydrologic--data-and-geologic,-topographic, and-soils-maps;~~

~~c.--A--statement-of-the-approximate-number-of-tons-of-coal to-be-removed-from-the-land;~~

~~d.--Such--other-information-as-the-commission-may-require.~~

2. The permittee shall annually advise the commission of the status of the plan, and shall amend such plan if changes are made in anticipated mining operations or if updated information is available.

Approved March 18, 1981

CHAPTER 371

SENATE BILL NO. 2309
(Senator Lips)
(Representative Kloubec)

COAL MINING PERFORMANCE BONDING SYSTEM

AN ACT to create and enact a new subsection to section 38-14.1-02 and a new subsection to section 38-14.1-03 of the North Dakota Century Code, relating to definitions and powers and duties of the public service commission for surface coal mining and reclamation operations.

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

SECTION 1. A new subsection to section 38-14.1-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Performance bond" means a surety bond, collateral bond, self-bond, deposit, 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.

SECTION 2. A new subsection to section 38-14.1-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

To establish a performance bonding system and an alternative to the performance bonding system which achieve the objectives and purposes of this chapter.

Approved March 18, 1981

CHAPTER 372

HOUSE BILL NO. 1130
(Committee on Natural Resources)
(At the request of the Public Service Commission)

SURFACE MINING AREAS, PERMITS, AND INTERESTS

AN ACT to amend and reenact section 38-14.1-07, subsection 4 of section 38-14.1-30, and section 38-14.1-38 of the North Dakota Century Code, relating to areas where mining is prohibited, temporary relief, and conflict of interest provisions for surface coal mining and reclamation operations.

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

SECTION 1. AMENDMENT. Section 38-14.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.1-07. MINING IS PROHIBITED. After July 1, 1979, and subject to valid existing rights, no surface coal mining operations except those which exist on July 1, 1979, shall be permitted:

1. On any lands within the boundaries of units of the North Dakota state park system, the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the national wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act [Pub. L. 90-542; 82 Stat. 906; 16 U.S.C. 1271 et seq.] and national recreation areas designated by Act of the Congress of the United States.

2. On any federal lands within the boundaries of any national forest unless the requirements of 30 U.S.C. 1272(e)(2) are met.

3. Within three hundred feet [91.44 meters] of any publicly owned park or places included in the state historic sites registry or the national register of historic ~~sites~~ places unless approved jointly by the commission and the federal, state, or local agency with jurisdiction over the park or the historic site.

4. Within one hundred feet [30.48 meters] of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the commission with the approval of the proper authority may permit such roads to be relocated or the area affected to lie within one hundred feet [30.48 meters] of such road, if after public notice and the opportunity for public hearing in the locality a written finding is made by the proper authority that the interests of the public and the landowners affected thereby will be protected.

5. Within five hundred feet [152.4 meters] of any occupied dwelling unless approved by the owner thereof and in accordance with the provisions of chapter 38-18, nor within three hundred feet [91.44 meters] of any public building, school, church, community, or institutional building, or within one hundred feet [30.48 meters] of a cemetery.

SECTION 2. AMENDMENT. Subsection 4 of section 38-14.1-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Pending completion of any investigation and hearing procedures being conducted under this section in connection with a request for review of a ruling on a permit application pursuant to section 38-14.1-20 or in connection with any notice or order issued pursuant to subdivision a or b of subsection 1 of section 38-14.1-28 and at any time prior to a decision by the commission on the request for review of a ruling on a permit application or a request for review of a notice or order, the permittee or any person with an interest which is or may be adversely affected by such notice, order, or the issuance of a permit may file with the commission a written request for temporary relief from such notice or order or permit decision together with a detailed statement giving reasons why such temporary relief should be granted. The commission shall issue an order granting or denying such relief expeditiously as provided by commission regulation. Provided, where the permittee or person with an interest which is or may be adversely affected requests relief from a cessation order, the commission's order under this subsection shall be issued within five days of receipt of such request. The commission may grant such relief, under such conditions as it may prescribe, if:

   a. A hearing on the request for temporary relief has been held in the locality of the permit area, providing all parties with an opportunity to be heard and the requirements of subdivisions b and c have been met; ~~or~~

b. The permittee or person shows that there is substantial likelihood that the findings of the commission in the formal administrative proceedings being conducted pursuant to this section will be favorable to him; and

c. Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

An order granting or denying temporary relief pursuant to this subsection shall be final and not subject to review in any subsequent administrative or judicial proceeding since any temporary relief granted is in effect only until the investigation and hearing procedures of this section are completed.

SECTION 3. AMENDMENT. Section 38-14.1-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.1-38. CONFLICT OF INTEREST. No employee of the commission performing any ~~decision-making~~ function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever willfully violates this section shall, upon conviction, be subject to the penalty provided in subsection 5 of section 38-14.1-32. The commission shall promulgate regulations to establish methods by which the provisions of this section will be monitored and enforced by the commission, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning any financial interests which may be affected by this section.

Approved March 11, 1981

CHAPTER 373

HOUSE BILL NO. 1123
(Committee on Natural Resources)
(At the request of the Public Service Commission)

SURFACE COAL MINING PERMIT ISSUANCE

AN ACT to amend and reenact subsection 3 of section 38-14.1-20 of the North Dakota Century Code, relating to temporary relief from the issuance of a permit for surface coal mining and reclamation operations.

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

SECTION 1. AMENDMENT. Subsection 3 of section 38-14.1-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Under either subsection 1 or 2 of this section: if the application is approved, a permit shall be issued ~~only after the thirty-day period for requesting a formal hearing has elapsed without such a request being made~~ subject to the right of any person with an interest which is or may be adversely affected to request formal hearing pursuant to North Dakota Century Code section 38-14.1-30; if the application is disapproved, specific reasons therefor must be set forth in the notification of disapproval together with the requirements for approval.

Approved February 16, 1981

CHAPTER 374

HOUSE BILL NO. 1455
(Representatives Gunsch, Nagel)
(Senators Bakewell, Olin)

MINE RECLAMATION RESTORATION REQUIREMENTS

AN ACT to amend and reenact subsections 17 and 18 of section 38-14.1-24 of the North Dakota Century Code, relating to environmental protection performance standards required of surface coal mining and reclamation permittees.

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

SECTION 1. AMENDMENT. Subsection 17 of section 38-14.1-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

17. Restore lands affected by the surface coal mining operation which have been designated for postmining agricultural purposes to the level of productivity equal to or greater, under equivalent management practices, than nonmined agricultural lands of similar soil types in the surrounding area ~~under--equivalent--management--practices~~. For those lands which are to be rehabilitated to native grasslands, a diverse, effective and permanent vegetative cover shall be established of the same seasonal variety native to the area to be affected and capable of self-regeneration, plant succession, and at least equal in extent of cover and productivity to the natural vegetation of the area. The level of productivity and cover attained on disturbed lands within the permit area shall be demonstrated by the permittee using comparisons with similar lands in the surrounding area having equivalent historical management practices and that are undisturbed by mining, or comparable disruptive activities.

SECTION 2. AMENDMENT. Subsection 18 of section 38-14.1-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18. Assume the responsibility for successful revegetation, as required by subsection 17, for a period of ten full years after ~~vegetation--has--been-established,-as-determined-by~~

~~the--commission~~ the last year of augmented seeding, fertilizing, irrigation, or other work, provided that, when the commission approves a long-term intensive agricultural postmining land use, the ten-year period of responsibility for revegetation shall commence at the date of initial planting. For the purposes of this subsection, "augmented seeding, fertilizing, irrigation, or other work" does not include normal conservation practices recognized locally as good management for the postmining land use.

Approved March 16, 1981

CHAPTER 375

HOUSE BILL NO. 1385
(Representatives Murphy, Conmy, Wald)
(Senators Albers, Nelson, Stenehjem)

SURFACE OWNER PROTECTION PROVISIONS

AN ACT to amend and reenact subsection 3 of section 38-18-05 and section 38-18-07 of the North Dakota Century Code, relating to the definition of mineral developer and surface damage and disruption payments.

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

SECTION 1. AMENDMENT. Subsection 3 of section 38-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Mineral developer" means the person who acquires ~~the mineral rights or lease~~ at least seventy-five percent of the mineral rights or a lease of at least seventy-five percent of the mineral rights for the purpose of extracting or using the mineral for nonagricultural purposes.

SECTION 2. AMENDMENT. Section 38-18-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-18-07. SURFACE DAMAGE AND DISRUPTION PAYMENTS.

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section shall only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and

which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter 38-14.1. The payments to be made hereunder shall be made before December thirty-first of that calendar year in which the loss occurred.

2. ~~If~~ Unless waived by the owner of a farm building, if the coal removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder shall be in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.

3. The rights granted to the surface owner by this section are hereby declared to be absolute and unwaivable, except as provided in subsection 2 of this section. Any instrument which purports to waive rights granted by this section is null and void and of no legal effect.

Approved March 16, 1981

CHAPTER 376

SENATE BILL NO. 2329
(Senators Albers, Nelson, Stenehjem)
(Representatives Murphy, Conmy, Wald)

SURFACE OWNER CONSENT PROVISIONS

AN ACT to amend and reenact subsections 6 and 10 of section 38-18-05 and subsection 3 of section 38-18-06 of the North Dakota Century Code, relating to surface owner consent before a permit to surface mine land may be issued and the definition of mineral owner and surface owner.

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

SECTION 1. AMENDMENT. Subsection 6 of section 38-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Mineral owner" means any person or persons who ~~owns~~ presently own the mineral estate, their successors, assigns, or predecessors in title, under a specified tract of land by means of a mineral deed, or by an exception or reservation in the deed, grant, or conveyance of the surface, or by any other means whatsoever.

SECTION 2. AMENDMENT. Subsection 10 of section 38-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. "Surface owner" means the person or persons who presently have valid title to the surface of the land, their successors, assigns, or predecessors in title, regardless of whether or not a portion of the land surface is occupied for a residence.

SECTION 3. AMENDMENT. Subsection 3 of section 38-18-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A certified copy of a mineral lease executed by the surface owner in favor of the mineral developer proposing the mining project or his agent, or a certified copy of a surface lease executed by the surface owner in favor of

the mineral developer proposing the mining project or his agent, if filed with the application for a permit to surface mine, may be used to fulfill the subsection 2 requirement of a statement of consent to have surface mining conducted. Any previously executed mineral lease or surface lease in favor of the mineral developer, his successors, assigns or predecessors in title shall run with the land and be binding on a subsequent mineral owner or owners or surface owner or owners, as the case may be.

Approved March 16, 1981

CHAPTER 377

HOUSE BILL NO. 1362
(Kloubec)

GEOTHERMAL RESOURCE DEVELOPMENT REGULATION

AN ACT providing for regulation of the exploration, development, and utilization of geothermal resources by the industrial commission; and providing penalties.

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

SECTION 1. DECLARATION OF POLICY. It is hereby declared to be in the public interest to encourage, and promote the proper use of geothermal resources in a manner which will prevent waste; to authorize and provide for the operation of geothermal resource extraction facilities in such manner as will achieve the optimum utilization of the geothermal resource and protect the correlative rights of all owners; to prevent contamination and pollution of surface and ground water sources; and to avoid creation of secondary hazards of a geologic nature.

SECTION 2. DEFINITIONS. As used in this Act:

1. "Commission" means the industrial commission of North Dakota.

2. "Geothermal energy" means the internal energy of the earth, available to man as heat from rocks or liquids.

3. "Geothermal energy extraction facility" means and includes any drilled, bored, or excavated device or installation to provide for the extraction of geothermal energy but shall not include any device used for private residential heating or cooling purposes.

4. "Geothermal resource" means the recoverable stored heat of the earth.

5. "Producer" means the owner of a geothermal energy extraction facility or facilities, and his agents or employees.

6. "Product" means anything produced, whether usable or unusable, by means of a geothermal energy extraction facility.

7. "Waste" means and includes the locating, spacing, drilling, excavating, or operating of any geothermal energy extraction facility in a manner which causes or tends to cause reduction in the quantity or quality of geothermal energy ultimately recoverable from a geothermal resource, or which causes or tends to cause unnecessary or excessive use, or degradation, of land surface.

SECTION 3. JURISDICTION OF THE INDUSTRIAL COMMISSION. The industrial commission has jurisdiction and authority and is charged with the responsibility to enforce the provisions of this Act. This Act shall not apply to any activity regulated under chapters 38-08, 38-12, 38-12.1, 38-14.1, and 61-28. The jurisdiction granted to the commission by this Act shall not be exclusive and shall not affect the jurisdiction of other governmental entities. The industrial commission acting through the office of the state geologist has the authority:

1. To require:

   a. Identification of ownership of all facilities, installations, and equipment used in the extraction of geothermal energy.

   b. The making and filing of all logs and reports on facility location, drilling, boring, excavating, and construction and the filing, free of charge, of samples, core chips, and complete cores, when requested, in the office of the state geologist.

   c. The drilling, boring, casing, excavating, plugging, and construction of facilities in a manner to prevent contamination and pollution of surface and ground water sources and unnecessary environmental degradation.

   d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the rules of the commission relating to the extraction of geothermal energy.

   e. Metering or measuring all products extracted from or by means of a facility regulated by this Act.

   f. That every person who operates a geothermal energy extraction facility in this state shall keep and maintain complete and accurate records of the quantities and nature of products extracted from or by means of any facility, and the ultimate disposition of such products, which records shall be available to the

commission or its agents at all times, and that every such person file with the commission such reports as it may prescribe.

g. That upon termination of the operation of any facility or activity regulated by this Act, the operator of the facility shall restore the surface as nearly as possible to its original condition and productivity.

2. To regulate:

a. The drilling, boring, excavating, and construction of all geothermal energy extraction facilities.

b. Operations to assure the optimum performance of all facilities regulated under this Act.

3. To limit and prescribe the nature, quantity, and source of geothermal energy to be extracted from any facility regulated by this Act.

4. To adopt rules and issue orders to effectuate the purposes of this Act.

SECTION 4. PERMIT REQUIRED. It shall be unlawful to commence any operations for the drilling, boring, excavating, or construction of a geothermal energy extraction facility without first securing a permit from the state geologist, under such rules as may be adopted by the commission and after paying to the commission a fee for each such facility in an amount to be prescribed by the commission by rule. The fee set shall be related to the cost or regulation and inspection under this Act.

SECTION 5. COMMISSION MAY EMPLOY EXAMINERS. The industrial commission may use hearing examiners under such rules as the commission may adopt.

SECTION 6. ACTION TO RESTRAIN VIOLATION OR THREATENED VIOLATION. Whenever it appears that any person is violating or threatening to violate any provision of this Act, or any rule or order of the commission, the commission may bring action against that person, in the district court of the county where the violation occurs or is threatened, to restrain that person from continuing the violation or from carrying out the threat of violation. In any such action, the court shall have jurisdiction to issue, without the filing of a bond or other undertaking by the commission, such prohibitory and mandatory injunctions as are necessary, including temporary restraining orders, preliminary injunctions, temporary, preliminary, or final orders restraining the person from continuing the violation or from carrying out the threat of violation.

SECTION 7. PENALTIES.

1. Any person who violates any provision of this Act, or any rule or order of the commission adopted or issued under this Act, shall be subject to a civil penalty of not more than twelve thousand five hundred dollars for each act of violation and for each day the violation continues.

2. It is a class C felony for any person, for the purpose of evading this Act, or any rule or order of the commission, to make or cause to be made any false entry or statement in a report required by this Act or by any rule or order adopted or issued or promulgated by the commission, or to make or cause to be made any false entry in any record, account, or memorandum required by this Act, or by any rule or order of the commission, or to omit, or cause to be omitted, from any such record, account, or memorandum, full, true, and correct entries as required by this Act or by any rule or order of the commission, or to remove from this state or destroy, mutilate, alter, or falsify any record, account, or memorandum.

3. The civil penalties provided in subsection 1 shall be recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there is more than one defendant, or in the district court of any county in which the violation occurred. The payment of the penalty shall not operate to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.

SECTION 8. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Any proceedings under this Act for the adoption or modification of rules or orders, including emergency orders relating to extraction of geothermal energy and determining compliance with rules of the commission, shall be conducted in accordance with sections 38-08-11, 38-08-12, 38-08-13, and 38-08-14; and chapter 28-32 shall govern administrative practice where consistent with the provisions of this Act and the above-referenced sections.

SECTION 9. DISPOSITION OF UNUSABLE PRODUCTS. Products for which there is no beneficial use and which the commission determines to be hazardous, must be disposed of in accordance with the provisions of chapter 23-20.2 of the North Dakota Century Code and other state laws and regulations regarding the management of hazardous waste.

Approved March 11, 1981

MOTOR VEHICLES

CHAPTER 378

SENATE BILL NO. 2069
(Legislative Council)
(Interim Judiciary "C" Committee)

REGISTRATION AND TITLING REQUIREMENTS

AN ACT to create and enact a new subsection to section 39-01-01, five new sections to chapter 39-04, a new subdivision to subsection 2 of section 39-04-18, and eight new sections to chapter 39-05 of the North Dakota Century Code, relating to the definition of "used vehicle", notification of a registrant's change of address, refusal to register a vehicle, personalized automobile number plates, antique automobile number plates, alteration or forging of registration cards, exemptions from registration, certificate of title requirement, exclusions from the certificate of title requirement, salvage certificates of title, allowing officers of the department to administer oaths, issuance of a salvage certificate of title, delivery of a title certificate, release of a security interest, and grounds for refusing issuance of a title certificate; and to amend and reenact sections 39-04-01, 39-04-02, 39-04-04, 39-04-05, 39-04-06, 39-04-10, 39-04-11, 39-04-12, 39-04-15.1, subdivision a of subsection 2 of section 39-04-18, section 39-04-36, subsection 3 of section 39-04-37, sections 39-04-44, 39-04-54, 39-05-01, 39-05-05, 39-05-09, 39-05-11, 39-05-19, 39-05-20, 39-05-21, and 39-05-27 of the North Dakota Century Code, relating to definitions, the application for registration, the department's files, refusal to register, rescission or suspension of registration, special plates for amateur radio station license holders, display of number plates, transfer of number plates, installment registration fees, vehicles which need not be registered, farm truck registration, change of registration, transfer of number plates, violations, credits on destroyed vehicles, contents of the registration card, the department's refusal to license a vehicle until application for a title certificate is made, contents of the certificate of title, issuance of the title certificate, altering a title certificate, transfer of title to a vehicle, obtaining a certificate of title when ownership is obtained by other than voluntary means, transferee's obtaining a new title certificate upon failure to obtain the old certificate, refusing issuance of a title certificate, and possession of title certificates by dealers in used vehicles; and to repeal sections 39-04-29 and 39-04-43 of the North

Dakota Century Code, relating to delivery of title and number plates for antique automobiles.

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

SECTION 1. AMENDMENT. A new subsection to section 39-01-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Used vehicle" means a motor vehicle which has been sold, bargained, exchanged, given away, or the title to which has been transferred to another, by the person who first acquired it from the manufacturer or importer, dealer, or agent of the manufacturer or importer.

SECTION 2. A new section to chapter 39-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

CHANGE OF ADDRESS. Whenever any person after making application for or obtaining the registration of a vehicle shall move from the address named in the application or shown upon a registration card such person shall within ten days thereafter notify the department in writing of his old and new addresses.

SECTION 3. A new section to chapter 39-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

REFUSAL TO REGISTER VEHICLE - REVOKING REGISTRATION - APPEAL.

1. If the department determines that an applicant for registration of a vehicle is not entitled to registration, it may refuse to register the vehicle. The applicant shall have no further right to apply for registration on the statements contained in the application unless the department reverses its decision or its decision is reversed by a court of competent jurisdiction.

2. The department may, after giving notice to the owner and an opportunity for a hearing, revoke the registration of a vehicle if it determines that the vehicle is not entitled to registration. The notice shall be served in person or by registered or certified mail.

SECTION 4. A new section to chapter 39-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

PERSONALIZED PLATES. The department may, in its discretion, provide special plates marked with initials, letters, or combinations of numerals and letters at the request of the registrant, upon application therefor and upon payment of an additional fee of one hundred dollars. The special plates shall contain not more than six letters or a combination of not more than six numerals and letters. In the event of sale or transfer of the

vehicle, the special plates may be surrendered and, upon application, a regular license plate shall be issued without additional cost, or upon payment of the applicable registration fee, the special plates shall be transferred to the replacement motor vehicle.

SECTION 5. A new section to chapter 39-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

ANTIQUE AUTOMOBILES - LICENSE AND FEE. Any motor vehicle which is at least forty years old may be permanently licensed by the department upon the payment of a registration fee of ten dollars. The department shall design and issue a distinctive number plate for this purpose.

SECTION 6. A new section to chapter 39-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

ALTERING OR FORGING REGISTRATION CARD - PENALTY. It is a class C felony for any person to:

1. Alter with fraudulent intent any registration card issued by the department;

2. Forge or counterfeit any registration card purporting to have been issued by the department under the provisions of this chapter;

3. Alter or falsify with fraudulent intent or forge any assignment of a registration card; or

4. Use any registration card, or assignment, knowing the same to have been altered, forged, or falsified.

* SECTION 7. AMENDMENT. Section 39-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Commercial freighting" means the carriage of things other than passengers, for hire, except that such terms shall not include:~~

   ~~a. The carriage of things other than passengers within the limits of the same city,~~

   ~~b. The carriage by local dray lines of baggage or goods to or from a railroad station from or to places in such city or in the immediate vicinity thereof, in this state, and not to exceed two miles [1.61 kilometers] from the corporate limits of said city, or~~

* NOTE: Section 39-04-01 was also amended by section 25 of House Bill No. 1069, chapter 91.

~~c.--Hauling--done--by--farmers--for--their--neighbors--in transporting-agricultural-products-to-or-from--market.~~

~~2.--"Commercial--passenger--transportation"-means-the-carriage of-passengers-for-hire,-except-that-such--term--shall--not include:~~

~~a.--The--carriage--of--passengers--within--the-limits-of-a city,-or~~

~~b.--The--carriage--by--local-bus-lines-of-passengers-to-or from-a-railroad-station-from-or-to-places--within--any city--or--within--two--miles--[1.61-kilometers]-of-the limits-thereof.~~

~~3.--"Dealer"--means--every-person,-partnership,-or-corporation engaged-in-the-business-of-buying,-selling,-or--exchanging motor-vehicles,-or-who-advertises,-or-holds-himself-out-to the--public--as--engaged--in--the--buying,---selling,---or exchanging-of-motor-vehicles,-or-who-engages-in-the-buying of-motor-vehicles-for-resale.---Any--person,--partnership, corporation,--or--association--doing--business--in-several cities-or-in-several-locations--within--a--city--shall--be considered-a-separate-dealer-in-each-such-location.~~

~~4.~~ "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.

~~5.~~ 2. "Foreign vehicle" means every motor vehicle which shall be brought into this state otherwise than in the ordinary course of business by or through a manufacturer or dealer and which has not been registered in this state.

~~6.--"Gross--weight"--means-the-total-of-the-unloaded-weight-of the-vehicle,-or-combination--of--vehicles,--and--the--load carried-thereon.~~

~~7.~~ 3. "Reconstructed vehicle" means any vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used. A reconstructed vehicle may be registered upon the payment of the same fees for the calendar year that are paid for a motor vehicle of comparable make and year as the reconstructed vehicle, excluding ~~penalties-as-provided--in section--39-04-16--and~~ nonuse fees as provided in section 39-04-18.

4. "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.

~~8.~~ 5. "Specially constructed vehicle" means any vehicle which shall not have been constructed originally under the distinct name, make, model, or type, by a generally recognized manufacturer of vehicles.

SECTION 8. AMENDMENT. Section 39-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-02. APPLICATION FOR THE REGISTRATION OF A ~~MOTOR~~ VEHICLE - CONTENTS. Application for the registration of a ~~motor~~ vehicle shall be made as ~~is~~ provided in this section:

1. Application shall be made by the owner thereof upon appropriate forms approved or furnished by the ~~registrar~~ department, and every application shall be signed by the owner and shall contain his county of residence, address, and a brief description of the vehicle to be registered, including the name of the maker, either the engine, serial, or identification number, if any, whether new or used, and the last license number known, and the state in which issued, and, upon the registration of a new vehicle, the date of sale by the manufacturer or dealer to the person first operating ~~such~~ the vehicle. The application shall contain ~~such~~ other information as may be required by the ~~registrar~~ department.

2. If the ~~motor~~ vehicle for which registration is sought is a specially constructed, reconstructed, or foreign vehicle, ~~such~~ the facts shall be stated in the application. The owner of every ~~foreign--motor~~ vehicle which has been registered outside ~~of~~ this state shall exhibit to the ~~registrar~~ department the certificate of the title and registration card or ~~such~~ other evidence as will satisfy the ~~registrar~~ department that the applicant is the lawful owner or possessor of the vehicle.

3. ~~If--the-motor-vehicle-for-which-registration-is-sought-has a-manufacturer's-identification-number-other-than--on--the engine,--such--identification--number-shall-be-included-in the---application,---and---when---so---registered,----such identification--number--shall--be--deemed--to--include-the engine-number.~~

~~4.~~ If the vehicle for which registration is sought is a new vehicle, no registration shall be issued unless a certificate of origin executed by the manufacturer of such vehicle is attached to the application for registration or is attached to the application for the certificate of title for such vehicle. If the new ~~motor~~ vehicle for which registration is sought is of foreign manufacture, the certificate of origin shall be furnished by the importer of such vehicle. The manufacturer or importer of all new vehicles shall designate the total shipping weight of the vehicle on the certificate of origin.

~~5.~~ 4. In applying for ~~such certificate of title~~ registration the buyer shall state his post-office address and the county and city or township of his residence and the dealer shall make specific inquiry relative thereto before ~~filling such information in~~ completing the application ~~blank~~.

SECTION 9. AMENDMENT. Section 39-04-04 of 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 ~~therein described~~ and the owner ~~thereof~~ in ~~suitable~~ 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 ~~to the~~ its owner ~~thereof~~, referred to in this chapter as the registration number~~;~~.

2. Alphabetically under the name of the owner~~;~~ ~~and~~.

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.

~~Such~~ The application may be destroyed by the department after it is two years old.

SECTION 10. AMENDMENT. Section 39-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-05. GROUNDS FOR REFUSING REGISTRATION ~~OR CERTIFICATE OF TITLE~~. The department shall refuse registration or any transfer of registration ~~and shall not issue a certificate of title or transfer a certificate of title~~ 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 ~~the issuance of a certificate of title or~~ 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 ~~such~~ 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 26-41.

The registrar of motor vehicles shall promulgate rules and regulations for ~~the~~ refusal of ~~the~~ registration ~~or--certificate--of title~~ of ~~motor~~ vehicles not equipped as required by chapter 39-21.

SECTION 11. AMENDMENT. Section 39-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-06. WHEN REGISTRATION RESCINDED OR SUSPENDED. The department shall rescind or suspend the registration of a ~~motor~~ vehicle for any of the following:

1. When the department ~~shall--determine--that~~ determines a vehicle is unsafe or unfit to be operated or is not equipped as required by law.

2. Whenever the person to whom the registration card or registration number plates therefor have been issued ~~shall make~~ makes or ~~permit to be made~~ permits any unlawful use of the same or ~~permit~~ permits the use thereof by a person or on a ~~motor~~ vehicle not entitled thereto.

3. Whenever the commissioner finds that a vehicle is registered in accordance with a reciprocity agreement, arrangement, or declaration and ~~such~~ the vehicle is operated in violation of ~~such~~ the agreement.

4. When the department ~~shall--determine~~ determines that a motor vehicle is not covered by security for payment of basic no-fault benefits and the liabilities covered under motor vehicle liability insurance as required by chapter 26-41.

5. When the department is satisfied that the registration or registration card, plate, or permit was fraudulently or erroneously issued.

6. When a registered vehicle has been dismantled or wrecked.

7. When a registration card, registration plate, or permit is knowingly displayed upon a vehicle other than the one for which issued.

8. When the department determines that the owner has committed any offense under this chapter involving the registration or the registration card, plate, or permit to be suspended or rescinded.

9. When the purchaser or transferee of a vehicle fails to present the endorsed and assigned certificate of title to the department for transfer and make application for a new certificate of title within thirty days as required by section 39-05-17.

Any registration suspended for any of the above reasons shall be restored upon compliance with the laws governing ~~motor~~ vehicle registration.

Whenever a check is returned to the department for want of payment the department shall rescind the registration of the ~~motor~~ vehicle covered by ~~such~~ the check.

Any registration rescinded for want of payment of a check shall be restored upon payment of the registration fee and the additional sum of ten dollars for the cost of collection of the check.

SECTION 12. AMENDMENT. Section 39-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-10. SPECIAL PLATES FOR AMATEUR RADIO STATION LICENSE HOLDERS. Owners of motor vehicles required to be registered under subdivisions a and b of subsection 2 of section 39-04-19, who hold an unrevoked and unexpired official amateur radio station license issued by the federal communications commission, Washington, D.C., may receive special plates. The plates will be issued upon application to the ~~registrar--of--motor--vehicles~~ department, accompanied by proof of ownership of ~~such~~ the amateur radio station license, compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles, and payment of the regular license fee, as prescribed under the North Dakota motor vehicle laws~~,--shall-be-issued~~. The special ~~number~~ plates will be issued in lieu of the ~~number~~ plates ordinarily issued, ~~upon-which~~ and shall ~~be~~ have inscribed on them the official amateur radio call letters of ~~such~~ the applicant as assigned by the federal communications commission. ~~Such-applications~~ The application must be filed by October first prior to the year of issuance.

~~The--registrar--of-motor-vehicles-shall-furnish-to-the-sheriff of-each-county-in--the--state--of--North--Dakota--an--alphabetically arranged--list-of-the-names-and-special-plate-letters-of-each-person to-whom-a-plate-is-issued-under-the-provisions-of-this-section,--and~~

~~it shall be the duty of the sheriffs of the state to maintain and to keep current such lists for public information and inquiry.~~

* SECTION 13. AMENDMENT. Section 39-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-11. DISPLAY OF NUMBER PLATES AND TABS. Except as otherwise specifically provided, no person shall operate or drive a ~~motor~~ vehicle on the public highways of this state unless ~~such~~ the vehicle shall have a distinctive number assigned to it by the ~~registrar~~ department, and two number plates, bearing ~~such~~ the distinctive number conspicuously displayed, horizontally and in an upright position, one on the front and one on the rear of ~~such~~ the vehicle, each securely fastened, except number plates assigned to a motorcycle, trailer, or house trailer shall be attached to the rear thereof. The bottom of each number plate shall be at a height of not less than twelve inches above the level surface upon which the vehicle stands. As far as is reasonably possible, ~~such~~ the plates shall at all times be kept free and clear of mud, ice, or snow so as to be clearly visible and all number plates, markers, or evidence of registration or licensing except for the current year shall be removed from ~~such~~ the vehicle. All ~~motor~~ vehicle license plates issued by the ~~registrar~~ department shall continue to be the property of the state of North Dakota for the period for which ~~said~~ the plates are valid. An annual registration tab or sticker for the current registration year shall be displayed on each number plate in those years for which ~~such~~ tabs or stickers are issued in lieu of number plates.

SECTION 14. AMENDMENT. Section 39-04-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-12. CONTENTS OF NUMBER PLATES - SIZE OF LETTERS AND NUMERALS ON PLATES - REFLECTORIZED - TABS OR STICKERS - ADDITIONAL FEE.

1. Number plates shall be of metal or other suitable material bearing the name of the state, either in full or by abbreviation, the number of the year, the slogan "Peace Garden State" and a distinctive number for assignment to each vehicle. The distinctive number may be in figures or a combination of figures and letters and shall be of a size clearly distinguishable by law enforcement officers and individuals generally. To reduce highway accidents at night all ~~such~~ number plates shall be legible for a minimum distance of one hundred feet [30.48 meters] to an approaching motorist by day or night with lawful headlight beams and without other illumination. Each plate shall be treated with a reflectorized material according to the specifications prescribed by the ~~registrar of motor vehicles~~ department. The ~~registrar~~ department shall furnish ~~such~~ number plates for a period to be determined by the ~~registrar~~ department, which period shall not be less than four years. In any year during which number

* NOTE: Section 39-04-11 was also amended by section 2 of House Bill No. 1309, chapter 381.

plates are not furnished the ~~registrar~~ department shall furnish for each annual registration a year plate, tab, or sticker to designate the year registration. ~~This~~ The plate, tab, or sticker shall show the ~~calendar~~ registration year for which issued, and is valid only for that year. It shall be unlawful for any person to transfer to another vehicle the number plate, tab, or sticker during the period or calendar year for which issued, except as ~~hereinafter~~ provided in section 39-04-36 and elsewhere in this chapter.

~~A registration plate currently assigned to a motor vehicle may be transferred to a similar replacement motor vehicle at the owner's request, upon payment of the appropriate registration fees applicable to the replacement vehicle and a three-dollar transfer fee. A new registration plate shall be assigned to the motor vehicle being replaced.~~

~~The registrar may, in his discretion, provide special plates marked with initials, letters, or combinations of numerals and letters at the request of the registrant, upon application therefor and upon payment of an additional fee of one hundred dollars. In the event of sale or transfer of the vehicle, the special plates may be surrendered and upon application, a regular license plate shall be issued without additional cost or upon payment of the applicable registration fee, be transferred to the replacement motor vehicle.~~

2. The ~~registrar~~ department may, in ~~his~~ its discretion, provide to an owner of a fleet of ten or more trailers which are offered for lease and rented to the public, number plates which shall be for a period of not more than six consecutive years and which shall be exempt from the requirements of annual validation evidence. The registration fees for such trailers may be paid for the entire period for which the plates are issued, or the fees may be paid for the first year of the issue and a corporate surety bond may be filed in such sum as the ~~registrar~~ department deems reasonable and adequate in the circumstances, conditioned that the owner will pay the annual fee at the beginning of each annual registration period.

* SECTION 15. AMENDMENT. Section 39-04-15.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-15.1. INSTALLMENT REGISTRATION OF VEHICLES LICENSED FOR A GROSS WEIGHT IN EXCESS OF THIRTY-SIX THOUSAND POUNDS [16329.33 KILOGRAMS] - DELINQUENCIES - PENALTY. All motor vehicles registered for a gross weight in excess of thirty-six thousand pounds [16329.33 kilograms] may be registered by the payment of registration fees in two installments, each equal to one-half of the annual fee. Such installments shall be due on January first and July first of each year and delinquent on February first, and August first,

* NOTE: Section 39-04-15.1 was also amended by section 26 of House Bill No. 1069, chapter 91.

respectively. A penalty~~,--in-addition-to-that-provided-in-section 39-04-16,~~ of twenty-five dollars shall be added to any installment delinquent under the provisions of this section. When any vehicle is initially registered between installment dates hereunder, the ~~registrar~~ department may prorate the fee in equal installments consisting of the date of such initial registration and any unexpired installment dates. The license plates shall be issued upon the payment of the first installment, plus five dollars, but upon default in the payment of any installment, the ~~registrar~~ department shall cause the license plates to be removed from the vehicle involved and shall not reissue them until the installment plus penalties have been paid.

SECTION 16. A new subdivision to subsection 2 of section 39-04-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

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.

SECTION 17. AMENDMENT. Subdivision a of subsection 2 of section 39-04-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

a. Farm tractors as defined in subsection 17 of 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.

SECTION 18. AMENDMENT. Section 39-04-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-36. TRANSFER OF REGISTRATION AND NUMBER PLATES UPON TRANSFERRING OR ASSIGNING TITLE - EXCEPTION.

1. Whenever the owner of a vehicle registered under the provisions of this chapter transfers or assigns his title thereto or interest therein, the registration of ~~such~~ the vehicle, together with the number plates originally assigned thereto, shall be transferred to the transferee as provided in this chapter. The number plates originally assigned to the vehicle must remain attached thereto until the end of the current registration year except ~~that--the~~ as provided in this chapter.

2. A registration plate currently assigned to a vehicle may be transferred to a similar replacement vehicle at the owner's request, upon payment of the appropriate registration fees applicable to the replacement vehicle

and a three dollar transfer fee. A new registration plate shall be assigned to the vehicle being replaced.

3. The owner of a vehicle registered for a gross weight in excess of thirty-six thousand pounds [16329.33 kilograms] may transfer registration and number plates from one truck to a replacement truck by compliance with procedures established by the ~~registrar~~ department. The truck from which ~~such~~ the registration and number plates are transferred shall not be operated upon the highways of this state until properly licensed therefor under the provisions of this chapter.

SECTION 19. AMENDMENT. Subsection 3 of section 39-04-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. To lend ~~to~~ any registration number plate or registration card to any person not entitled thereto, or knowingly ~~to~~ permit the use ~~by one not entitled thereto~~ of any registration number plate ~~issued to the person so lending or permitting the use thereof~~ or registration card by any person not entitled thereto.

SECTION 20. AMENDMENT. Section 39-04-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-44. CREDITS ON DESTROYED VEHICLE. Any owner of a motor vehicle licensed ~~or taxed~~ in this state, if such vehicle is permanently and involuntarily destroyed, may during the same year or following year claim a refund in an amount equal to the unused portion of the fee ~~or tax~~ paid upon the vehicle so destroyed, computed pro rata by the month, one-twelfth of the annual fee ~~or tax~~ paid for each month of the year remaining after the month in which such vehicle was so destroyed. ~~Any person or organization who completely destroys or completely dismantles a car or truck so as to cause that car or truck to lose its identity shall forward the title for this vehicle to the registrar of motor vehicles within ten days. A certificate of title of the vehicle shall not again be issued except upon application containing the information the department requires, accompanied by a certificate of inspection in the form and content specified by the registrar,~~ provided the number plates, registration card, and certificate of title are returned to the department. If the number plates or registration card assigned to the vehicle are destroyed, a refund may be obtained upon furnishing information of such fact satisfactory to the department. Upon receiving the certificate of title, the department shall issue a salvage certificate of title.

SECTION 21. AMENDMENT. Section 39-04-54 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-54. REGISTRATION CARD - ISSUANCE - CONTENTS - SIGNING. Upon registering a ~~motor~~ vehicle, the department shall issue to the

~~applicant~~ owner a registration card which shall set forth all of the following:

1. The date issued.

2. The registration number assigned ~~to the applicant and~~ to the vehicle.

3. A description of the registered vehicle, including either ~~the engine,~~ serial, or identification number.

4. A space for the signature of the ~~applicant~~ owner.

5. ~~Such other~~ The name of the owner.

6. Other statements of fact as may be determined necessary by the department.

SECTION 22. A new section to chapter 39-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

CERTIFICATE OF TITLE REQUIRED. Except as otherwise provided in this chapter, every owner of a vehicle which is in this state and for which no certificate of title has been issued shall make application to the department for a certificate of title to the vehicle.

SECTION 23. A new section to chapter 39-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

EXCLUSIONS FROM THE CERTIFICATE OF TITLE REQUIREMENT. No certificate of title need be obtained for:

1. A vehicle owned by the United States unless it is registered in this state.

2. A vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing or demonstration or a vehicle used by a manufacturer solely for testing.

3. A vehicle owned by a nonresident of this state and not required by law to be registered in this state.

4. A vehicle regularly engaged in interstate transportation of persons or property for which a currently effective certificate of title has been issued in another state.

5. A vehicle moved solely by human or animal power.

6. Implements of husbandry.

7. Special mobile equipment.

8. A self-propelled invalid wheelchair or invalid tricycle.

9. Any vehicle which is driven or moved upon a highway only for the purpose of crossing the highway from one property to another. The vehicle shall cross the highway at an angle of approximately ninety degrees to the direction of the highway.

10. Other vehicles not required to be registered in this state or not required to display distinctive plates.

SECTION 24. A new section to chapter 39-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

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.

SECTION 25. A new section to chapter 39-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

ADMINISTRATION OF OATHS. Officers and employees of the department designated by the registrar may administer oaths for the purposes of this chapter, but shall not charge any fee therefor.

SECTION 26. A new section to chapter 39-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 three dollar fee.

SECTION 27. A new section to chapter 39-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

CERTIFICATE OF TITLE TO BE DELIVERED. Every person, firm, or corporation upon the sale and delivery of any vehicle for which a certificate of title is required shall within fifteen days after sale deliver to the vendee a certificate of title covering the vehicle endorsed according to law. If the vehicle is subject to any liens, the certificate of title shall be delivered to the first lienholder.

SECTION 28. A new section to chapter 39-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

RELEASE OF A SECURITY INTEREST.

1. Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of the lienholder, the lienholder shall, within ten days after demand, and in any event within thirty days, execute a release of the lienholder's security interest as the department prescribes. The lienholder shall:

   a. Mail or deliver the certificate of title and release to the next lienholder named on the certificate of title, who shall, within thirty days of receipt, mail or deliver the certificate of title, release, and a fee of three dollars to the department. The department shall issue and mail or deliver a new certificate of title to the first lienholder named on the new certificate of title.

   b. If there are no other lienholders named on the certificate of title, mail or deliver the certificate of title and release to the owner or any other person who delivers to the lienholder an authorization from the owner to receive the certificate of title and release. The person receiving the certificate of title and release shall, within thirty days of receipt, mail or deliver the certificate of title, release, and a fee of three dollars to the department. The department may prescribe further application procedures and, upon determining that there has been a proper compliance with these procedures, shall issue a new certificate of title and mail or deliver it to the owner or any person the owner authorizes to receive it.

2. Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of a prior lienholder, the lienholder whose security interest is satisfied shall within ten days after demand and, in any event within thirty days, execute a release in the form the department prescribes and deliver the release to the owner or any person who delivers to the lienholder an authorization from the owner to receive it. The

lienholder in possession of the certificate of title shall either deliver the certificate of title to the owner or the person authorized by him for delivery to the department; or, upon receipt of the release, mail or deliver it with the certificate of title to the department which shall, upon the payment of a three dollar fee, issue a new certificate.

SECTION 29. A new section to chapter 39-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

GROUNDS FOR REFUSING CERTIFICATE OF TITLE. The department shall not issue a certificate of title or transfer a certificate of title upon any of the following grounds:

1. When the application contains any false or fraudulent statements or when the applicant has failed to furnish required information or reasonable additional information requested by the department or when the applicant is not entitled to the issuance of a certificate of title under this chapter.

2. When the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

3. When the department has reason to believe the vehicle is a stolen or embezzled vehicle or the granting of title would constitute a fraud against the rightful owner or other person having valid lien upon the vehicle.

4. When the certificate of title is suspended or revoked for any reason as provided in the motor vehicle laws of this state.

5. When 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 provide 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 26-41.

SECTION 30. AMENDMENT. Section 39-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-05-01. ~~DEFINITIONS~~ DEFINITION. In this chapter, unless the context or subject matter otherwise requires:

~~1. "Dealer" means every person, partnership, or corporation engaged in the business of buying, selling, or exchanging motor vehicles, or who advertises, or holds himself out to~~

~~the--public--as--engaged--in--the--buying,---selling,---or exchanging-of-motor-vehicles,-or-who-engages-in-the-buying of-motor-vehicles-for-resale.---Any--person,--partnership, corporation,--or--association--doing--business--in-several cities-or-in-several-locations--within--a--city--shall--be considered-a-separate-dealer-in-each-such-location.~~

~~2.--"Legal--owner"-means-a-person-who-holds-the-legal-title-to a-vehicle.~~

~~3.--"Motor,~~ "motor vehicle" includes a house trailer or mobile home and any semitrailer designed to be towed by a truck tractor.

~~4.--"Registered---owner"---means--a--person--who--holds--legal possession-of-a-vehicle-but-does-not-hold-legal-title.~~

~~5.--"State"--includes--a--state,--district,--or--organized--or unorganized-territory-of-the-United-States-of-America.~~

~~6.--"Used--vehicle"-means-a-motor-vehicle-which-has-been-sold, bargained,-exchanged,-given-away,-or-the--title--of--which has-been-transferred-from-the-person-who-first-acquired-it from-the-manufacturer-or-importer,-dealer-or-agent-of--the manufacturer--or--importer,--and-so-used-as-to-have-become what-is-commonly-known-as-"secondhand"-within-the-ordinary meaning-of-such-term.~~

SECTION 31. AMENDMENT. Section 39-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-05-05. APPLICATION FOR CERTIFICATE OF TITLE - CONTENTS - FEE TO ACCOMPANY.

1. An application for a certificate of title shall be made upon an appropriate form furnished or approved by the department and shall contain all of the following:

~~1.~~ a. A full description of the ~~motor~~ vehicle, including the name of the ~~maker~~ manufacturer, either the engine, serial, or identification number, and any other distinguishing marks ~~thereon~~.

~~2.~~ b. A statement as to whether the vehicle is new or used.

~~3.~~ c. A statement of the applicant's title and of any liens or encumbrances upon ~~said~~ the vehicle.

~~4.~~ d. The name and address of the person to whom the certificate shall be delivered.

e. The names and addresses of any lienholders in the order of their priority and the dates of their security agreements.

f. If the vehicle for which certificate of title is sought is a specially constructed, reconstructed, or foreign vehicle, such facts shall be stated in the application.

g. The buyer's street address, city, and county, or township and county, of residence and the dealer shall make specific inquiry relative thereto before filling in such information on the application.

~~5.~~ h. Such other information as the department may require.

2. The owner of every vehicle which has been registered outside of this state shall surrender to the department the certificate of title and registration card or other evidence which may satisfy the department the applicant is the lawful owner or possessor of the vehicle.

3. If the vehicle for which certificate of title is sought is a new vehicle, no certificate of title shall be issued unless a certificate of origin executed by the manufacturer of such vehicle is attached to the application for registration or is attached to the application for the certificate of title for the vehicle. If the new vehicle for which certificate of title is sought is of foreign manufacture, the certificate of origin shall be furnished by the importer of the vehicle. The manufacturer or importer of all new vehicles shall designate the total shipping weight of the vehicle on the certificate of origin.

4. When a new ~~motor~~ vehicle is purchased from a dealer, the application for the certificate of title shall include a statement of the transfer by the dealer and of any lien retained by ~~such~~ the dealer or other lienholder. If the title to ~~such a~~ the vehicle is reserved by the dealer or other lienholder, the certificate shall be made out to the dealer or lienholder and delivered to him as the ~~legal owner~~ owner or lienholder of the vehicle.

5. Every application shall be accompanied by a fee of three dollars, which shall be in addition to any fee charged for the registration of such vehicle.

SECTION 32. AMENDMENT. Section 39-05-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-05-09. ISSUANCE, CONTENTS, DELIVERY, AND TERM OF CERTIFICATE.

1. After checking the application for a certificate as provided in section 39-05-08, the department, if it is satisfied that the applicant is the person entitled to the

possession of the vehicle, shall issue ~~in---the~~ a certificate of title which shall contain:

a. The name of the owner ~~a-certificate-of-title-bearing-a serial~~.

b. The vehicle identification number~~,-the~~.

c. The signature of the registrar~~,~~ and the seal of ~~his~~ the office. ~~Such-certificate-shall-set-forth--further the~~

d. The date issued~~,-a~~.

e. A description of the vehicle as determined by the department~~,-a~~.

f. A statement of the owner's title and of all liens or encumbrances upon the vehicle therein described and whether possession is held by the ~~legal~~ owner or lienholder.

2. Upon the reverse side of such certificate shall be contained forms for the assignment of title or interest and warranty thereof by the owner with a space for the notation of liens and encumbrances upon such vehicle at the time of a transfer.

3. The amount of any lien or encumbrance upon the vehicle need not be shown anywhere on the certificate of title, only the fact of such lien or encumbrance, and the identity of the lienholder or encumbrancer. The department shall deliver the certificate of title to the owner or first lienholder. ~~Said~~ The certificate shall be good for the life of the vehicle as long as the vehicle is owned or held by the original holder of ~~such~~ the certificate.

SECTION 33. AMENDMENT. Section 39-05-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-05-11. ALTERING OR FORGING CERTIFICATE OF TITLE ~~OR REGISTRATION-CARD~~ - PENALTY. Any person who shall:

1. Alter with fraudulent intent any certificate of title ~~or registration-card~~ issued by the department;

2. Forge or counterfeit any certificate of title ~~or registration-card~~ purporting to have been issued by the department under the provisions of this chapter;

3. Alter or falsify with fraudulent intent or forge any assignment of a certificate of title ~~or-registration-card~~; ~~or~~

4. Use any certificate~~,--registration--card,~~ or assignment, knowing the same to have been altered, forged, or falsified~~;~~

shall be guilty of a class C felony.

SECTION 34. AMENDMENT. Section 39-05-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-05-19. OBTAINING CERTIFICATE OF TITLE FOR VEHICLE WHEN OWNERSHIP OBTAINED BY OTHER THAN VOLUNTARY MEANS. Whenever the ownership of any ~~motor~~ vehicle shall pass otherwise than by voluntary transfer, the ~~new-legal--owner~~ transferee may obtain a certificate of title ~~therefor~~ for the vehicle from the department upon application ~~therefor~~ for the certificate and payment of a fee of three dollars~~,~~. The application for the certificate shall be accompanied ~~with-such~~ by instruments or documents of authority, or certified copies thereof, as may be required by law to evidence or effect a transfer of title in or to chattels in such case. The department, when satisfied of the genuineness and regularity of such transfer, shall issue a new certificate of title to the person entitled thereto.

SECTION 35. AMENDMENT. Section 39-05-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-05-20. TRANSFEREE MAY OBTAIN NEW CERTIFICATE OF TITLE UPON INABILITY TO OBTAIN OLD CERTIFICATE.

1. When the transferee of a ~~motor~~ vehicle is unable to obtain a properly assigned certificate of title for ~~such~~ 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 ~~such~~ the transferee.

2. A person holding a certificate of title whose interests in the vehicle have been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate to the department upon request of the department. The delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate. The action of the department in issuing a new certificate of title as provided herein is not conclusive upon the rights of the owner or lienholder listed in the old certificate.

SECTION 36. AMENDMENT. Section 39-05-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-05-21. REFUSAL TO ISSUE CERTIFICATE OF TITLE ~~OR--TO REGISTER-VEHICLE~~ - REVOKING CERTIFICATE - APPEAL. If the department determines that an applicant for a certificate of title to a ~~motor~~ vehicle is not entitled thereto, it may refuse to issue ~~such~~ the

certificate ~~or--to-register-such-vehicle~~, and in that event, unless the department reverses its decision or its decision is reversed by a court of competent jurisdiction, the applicant shall have no further right to apply for a certificate of title ~~or-registration~~ on the statements in ~~said~~ the application. The department, for a like reason, after notice and hearing, may revoke the ~~registration already--acquired,--or--any~~ outstanding certificate of title. Said notice shall be served in person or by registered or certified mail. An appeal shall be taken in accordance with the provisions of chapter 28-32.

SECTION 37. AMENDMENT. Section 39-05-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-05-27. ~~USED--MOTOR~~ VEHICLE DEALER TO HAVE CERTIFICATE OF TITLE OR OTHER DOCUMENTARY EVIDENCE TO PROVE POSSESSION. Every vehicle dealer ~~in--used-or-secondhand-motor-vehicles~~ shall have in his possession a separate certificate of title assigned to such dealer, or other documentary evidence of his right to the possession of every ~~motor~~ vehicle in his possession.

SECTION 38. REPEAL. Sections 39-04-29 and 39-04-43 of the North Dakota Century Code are hereby repealed.

Approved March 19, 1981

CHAPTER 379

SENATE BILL NO. 2363
(Senator Hanson)
(Representative A. Olson)

PARKING VIOLATIONS ON STATE PROPERTY

AN ACT to create and enact a new subsection to section 39-01-15, a new subsection to section 39-06.1-06, a new subsection to section 39-10-48, and a new subsection to section 39-10-50 of the North Dakota Century Code, relating to parking spaces designated for use by physically handicapped persons on state charitable or penal institution property or on the state capitol grounds, authority of law enforcement officers to enforce traffic and parking violations on state charitable and penal institution property and on the state capitol grounds, to fees assessed for violations, and to envelopes for traffic and parking violations on state charitable and penal institution property or on the state capitol grounds.

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

SECTION 1. A new subsection to section 39-01-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

No person may stop, stand, or park any vehicle in any designated parking space which is reserved for the physically handicapped on any state charitable or penal institution property or on the state capitol grounds unless the vehicle displays a physically handicapped identification certificate or insignia issued by the motor vehicle registrar to a physically handicapped person.

SECTION 2. PROVISION OF ENVELOPES FOR TRAFFIC AND PARKING VIOLATIONS ON STATE CHARITABLE OR PENAL INSTITUTION PROPERTY OR STATE CAPITOL GROUNDS. Preprinted envelopes shall be provided for any person who elects to post bond by mail, pursuant to section 39-06.1-02, for a violation of section 1 of this Act or any state traffic parking regulations on any state charitable or penal institution property or on the state capitol grounds.

SECTION 3. A new subsection to section 39-06.1-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

For a violation of section 1 of this Act, any municipal ordinance equivalent to section 1 of this Act, or any traffic parking regulations on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars.

SECTION 4. A new subsection to section 39-10-48 of the North Dakota Century Code is hereby created and enacted to read as follows:

Whenever any authorized law enforcement officer finds, on state charitable or penal institution property or on the state capitol grounds, a vehicle standing, stopped, or parked in a dangerous location or in violation of any official traffic control device prohibiting or restricting the stopping, standing, or parking of any vehicle, the officer shall place a written warning on the vehicle for the first offense and thereafter an authorized traffic citation may be issued. However, no traffic citation may be issued for a violation of this subsection occurring on the state capitol grounds during a legislative session.

SECTION 5. A new subsection to section 39-10-50 of the North Dakota Century Code is hereby created and enacted to read as follows:

The state highway department, with respect to streets, roadways, and parking areas of any state charitable or penal institution and on the state capitol grounds, may authorize the purchase and placement by the director of institutions of official traffic control devices prohibiting or restricting the stopping, standing, or parking of vehicles. The placement of signs pursuant to this section shall be done when, in the department's opinion, the stopping, standing, or parking is dangerous or would unduly interfere with the free movement of traffic, especially the free flow of traffic required for proper fire protection. No person may stop, stand, or park any vehicle in violation of the restriction indicated by any official traffic control device. Any registered owner shall be presumed to have been the operator of a vehicle that is parked in violation of any official traffic control device prohibiting or restricting the stopping, standing, or parking of vehicles on any highway, state charitable or penal institution property, or on the state capitol grounds. This presumption may be rebutted by a showing of clear and convincing evidence to the contrary. However, no traffic citation may be issued for a violation of this subsection occurring on the state capitol grounds during a legislative session, except that a written warning shall be placed on any vehicle for such a violation.

Approved April 8, 1981

CHAPTER 380

HOUSE BILL NO. 1161
(Representatives Solberg, Martinson)
(Senator Olin)

HIGHWAY PATROLMEN'S RETIREMENT

AN ACT to amend and reenact sections 39-03.1-01, 39-03.1-09, 39-03.1-10, 39-03.1-12, 39-03.1-14, 39-03.1-21, and 39-03.1-26 of the North Dakota Century Code, relating to definitions of "total disability" and "surviving spouse", contributions to and benefits under the North Dakota highway patrolmen's retirement system, and payments made under other laws; and to repeal sections 39-03.1-15, 39-03.1-16, and 39-03.1-21.1 of the North Dakota Century Code, relating to disability benefits and children's benefits under the North Dakota highway patrolmen's retirement system.

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

SECTION 1. AMENDMENT. Section 39-03.1-01 of 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 this chapter, unless a different meaning is plainly implied by the context, shall have the following meanings:

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 credit in the fund, together with the regular interest thereon.

2. "Board"~~,~~ means the North Dakota highway patrolmen's retirement board.

3. "Contributor"~~,~~ means any person who is a member of the North Dakota highway patrol ~~and~~, 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.

7. ~~"Total--disability",--the--degree--of--disability-which-is recognized--under--the--workmen's--compensation--laws---as sufficient--to--entitle--the--claimant--to--an--award--for temporary-total-disability.~~ "Surviving spouse" means that person lawfully married to the contributor at the time of the contributor's death.

SECTION 2. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-09. PAYMENTS BY CONTRIBUTORS. Every member shall be required to contribute into the fund a sum equal to ~~nine~~ seven percent of his monthly salary, but not to exceed one hundred ~~thirty-five~~ thirty-three dollars, which sum shall be deducted from his salary and credited to his 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 him 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 his 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 shall elect 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 he might thereby be entitled.

SECTION 3. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-10. CONTRIBUTIONS BY THE STATE OF NORTH DAKOTA. The state of North Dakota shall ~~annually~~ contribute to the fund a sum equal to ~~the--amount--contributed--by-patrolmen-to-the-fund~~ twelve percent of the monthly salary or wage of a participating member. Such contribution shall not exceed two hundred twenty-eight dollars per month.

SECTION 4. AMENDMENT. Section 39-03.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-12. RETIREMENT ALLOWANCE. Each contributor qualifying under section 39-03.1-11 shall be entitled to receive from the fund, for the duration of his life, a monthly retirement allowance equal to two and ~~one-fourth~~ one-half percent of the average monthly salary, not to exceed one thousand ~~five~~ nine hundred dollars, for the thirty-six months of service immediately preceding retirement from the patrol, multiplied by twenty-five. For each

additional year of service over twenty-five the contributor shall be entitled to an additional one and one-half percent per month of his average salary, as determined above. Credit for additional service of at least one month of an uncompleted year of service shall be given in proportion to the number of months the additional service bears to one full year of service.

SECTION 5. AMENDMENT. Section 39-03.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-14. OPTIONAL RETIREMENT ALLOWANCE. Each contributor qualifying under section 39-03.1-13 shall be entitled to receive from the fund, for the duration of his life, a monthly optional retirement allowance equal to two and ~~one-fourth~~ one-half percent of the average monthly salary, not to exceed one thousand ~~five~~ nine hundred dollars, for the last thirty-six months of service, times the total number of years served.

SECTION 6. AMENDMENT. Section 39-03.1-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-21. PAYMENTS IN CASE OF DEATH. Whenever a contributor~~,--whether-or-not--he--is--receiving--or--is--entitled--to receive--a-retirement,-optional-retirement,-or-disability-retirement allowance,~~ with fewer than fifteen years of service dies leaving a surviving ~~wife-or-children,-an-allowance~~ spouse, a lump sum payment of the contributor's contributions plus regular interest shall be paid to the surviving ~~wife-until-her-death-or-prior-remarriage,-or, if-there-is-no-surviving--wife,--to--the--surviving--children--under eighteen--years--of-age~~ spouse. Whenever a contributor with fifteen or more years of service, whether or not he is receiving or is entitled to receive a retirement or optional retirement allowance dies leaving a surviving spouse, the surviving spouse, after attaining the age of fifty-five years, shall be paid a monthly benefit equal to fifty percent of the contributor's earned benefits. If there is no surviving ~~wife~~ spouse or if the contributor or surviving ~~wife-remarries,-and-there-are-no-surviving-children--under eighteen-years-of-age,-then-an-allowance-shall-be-paid-to-the-father or-mother-of-the-contributor-as-specified--by--the--contributor,--if both-survive,-or-to-either-parent-if-one-survives.~~

~~Eligibility--for-benefits-under-the-provisions-of-this-section shall-be-effective-for-the-widows-or-children-of-all-members--making contributions--to--the--North--Dakota-highway-patrolmen's-retirement fund-subsequent-to-July-1,-1955.~~

~~Such--allowance--shall--be--one-hundred-eighty-one-dollars-and fifty-cents-per-month~~ spouse dies prior to receiving benefits equal to the sum total of the contributor's contributions plus regular interest, a lump sum payment of an amount equal to the sum total of the contributor's contributions plus interest, minus any benefits already received, shall be made to the contributor's estate if there is no surviving spouse, or to the surviving spouse's estate if the surviving spouse dies prior to receiving all allowable benefits.

SECTION 7. AMENDMENT. Section 39-03.1-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-26. PAYMENTS UNDER OTHER LAWS. All payments provided for in this chapter are in addition to any other benefits now or hereafter provided for under the workmen's compensation laws of the state of North Dakota~~, except as provided in section 39-03.1-15~~.

SECTION 8. REPEAL. Sections 39-03.1-15, 39-03.1-16, and 39-03.1-21.1 of the North Dakota Century Code are hereby repealed.

Approved March 2, 1981

CHAPTER 381

HOUSE BILL NO. 1309
(Representatives Olafson, A. Olson)
(Senator Erickson)

TRUCK TRACTOR OR SEMITRAILER NUMBER PLATE

AN ACT to amend and reenact sections 39-04-08 and 39-04-11 of the North Dakota Century Code, relating to the number and display of number plates furnished by the motor vehicle department.

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

SECTION 1. AMENDMENT. Section 39-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-08. NUMBER PLATES FURNISHED BY THE DEPARTMENT. The department shall furnish to every motor vehicle owner two number plates for each registered motor vehicle, and one number plate for each registered motorcycle, trailer, or house trailer. The department may, in its discretion, furnish only one number plate for each registered truck tractor or semitrailer.

* SECTION 2. AMENDMENT. Section 39-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-11. DISPLAY OF NUMBER PLATES AND TABS. Except as otherwise specifically provided, no person shall operate or drive a motor vehicle on the public highways of this state unless such vehicle shall have a distinctive number assigned to it by the registrar, and two number plates, bearing such number conspicuously displayed, horizontally and in an upright position, one on the front and one on the rear of such vehicle, each securely fastened, except number plates assigned to a motorcycle or house trailer shall be attached to the rear thereof. When only one number plate is furnished for a truck tractor or semitrailer, the plate shall be attached to the front of the truck tractor and the rear of the semitrailer. As far as is reasonably possible, such plates shall at all times be kept free and clear of mud, ice, or snow so as to be clearly visible and all number plates, markers, or evidence of registration or licensing except for the current year shall be removed from such vehicle. All motor vehicle license plates issued by the registrar shall continue to be the property of the state of North Dakota for the period for which said plates are valid. An annual registration tab or sticker for the current registration year shall be displayed on each number plate in those years for which such tabs or stickers are issued in lieu of number plates.

* NOTE: Section 39-04-11 was also amended by section 13 of Senate Bill No. 2069, chapter 378.

Approved March 2, 1981

CHAPTER 382

SENATE BILL NO. 2289
(Nething, Cussons)

SPECIAL EX-P.O.W. LICENSE PLATES

AN ACT to create and enact a new subdivision to subsection 2 of section 39-04-18 of the North Dakota Century Code, relating to motor vehicle license plates for former prisoners of war; and to provide an appropriation.

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

SECTION 1. A new subdivision to subsection 2 of section 39-04-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

> 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 upon the payment of one dollar. 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.

SECTION 2. MOTOR VEHICLE REGISTRAR REIMBURSED - APPROPRIATION. The cost of the former prisoner of war license plates authorized by this Act shall be paid, upon a voucher prepared by the adjutant general, from any unappropriated moneys remaining in the sinking fund for the state of North Dakota general obligation bonds, Vietnam conflict adjusted compensation series, and such moneys as may be necessary, not to exceed five thousand dollars, are hereby appropriated from the sinking fund to the adjutant general for the purposes of this Act. Payment under this section shall be based on claims submitted by the motor vehicle registrar.

Approved April 8, 1981

CHAPTER 383

HOUSE BILL NO. 1365
(Representatives Strinden, A. Hausauer, Timm)
(Senators Nething, Goodman)

MOTOR VEHICLE REGISTRATION FEES

AN ACT to amend and reenact section 1 of House Bill No. 1341, as approved by the forty-seventh legislative assembly, relating to a conditional transfer of funds to the state capital construction fund; and to amend and reenact sections 39-04-19 and 57-50-01 and subsection 1 of section 57-51-15 of the North Dakota Century Code, relating to motor vehicle registration fees, refunds of the motor vehicle fuel and special fuel taxes, and distribution of the first one percent of the oil and gas gross production tax.

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

SECTION 1. Section 1 of House Bill No. 1341, as enacted by the forty-seventh legislative assembly, is hereby amended and reenacted to read as follows:

SECTION 1. APPROPRIATION - TRANSFER. In the event that the amount of revenues deposited in the general fund of the state treasury for the fiscal year ending June 30, 1981, exceeds $348,500,000, the director of the department of accounts and purchases shall direct the state treasurer to transfer from the general fund to the state capital construction fund the sum of $22,189,000, which is hereby appropriated, or so much thereof as may be necessary, or the amount by which the revenues deposited in the general fund for the fiscal year ending June 30, 1981, exceeds $348,500,000, whichever is less. In the event that the revenues deposited in the general fund of the state treasury for the fiscal year ending June 30, 1982, exceed ~~$400,000,000~~ $383,900,000, the director of the department of accounts and purchases shall direct the state treasurer to transfer from the general fund to the state capital construction fund the funds that are in excess of ~~$400,000,000~~ $383,900,000, or so much thereof as may be necessary, for the projects listed in section 2 of this Act for which funds were not previously transferred from the general fund to the capital construction fund, or the amount by which the revenues deposited in the general fund for the fiscal year ending June 30, 1982, exceed ~~$400,000,000~~ $383,900,000, whichever is less. In addition to other

transfers authorized by this section, if more than fifty percent of the amount appropriated in section 2 of this Act for a specific facility, in priority order, is transferred from the general fund to the capital construction fund on the dates authorized in this section, the director of the department of accounts and purchases shall direct the state treasurer to transfer the additional amounts required to complete such facility, not to exceed the total appropriation of state funds for such facility as set forth in section 2. Funds transferred pursuant to this section shall be expended by the various agencies, departments, and institutions for the construction or addition, remodeling, and equipping of buildings in accordance with specific appropriation made by the legislative assembly in section 2 of this Act.

SECTION 2. AMENDMENT. Section 39-04-19 of 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, shall pay a fee of ten 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, and 3rd Years	4th, 5th, and 6th Years	7th, 8th, and 9th Years	10th and Subsequent Years
~~1,999 or less~~	~~$ 32.00~~	~~$ 25.00~~	~~$ 19.00~~	~~$ 15.00~~
~~2,000-2,399~~	~~34.00~~	~~27.00~~	~~20.00~~	~~15.00~~
~~2,400-2,799~~	~~36.00~~	~~29.00~~	~~22.00~~	~~15.00~~
~~2,800-3,199~~	~~38.00~~	~~30.00~~	~~23.00~~	~~16.00~~
~~3,200-3,599~~	~~42.00~~	~~33.00~~	~~25.00~~	~~17.00~~
~~3,600-3,999~~	~~46.00~~	~~37.00~~	~~28.00~~	~~19.00~~
~~4,000-4,499~~	~~56.00~~	~~45.00~~	~~34.00~~	~~23.00~~
~~4,500-4,999~~	~~72.00~~	~~57.00~~	~~43.00~~	~~29.00~~
~~5,000-5,999~~	~~100.00~~	~~80.00~~	~~60.00~~	~~40.00~~

~~6,000-6,999~~	~~130.00~~	~~104.00~~	~~78.00~~	~~52.00~~
~~7,000-7,999~~	~~160.00~~	~~128.00~~	~~96.00~~	~~64.00~~
~~8,000-8,999~~	~~190.00~~	~~152.00~~	~~114.00~~	~~76.00~~
~~9,000-and-over~~	~~220.00~~	~~176.00~~	~~132.00~~	~~88.00~~
1,999 or less	$ 37.00	$ 30.00	$ 24.00	$ 20.00
2,000-2,399	39.00	32.00	25.00	20.00
2,400-2,799	41.00	34.00	27.00	20.00
2,800-3,199	43.00	35.00	28.00	21.00
3,200-3,599	47.00	38.00	30.00	22.00
3,600-3,999	51.00	42.00	33.00	24.00
4,000-4,499	61.00	50.00	39.00	28.00
4,500-4,999	77.00	62.00	48.00	34.00
5,000-5,999	105.00	85.00	65.00	45.00
6,000-6,999	135.00	109.00	83.00	57.00
7,000-7,999	165.00	133.00	101.00	69.00
8,000-8,999	195.00	157.00	119.00	81.00
9,000 and over	225.00	181.00	137.00	93.00

In addition to the fees required in this subsection and section 49-18-32, all motor buses used for the transportation of persons for hire over the highways of this state which have a seating capacity of more than seven passengers shall pay an annual additional license fee of twelve dollars for each passenger capacity in excess of seven. Motor passenger buses operating exclusively within the corporate limits of any city shall not be required to pay this fee.

b. School buses, 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, and 3rd Years	4th and 5th Years	6th and 7th Years	8th and Subsequent Years
~~0--4,000~~	~~$26.00~~	~~$21.00~~	~~$16.00~~	~~$15.00~~
~~4,001--6,000~~	~~31.00~~	~~25.00~~	~~20.00~~	~~15.00~~
~~6,001--8,000~~	~~36.00~~	~~29.00~~	~~23.00~~	~~15.00~~
~~8,001-10,000~~	~~41.00~~	~~34.00~~	~~26.00~~	~~16.00~~
~~10,001-12,000~~	~~47.00~~	~~38.00~~	~~29.00~~	~~18.00~~
~~12,001-14,000~~	~~52.00~~	~~42.00~~	~~32.00~~	~~20.00~~
~~14,001-16,000~~	~~57.00~~	~~46.00~~	~~35.00~~	~~22.00~~
~~16,001-18,000~~	~~62.00~~	~~50.00~~	~~38.00~~	~~24.00~~
~~18,001-20,000~~	~~68.00~~	~~55.00~~	~~42.00~~	~~26.00~~
~~20,001-22,000~~	~~73.00~~	~~59.00~~	~~45.00~~	~~27.00~~
~~22,001-24,000~~	~~78.00~~	~~63.00~~	~~48.00~~	~~29.00~~
0- 4,000	$31.00	$26.00	$21.00	$20.00

4,001- 6,000	36.00	30.00	25.00	20.00
6,001- 8,000	41.00	34.00	28.00	20.00
8,001-10,000	46.00	39.00	31.00	21.00
10,001-12,000	52.00	43.00	34.00	23.00
12,001-14,000	57.00	47.00	37.00	25.00
14,001-16,000	67.00	56.00	45.00	32.00
16,001-18,000	72.00	60.00	48.00	34.00
18,001-20,000	78.00	65.00	52.00	36.00
20,001-22,000	83.00	69.00	55.00	37.00
22,001-24,000	88.00	73.00	58.00	39.00

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, and 4th Years	5th, 6th, 7th, 8th, and 9th Years	10th and Subsequent Years
~~24,001--26,000~~	~~$--176.00~~	~~$--141.00~~	~~$--123.00~~
~~26,001--28,000~~	~~211.00~~	~~169.00~~	~~148.00~~
~~28,001--30,000~~	~~246.00~~	~~197.00~~	~~172.00~~
~~30,001--32,000~~	~~281.00~~	~~225.00~~	~~197.00~~
~~32,001--34,000~~	~~316.00~~	~~253.00~~	~~221.00~~
~~34,001--36,000~~	~~351.00~~	~~281.00~~	~~246.00~~
~~36,001--38,000~~	~~386.00~~	~~309.00~~	~~270.00~~
~~38,001--40,000~~	~~421.00~~	~~337.00~~	~~295.00~~
~~40,001--42,000~~	~~456.00~~	~~365.00~~	~~319.00~~
~~42,001--44,000~~	~~491.00~~	~~393.00~~	~~344.00~~
~~44,001--46,000~~	~~526.00~~	~~421.00~~	~~368.00~~
~~46,001--48,000~~	~~561.00~~	~~449.00~~	~~393.00~~
~~48,001--50,000~~	~~596.00~~	~~477.00~~	~~417.00~~
~~50,001--52,000~~	~~631.00~~	~~505.00~~	~~442.00~~
~~52,001--54,000~~	~~666.00~~	~~533.00~~	~~466.00~~
~~54,001--56,000~~	~~701.00~~	~~561.00~~	~~491.00~~
~~56,001--58,000~~	~~736.00~~	~~589.00~~	~~515.00~~
~~58,001--60,000~~	~~771.00~~	~~617.00~~	~~540.00~~
~~60,001--62,000~~	~~806.00~~	~~645.00~~	~~564.00~~
~~62,001--64,000~~	~~841.00~~	~~673.00~~	~~589.00~~
~~64,001--66,000~~	~~876.00~~	~~701.00~~	~~613.00~~
~~66,001--68,000~~	~~911.00~~	~~729.00~~	~~638.00~~
~~68,001--70,000~~	~~946.00~~	~~757.00~~	~~662.00~~
~~70,001--72,000~~	~~981.00~~	~~785.00~~	~~687.00~~
~~72,001--74,000~~	~~1,016.00~~	~~813.00~~	~~711.00~~
~~74,001--76,000~~	~~1,051.00~~	~~841.00~~	~~736.00~~
~~76,001--78,000~~	~~1,086.00~~	~~869.00~~	~~760.00~~
~~78,001--80,000~~	~~1,121.00~~	~~897.00~~	~~785.00~~
~~80,001--82,000~~	~~1,156.00~~	~~925.00~~	~~809.00~~
~~82,001--84,000~~	~~1,226.00~~	~~985.00~~	~~859.00~~
~~84,001--86,000~~	~~1,296.00~~	~~1,045.00~~	~~909.00~~
~~86,001--88,000~~	~~1,366.00~~	~~1,105.00~~	~~959.00~~
~~88,001--90,000~~	~~1,436.00~~	~~1,165.00~~	~~1,009.00~~
~~90,001--92,000~~	~~1,506.00~~	~~1,225.00~~	~~1,059.00~~
~~92,001--94,000~~	~~1,576.00~~	~~1,285.00~~	~~1,109.00~~
~~94,001--96,000~~	~~1,646.00~~	~~1,345.00~~	~~1,159.00~~
~~96,001--98,000~~	~~1,716.00~~	~~1,405.00~~	~~1,209.00~~
~~98,001-100,000~~	~~1,786.00~~	~~1,465.00~~	~~1,259.00~~

~~100,001-102,000~~	~~17,856.00~~	~~17,525.00~~	~~17,309.00~~
~~102,001-104,000~~	~~17,926.00~~	~~17,585.00~~	~~17,359.00~~
~~104,001-105,500~~	~~17,996.00~~	~~17,645.00~~	~~17,409.00~~
24,001- 26,000	$ 186.00	$ 151.00	$ 133.00
26,001- 28,000	221.00	179.00	158.00
28,001- 30,000	256.00	207.00	182.00
30,001- 32,000	296.00	240.00	212.00
32,001- 34,000	331.00	268.00	236.00
34,001- 36,000	366.00	296.00	261.00
36,001- 38,000	401.00	324.00	285.00
38,001- 40,000	436.00	352.00	310.00
40,001- 42,000	471.00	380.00	334.00
42,001- 44,000	506.00	408.00	359.00
44,001- 46,000	541.00	436.00	383.00
46,001- 48,000	576.00	464.00	408.00
48,001- 50,000	611.00	492.00	432.00
50,001- 52,000	656.00	530.00	467.00
52,001- 54,000	691.00	558.00	491.00
54,001- 56,000	726.00	586.00	516.00
56,001- 58,000	761.00	614.00	540.00
58,001- 60,000	796.00	642.00	565.00
60,001- 62,000	831.00	670.00	589.00
62,001- 64,000	866.00	698.00	614.00
64,001- 66,000	901.00	726.00	638.00
66,001- 68,000	936.00	754.00	663.00
68,001- 70,000	971.00	782.00	687.00
70,001- 72,000	1,006.00	810.00	712.00
72,001- 74,000	1,041.00	838.00	736.00
74,001- 76,000	1,076.00	866.00	761.00
76,001- 78,000	1,111.00	894.00	785.00
78,001- 80,000	1,146.00	922.00	810.00
80,001- 82,000	1,181.00	950.00	834.00
82,001- 84,000	1,251.00	1,010.00	884.00
84,001- 86,000	1,321.00	1,070.00	934.00
86,001- 88,000	1,391.00	1,130.00	984.00
88,001- 90,000	1,461.00	1,190.00	1,034.00
90,001- 92,000	1,531.00	1,250.00	1,084.00
92,001- 94,000	1,601.00	1,310.00	1,134.00
94,001- 96,000	1,671.00	1,370.00	1,184.00
96,001- 98,000	1,741.00	1,430.00	1,234.00
98,001-100,000	1,811.00	1,490.00	1,284.00
100,001-102,000	1,881.00	1,550.00	1,334.00
102,001-104,000	1,951.00	1,610.00	1,384.00
104,001-105,500	2,021.00	1,670.00	1,434.00

c. Motorcycles:

(1) Without sidecar, six dollars per motorcycle.

(2) With sidecar, ten dollars per unit.

d. A house car shall be subject to registration at the corresponding rate prescribed for trucks under subdivision b of subsection 2, and the registrar shall

issue distinctive plates for each house car registered.

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 as codified into 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.

4. Every trailer, semitrailer, and farm trailer required to be registered under this chapter shall be furnished registration plates upon the payment of one of the following annual fees:

   a. Ten dollars for trailers and farm trailers which are not semitrailers, including trailers which are offered for lease or rent to the public.

   b. Ten dollars per axle, limited to a maximum of thirty dollars, for semitrailers and farm trailers which are semitrailers, when the gross weight, not including the weight of the towing vehicle, does not exceed twenty-four thousand pounds [10886.22 kilograms].

   c. Ten dollars for semitrailers when the gross weight, not including the weight of the towing vehicle, exceeds twenty-four thousand pounds [10886.22 kilograms].

   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 from 24,001 to 82,000 pounds [10886.66 to 37194.57 kilograms] which are used as farm vehicles only, shall be entitled to registration pursuant to the following fee schedule and the provisions of this subsection. Farm vehicles shall be considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing from 24,001 to 82,000 pounds [10886.66 to 37194.57 kilograms] owned, or leased for a minimum period of one year by a bona fide resident farmer who uses such vehicles exclusively for transporting his 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 such farms, nor otherwise for hire.

YEARS REGISTERED

Gross Weights	1st, 2nd, and 3rd Years	4th and 5th Years	6th and 7th Years	8th and Subsequent Years
~~24,001-26,000~~	~~$-86.00~~	~~$-69.00~~	~~$-52.00~~	~~$-31.00~~
~~26,001-28,000~~	~~96.00~~	~~77.00~~	~~58.00~~	~~35.00~~
~~28,001-30,000~~	~~106.00~~	~~85.00~~	~~64.00~~	~~39.00~~
~~30,001-32,000~~	~~116.00~~	~~93.00~~	~~70.00~~	~~43.00~~
~~32,001-34,000~~	~~126.00~~	~~101.00~~	~~76.00~~	~~47.00~~
~~34,001-36,000~~	~~136.00~~	~~109.00~~	~~82.00~~	~~51.00~~
~~36,001-38,000~~	~~146.00~~	~~117.00~~	~~88.00~~	~~55.00~~
~~38,001-40,000~~	~~156.00~~	~~125.00~~	~~94.00~~	~~59.00~~
~~40,001-42,000~~	~~166.00~~	~~133.00~~	~~100.00~~	~~63.00~~
~~42,001-44,000~~	~~176.00~~	~~141.00~~	~~106.00~~	~~67.00~~
~~44,001-46,000~~	~~186.00~~	~~149.00~~	~~112.00~~	~~71.00~~
~~46,001-48,000~~	~~196.00~~	~~157.00~~	~~118.00~~	~~75.00~~
~~48,001-50,000~~	~~206.00~~	~~165.00~~	~~124.00~~	~~79.00~~
~~50,001-52,000~~	~~216.00~~	~~173.00~~	~~130.00~~	~~83.00~~
~~52,001-54,000~~	~~226.00~~	~~181.00~~	~~136.00~~	~~87.00~~
~~54,001-56,000~~	~~236.00~~	~~189.00~~	~~142.00~~	~~91.00~~
~~56,001-58,000~~	~~246.00~~	~~197.00~~	~~148.00~~	~~95.00~~
~~58,001-60,000~~	~~256.00~~	~~205.00~~	~~154.00~~	~~99.00~~
~~60,001-62,000~~	~~266.00~~	~~213.00~~	~~160.00~~	~~103.00~~
~~62,001-64,000~~	~~276.00~~	~~221.00~~	~~166.00~~	~~107.00~~
~~64,001-66,000~~	~~286.00~~	~~229.00~~	~~172.00~~	~~111.00~~
~~66,001-68,000~~	~~296.00~~	~~237.00~~	~~178.00~~	~~115.00~~
~~68,001-70,000~~	~~306.00~~	~~245.00~~	~~184.00~~	~~119.00~~
~~70,001-72,000~~	~~316.00~~	~~253.00~~	~~190.00~~	~~123.00~~
~~72,001-74,000~~	~~326.00~~	~~261.00~~	~~196.00~~	~~127.00~~
~~74,001-76,000~~	~~336.00~~	~~269.00~~	~~202.00~~	~~131.00~~
~~76,001-78,000~~	~~346.00~~	~~277.00~~	~~208.00~~	~~135.00~~
~~78,001-80,000~~	~~356.00~~	~~285.00~~	~~214.00~~	~~139.00~~
~~80,001-82,000~~	~~366.00~~	~~293.00~~	~~220.00~~	~~143.00~~
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

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. AMENDMENT. Section 57-50-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-50-01. REFUND OF TAX PROVIDED FOR - REDUCTION FOR AGRICULTURALLY DERIVED ALCOHOL MOTOR VEHICLE FUEL TAX FUND. Any person who shall buy or use any motor vehicle fuel as defined in subsection 2 of section 57-54-03, for agricultural or industrial purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of the state of North Dakota on which the motor vehicle fuel tax has been paid, shall be reimbursed or repaid within the time hereinafter provided, the amount of such tax paid by him upon the presentation to and the approval of the tax commissioner of a claim for refund. Provided, however, the amount of the tax refund provided for in this section shall be reduced by one-eighth cent per gallon [3.79 liters], and the one-eighth cent per gallon [3.79 liters] withheld from the refund shall be deposited in the agriculturally derived alcohol motor vehicle fuel tax fund. Those persons who have a valid tax assignment permit issued by the state tax commissioner under the provisions of section 57-50-11.1 shall be charged one-eighth cent per gallon [3.79 liters] by the dealer and the one-eighth cent charge shall be remitted to the state tax commissioner by the dealer when the dealer submits the tax assigned invoices for credit. Those aviation gasoline fuel taxes collected, upon which no refund is claimed and those revenues remaining as unclaimed refunds under the provisions of the statutory refunds on aviation gasoline and aviation motor fuels are hereby appropriated, in accordance with the time limitations as provided by law, and used exclusively for construction, reconstruction, repair, maintenance, and operation of small landing strips near highways and communities in this state and for the purchase of necessary land required therefor and shall be administered and expended by the state of North Dakota aeronautics commission for the above purpose.

The refunds provided under this section from July 1, 1981, through June 30, 1983, for all fuels taxed under chapters 57-52 and 57-54, except those fuels used in aircraft or with respect to refunds claimed under section 57-50-05, shall be reduced by one cent per gallon. This one cent per gallon not refunded during the period July 1, 1981, through June 30, 1983, shall be transferred to township road and bridge funds or to the appropriate county fund in the case of unorganized townships. Each township, or county in the case of unorganized townships, shall receive a sum based upon the proportionate number of miles of township roads within the organized or unorganized township as compared with the total number of miles of township roads in the state. These funds are to be used for the construction or maintenance of township roads and may not be used to purchase road building or road maintenance equipment. No township, or county in the case of unorganized townships, shall receive any funds under this subsection unless that township is levying, for the current budget year, at least ninety-five percent of the mill levies authorized by law. If a township is not levying at the ninety-five percent level, the moneys to which they would be entitled under this subsection shall instead be deposited by the state treasurer in the highway tax distribution fund. The state treasurer may adopt rules, pursuant to chapter 28-32, necessary to the administration of this allocation to townships during the 1981-1983 biennium.

SECTION 4. AMENDMENT. Subsection 1 of section 57-51-15 of the North Dakota Century Code is hereby amended and reenacted to read 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 ~~credit it to the general fund~~ distribute 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 57-50-01, 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 57-50-01;

      (2) The treasurer shall next distribute an amount which, when added to the sum distributed under paragraph 1 above, 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.

Approved April 6, 1981

CHAPTER 384

SENATE BILL NO. 2166
(Committee on Transportation)
(At the request of the Highway Department)

OPERATOR'S LICENSE

AN ACT to create and enact a new section to chapter 39-06 of the North Dakota Century Code, relating to the use of medical advice by the highway commissioner in making driver licensing decisions; to amend and reenact sections 39-06-07, 39-06-13, 39-06-18, 39-06-19, subsection 1 of section 39-06-40.1, and section 39-06.1-11 of the North Dakota Century Code, relating to the number of attempts to pass the drivers license test, the fee for duplicate licenses, the expiration of drivers licenses issued in 1976 through 1978, the offense of altering driver license documents, and issuance of temporary restricted licenses after conviction of driving under suspension or revocation; and to repeal subsection 4 of section 39-06-14 of the North Dakota Century Code, relating to acceptance by the highway department of a certificate of driving experience in lieu of a driving examination for class 1 or 2 licenses.

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

SECTION 1. A new section to chapter 39-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

MEDICAL ADVICE - USE BY COMMISSIONER.

1. The commissioner is authorized to seek professional medical advice from any physician authorized to practice in this state, and to use that advice in decisions made by the commissioner in regard to the issuance, renewal, suspension, revocation, or cancellation of driver's licenses pursuant to this chapter. The advice may be received in any manner deemed advisable by the commissioner or his authorized agent.

2. In addition to advice sought and received pursuant to subsection 1 of this section, the commissioner may consider information and advice received from an individual applicant's or driver's personal physician. Any examination and report requested by the applicant or

driver or required to be taken and provided by the commissioner pursuant to this chapter shall be at the expense of the applicant or driver.

3. Any physician providing advice to the commissioner or his authorized agent pursuant to subsection 1 of this section shall incur no liability for any opinion, recommendation, or advice provided.

4. Advice and information received by the commissioner or his authorized agent pursuant to subsection 1 of this section which relates to an individual applicant or driver is for the confidential use of the commissioner or his authorized agent in making decisions on the individual's qualifications as a driver, and the information shall not be divulged to any person or used in evidence in any trial or proceeding except in matters concerning the individual's qualifications to receive or retain a driver's license.

5. General advice and information received by the commissioner or his authorized agent pursuant to this section, in addition to other sources of information, may be used by the commissioner in the adoption of administrative rules concerning medical criteria for driver licensing.

SECTION 2. AMENDMENT. Section 39-06-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-07. APPLICATION FOR LICENSE OR INSTRUCTION PERMIT.

1. Every application for an instruction permit or for an operator's license shall be made upon a form furnished by the commissioner.

2. Every said application shall state the full name, date of birth, sex, residence and mailing address and briefly describe the applicant. In signing the application the applicant shall be deemed to have certified that all information contained on the application is true and correct and shall be accompanied by the proper fee. ~~Payment--of--such--fee--shall-entitle-the-applicant-to-not more-than-three-attempts-to-pass-the-examination-within--a period--of--six--months-from-the-date-of-application.~~ The application shall also provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06.1. The application shall contain such other information as the commissioner may require.

3. Whenever an application is received from a person previously licensed in another jurisdiction, the commissioner may request a copy of the driver's record

from such other jurisdiction. When received, the driving record shall become a part of the driving record in this state with the same force and effect as though entered on the driving record in this state in the original instance.

4. Whenever the commissioner receives a request for a driving record from another licensing jurisdiction the record shall be forwarded without charge.

SECTION 3. AMENDMENT. Section 39-06-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-13. EXAMINATION OF APPLICANTS. The highway patrol 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~~,--province,--or--territory~~. The highway patrol 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 4. AMENDMENT. Section 39-06-18 of 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 ~~one~~ three dollar fee.

SECTION 5. AMENDMENT. Section 39-06-19 of 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 the provisions of this chapter shall expire and be renewed according to the following schedule: 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. ~~Notwithstanding the foregoing provisions, during the period between July 1, 1976, and June 30, 1978, every person whose year of birth occurred in a year ending in an even numeral shall be issued a two-year license if that person's day of birth is an odd numeral, or a four-year license if that person's day of birth is an even numeral. Also, between July 1, 1976, and June 30, 1978, every person whose year of birth occurred in a year ending in an odd numeral shall be issued a two-year license if that person's day of birth is an odd numeral, or a four-year license if that person's date of birth is an even numeral. The fee established pursuant to this section and pursuant to section 39-06-14 shall be prorated accordingly.~~ Application with fee for renewal of license shall be presented to the commissioner not prior to ninety days 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 under the age of twenty-one or over the age of seventy 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. 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 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, as defined in section 16-18-01, has terminated less than sixty 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 dollars.

SECTION 6. AMENDMENT. Subsection 1 of section 39-06-40.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. It shall be unlawful for any person to print, photograph, photostat, duplicate, alter, or in any way reproduce any operator's or driver's license or permit 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.

SECTION 7. AMENDMENT. Section 39-06.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-11. TEMPORARY RESTRICTED LICENSE. When the licensing authority has suspended a license, pursuant to section 39-06.1-10, or when the commissioner has revoked a license pursuant to section 39-20-04, or when the commissioner has extended a suspension or revocation pursuant to section 39-06-43, for a period in excess of seven days, the authority may, for good cause, upon receiving written application from the licensee affected, issue a temporary restricted operator's license valid, after seven days of the suspension period have passed, for the remainder of the suspension period. The restricted license may authorize the use of a motor vehicle only during the licensee's normal working hours, or may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section shall be deemed a violation of section 39-06-17.

SECTION 8. REPEAL. Subsection 4 of section 39-06-14 of the North Dakota Century Code is hereby repealed.

Approved March 19, 1981

CHAPTER 385

HOUSE BILL NO. 1197
(Committee on Transportation)
(At the request of the Highway Department)

OPERATOR'S LICENSE SUSPENSION

AN ACT to amend and reenact section 39-06-27, subsection 4 of section 39-06-32, section 39-06-33, subsection 2 of section 39-06-37, subsection 1 of section 39-06.1-10, and section 39-20-05 of the North Dakota Century Code, relating to the sufficiency of evidence used by the highway commissioner for drivers license action, the adequacy of the commissioner's records for such action, and the sufficiency of the notice to drivers of impending or concluded drivers license decisions.

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

SECTION 1. AMENDMENT. Section 39-06-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-27. SUSPENDING LICENSES UPON CONVICTION, SUSPENSION, OR REVOCATION IN ANOTHER STATE. The commissioner may suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator. This section shall not be construed as authorizing the assessment of points against a resident driver's record in accordance with chapter 39-06.1, except upon conviction of a resident driver for a criminal offense in another state which is equivalent to one of those offenses defined in section 39-06.1-05. No suspension or revocation shall be imposed for convictions for driving under suspension or revocation in another state if a valid North Dakota license or permit was in effect at the time of the violation. For the purposes of this section, photostatic copies of the records of the drivers licensing authority of the other state shall be sufficient evidence whether or not they are certified copies.

Upon receipt of a certification that the operating privileges of a resident of this state have been suspended or revoked in any other state pursuant to a law providing for the suspension or revocation for failure to deposit security for the payment of

judgments arising out of a motor vehicle accident, under circumstances which would require the commissioner to suspend a nonresident's operating privileges had the accident occurred in this state, the commissioner shall suspend the license of such resident if he was the driver of a motor vehicle involved in such accident. Such suspension shall continue until such resident furnishes evidence satisfactory to the commissioner of his compliance with the laws of such other state relating to the deposit of security or payment of a judgment arising out of a motor vehicle accident, to the extent that such compliance would be required if the accident had occurred in this state.

SECTION 2. AMENDMENT. Subsection 4 of section 39-06-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. ~~Commission of an offense~~ Refusal to submit to an implied consent chemical blood-alcohol test in another state ~~which if committed in this state would be grounds for revocation~~. For purposes of this subsection the specific requirements for establishing a refusal used in the other state shall not be considered, and photostatic copies of the records of the other states' drivers licensing authority shall be sufficient evidence of the refusal whether or not those copies are certified. The suspension shall be for the same length of time as the revocation in section 39-20-04.

SECTION 3. AMENDMENT. Section 39-06-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-33. HEARINGS PRIOR TO SUSPENSION. In matters of driver's license suspension arising under the provisions of section 39-06-32, the commissioner shall first give notice of intention to suspend to the licensee. The licensee shall have ten days from the date of receipt of such notice to request, in writing, a hearing upon the intended suspension.

Any hearing conducted under this section shall be before the commissioner or his authorized agent and shall be heard within ~~thirty~~ sixty days of the receipt of the request for hearing and in the county of the licensee's residence, however, the parties may agree to a different time and place for the hearing. Upon such hearing the commissioner or his 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 shall establish prima facie the contents thereof without further foundation.

Within twenty days of the completion of the hearing, the commissioner or his 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 pursuant to section 39-06-20 shall be sufficient notice. In the event a suspension is ordered, a reexamination of the licensee may be required.

SECTION 4. AMENDMENT. Subsection 2 of section 39-06-37 of 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 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 ~~proper deposit in the mails~~ the order is mailed to the person by regular mail.

SECTION 5. AMENDMENT. Subsection 1 of section 39-06.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-10. ENTRIES AGAINST DRIVING RECORD - LICENSING AUTHORITY DUTIES - HEARINGS - DEMERIT SCHEDULE - SUSPENSION.

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 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. 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 6. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-05. ADMINISTRATIVE HEARING ON REQUEST. Prior to issuing an order of revocation or denial under section 39-20-04, the commissioner shall give such person a written notice of intention to revoke or deny and afford him an opportunity for a hearing. If the commissioner receives a written request within ten days, he shall ~~grant~~ hold such hearing within ~~thirty~~ sixty days. The hearing shall be before the commissioner or his authorized agent in the county wherein the alleged events occurred for which the person was arrested, unless the commissioner or his authorized agent and the person agree that the hearing may be held in some other county. The hearing shall be transcribed and its scope shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor; whether the person was placed under arrest; and, whether he refused to submit to the test or tests. Whether the person was informed that his privilege to drive would be revoked or denied if he refused to submit to the test or tests shall not be an issue. At the hearing, the regularly kept records of the commissioner may be introduced and shall establish prima facie the contents thereof without further foundation. The commissioner or his authorized agent shall promptly make findings of fact, conclusions, and decision~~,--and-give-notice-thereof,~~ as provided for in section 28-32-13. Notice of the decision and resulting order of the commissioner shall be sufficient if mailed by regular mail to the address on file with the commissioner pursuant to section 39-06-20.

Approved March 31, 1981

CHAPTER 386

HOUSE BILL NO. 1180
(Committee on Transportation)
(At the request of the Highway Department)

TRAFFIC VIOLATION CONVICTION AND REPORT

AN ACT to amend and reenact sections 39-06-30 and 39-07-11 of the North Dakota Century Code, relating to the finality of convictions for drivers license purposes and to reports of commission of traffic violations to the licensing authority; and to repeal sections 39-06-29 and 39-08-17 of the North Dakota Century Code, relating to reports of convictions sent to the licensing authority.

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

SECTION 1. AMENDMENT. Section 39-06-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-30. CONVICTION - MEANING AND EFFECT. For purposes of this title the term "conviction" means a final order or judgment of conviction by ~~a--trial--court--having-jurisdiction,--Also,-for-the purposes--of--this--chapter--a--forfeiture--of--bail--or--collateral deposited--to--secure--a--defendant's--appearance--in--court,--which forfeiture-has-not-been-vacated,-shall-be-equivalent-to-a-conviction~~ 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. Subject to the filing of an appeal, a conviction shall include 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 2. AMENDMENT. Section 39-07-11 of 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 him in which a person is charged with a violation of section 12.1-16-03 or of any provision of chapters 39-05 through 39-13, and chapters 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 ~~determination,-in-any-manner-provided-by-law,-that-a-person--charged--has--committed--one--of--the--foregoing-offenses--or-violations~~ final order or judgment of conviction, for a violation not subject to disposition and reporting pursuant to 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 ~~certification~~ report of that fact to the licensing authority. 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 upon the report. Subject to the filing of an appeal, a conviction shall include 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 3. REPEAL. Sections 39-06-29 and 39-08-17 of the North Dakota Century Code are hereby repealed.

Approved March 26, 1981

CHAPTER 387

HOUSE BILL NO. 1338
(A. Hausauer, Martinson)

DRIVER'S LICENSE SUSPENSION EXTENSION

AN ACT to amend and reenact section 39-06-43 of the North Dakota Century Code, relating to mandatory extension of license suspension or revocation; and declaring an emergency.

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

SECTION 1. AMENDMENT. Section 39-06-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-43. EXTENSION OF LICENSE SUSPENSION OR REVOCATION. The commissioner upon receiving a record of the conviction of any person upon a charge of driving a vehicle while the license or driving privileges of ~~such~~ the person was suspended shall extend the period of ~~such~~ that suspension for an additional like period and if the original suspension was for an indefinite or unstated period of time, the additional suspension shall be for a period of six months on and after ~~such~~ the date the person would otherwise have been entitled to the return of license or privileges. If, however, the original suspension of driving privileges resulted solely from failure to appear in court or to post and forfeit bond on noncriminal traffic violations, there shall be no additional period of suspension. If the conviction was upon a charge of driving while a license or driving privileges was revoked, the commissioner shall not issue a new license for an additional period of one year from and after the date ~~such~~ the person would otherwise have been entitled to apply for a new license.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 11, 1981

CHAPTER 388

HOUSE BILL NO. 1595
(Rued, A. Olson)

NONCRIMINAL TRAFFIC OFFENSE BOND POSTING

AN ACT to amend and reenact sections 39-06.1-02 and 39-07-07 of the North Dakota Century Code, relating to the posting of bond for noncriminal traffic offenses.

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

SECTION 1. AMENDMENT. Section 39-06.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-02. TRAFFIC VIOLATIONS NONCRIMINAL - EXCEPTIONS - PROCEDURES. Any person cited, in accordance with the provisions of sections 39-07-07 and 39-07-08, for a traffic violation under state law or municipal ordinance, other than an offense listed in section 39-06.1-05, shall be deemed to be charged with a noncriminal offense and may appear before the designated official and pay the statutory fee for the violation charged at or prior to the time scheduled for a hearing, or, if he has posted bond in person, as provided by section 39-07-07, or by mail, he may forfeit bond by not appearing at the designated time. If the person appears at the time scheduled in the citation, he may make a statement in explanation of his action, and the official may at that time, in his discretion, waive, reduce, or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, he shall be deemed to have admitted the violation and to have waived his right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the official designated in the citation shall be identical to the statutory fee established by section 39-06.1-06. Within ten days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the licensing authority:

1. Admission of the violation; and

2. In speeding violations, whether the speed charged was in excess of the lawful speed limit by more than nine miles [14.48 kilometers] per hour and the miles [kilometers] per hour by which the speed limit was exceeded.

This section shall not be construed as allowing a halting officer to receive the statutory fee or bond, unless he is otherwise authorized by law to do so.

SECTION 2. AMENDMENT. Section 39-07-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-07. HALTING PERSON FOR VIOLATING TRAFFIC REGULATIONS - DUTY OF OFFICER HALTING. Whenever any person is halted for the violation of any of the provisions of chapters 39-01 through 39-13, 39-18, 39-21, and 39-24, or of equivalent city ordinances, the officer halting such person, except as otherwise provided in section 39-07-09, may:

1. Take the name and address of such person;

2. Take the license number of his motor vehicle; and

3. Issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice.

A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a noncriminal offense under section 39-06.1-02. The officer shall provide the person with an envelope for use by that person to mail the bond.

Approved March 18, 1981

CHAPTER 389

HOUSE BILL NO. 1404
(Representatives Timm, Dietz, Rued)
(Senator Erickson)

SPEED RESTRICTIONS

AN ACT to create and enact a new section to chapter 39-09 of the North Dakota Century Code, relating to limitations on the reduction of speed zone speed limits; to amend and reenact sections 39-06.1-06 and 39-06.1-09 of the North Dakota Century Code, relating to fines and points assessed against driver's licenses for violations of speed limits and the definition of moving violation; and to repeal paragraph 11 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to point assessments for certain speeding violations.

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

* SECTION 1. AMENDMENT. Section 39-06.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-06. AMOUNT OF STATUTORY FEES. The fees required for a noncriminal disposition pursuant to either section 39-06.1-02 or section 39-06.1-03 shall be as follows:

1. For a nonmoving violation as defined in section 39-06.1-08, a fee ~~in the amount~~ of ten dollars.

2. For a moving violation as defined in section 39-06.1-09, a fee ~~in the amount~~ of twenty dollars.

3. For a violation of section 39-09-02, or an equivalent ordinance, the penalty shall be a fee and a point assessment against the driver's license as follows:

Speed (mph)	Fee ($)	Points
56 - 60	$ 5	0
61 - 65	$ 5 plus $1/each mph over 60	1
66 - 70	$10 plus $1/each mph over 65	2
71 - 75	$15 plus $2/each mph over 70	3
76 - 80	$25 plus $3/each mph over 75	4
81 - 90	$40 plus $3/each mph over 80	6

* NOTE: Section 39-06.1-06 was also amended by section 1 of Senate Bill No. 2331, chapter 390.

91 - 100	$70 plus $3/each mph over 90	8
101 +	$100 plus $5/each mph over 100	12

~~The provisions of paragraph 11 of subdivision a of subsection 3 of section 39-06.1-10 shall only apply to violations involving speed limits less than fifty-five miles [88.51 kilometers] per hour.~~

4. For a violation of section 39-09-01, or an ordinance defining careless driving, a fee ~~in the amount~~ of thirty dollars.

5. For a violation of section 39-09-01.1, or an ordinance defining care required in driving, a fee of not less than ten dollars nor more than thirty dollars.

6. For a violation of section 39-09-02, or an equivalent ordinance, which violation is not provided for in subsection 3 of this section, the penalty shall be a fee and a point assessment against the driver's license as follows:

   a. From one to five miles per hour in excess of the lawful limit, a fee of five dollars, and no points.

   b. From six to ten miles per hour in excess of the lawful speed limit, a fee of ten dollars, and one point.

   c. From eleven to fifteen miles per hour in excess of the lawful speed limit, a fee of fifteen dollars, and two points.

   d. From sixteen to twenty-five miles per hour in excess of the lawful speed limit, a fee of twenty dollars, and four points.

   e. Twenty-six or more miles per hour in excess of the lawful speed limit, a fee of twenty-five dollars, and six points.

* SECTION 2. AMENDMENT. Section 39-06.1-09 of 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 section 39-06.1-06 and section 39-06.1-13, a "moving violation" means a violation of section ~~39-09-02, or an equivalent ordinance, or a violation of section~~ 39-04-22; subsection 1 of section 39-04-37; sections 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 chapters 39-10 or 39-21, or equivalent ordinances, except section 39-21-01 and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

* NOTE: Section 39-06.1-09 was also amended by section 1 of Senate Bill No. 2179, chapter 392.

SECTION 3. A new section to chapter 39-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

SPEED ZONES - REDUCTION LIMITATION. No street, road, or highway in the state highway system or any other township, county, or state road or highway may be posted in a manner which reduces the maximum speed limit on the street, road, or highway by more than twenty miles per hour between any two signs so posted in a speed zone.

SECTION 4. REPEAL. Paragraph 11 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is hereby repealed.

Approved March 26, 1981

CHAPTER 390

SENATE BILL NO. 2331
(Mutch)

HIGHWAY SPEED LIMIT

AN ACT to amend and reenact section 39-06.1-06 and subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to the fifty-five mile per hour highway speed limit; and to provide an effective date.

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

* SECTION 1. AMENDMENT. Section 39-06.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-06. AMOUNT OF STATUTORY FEES. The fees required for a noncriminal disposition pursuant to either section 39-06.1-02 or section 39-06.1-03 shall be as follows:

1. For a nonmoving violation as defined in section 39-06.1-08, a fee in the amount of ten dollars.

2. For a moving violation as defined in section 39-06.1-09, a fee in the amount of twenty dollars.

3. For a violation of section 39-09-02, or an equivalent ordinance, the penalty shall be a fee and a point assessment against the driver's license as follows:

Speed (mph)	Fee ($)	Points
~~56 - 60~~	~~$5~~	~~0~~
~~61 - 65~~	~~$5 plus $1 each mph over 60~~	~~1~~
66 - 70	$10 plus $1/each mph over 65	~~2~~ 1
71 - 75	$15 plus $2/each mph over 70	~~3~~ 2
76 - 80	$25 plus $3/each mph over 75	4
81 - 90	$40 plus $3/each mph over 80	~~6~~ 7
91 - 100	$70 plus $3/each mph over 90	~~8~~ 10
101 +	$100 plus $5/each mph over 100	12

The provisions of paragraph 11 of subdivision a of subsection 3 of section 39-06.1-10 shall only apply to

* NOTE: Section 39-06.1-06 was also amended by section 1 of House Bill No. 1404, chapter 389.

violations involving speed limits less than ~~fifty-five~~ sixty-five miles [~~88.51~~ 104.61 kilometers] per hour.

4. For a violation of section 39-09-01, or an ordinance defining careless driving, a fee in the amount of thirty dollars.

5. For a violation of section 39-09-01.1, or an ordinance defining care required in driving, a fee of not less than ten dollars nor more than thirty dollars.

SECTION 2. AMENDMENT. Subsection 1 of section 39-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Subject to the provisions of section 39-09-01 and except in those instances where a lower speed is specified in this chapter, it presumably shall be lawful for the driver of a vehicle to drive the same at a speed not exceeding:

   a. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] of a grade crossing of any steam, electric, or street railway when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last two hundred feet [60.96 meters] of his approach to such crossing he does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred feet [121.92 meters] in each direction from such crossing.

   b. Twenty miles [32.19 kilometers] an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours.

   c. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] and in traversing an intersection of highways when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last fifty feet [15.24 meters] of his approach to such intersection, he does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred feet [60.96 meters] from such intersection.

   d. Twenty miles [32.19 kilometers] an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred feet [30.48 meters].

e. Twenty-five miles [40.23 kilometers] an hour on any highway in a business district or in a residence district or in a public park, unless a different speed limit is designated and posted by local authorities.

f. ~~Fifty-five~~ Sixty-five miles [~~88.51~~ 104.61 kilometers] an hour under other circumstances, unless otherwise permitted, restricted, or required by conditions.

SECTION 3. EFFECTIVE DATE. This Act shall become effective upon 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, provided that date is before July 1, 1983.

Approved March 9, 1981

CHAPTER 391

HOUSE BILL NO. 1220
(Rued, Timm)

PENALTIES FOR DRIVING WITHOUT LIABILITY INSURANCE

AN ACT to create and enact a new subsection to section 39-06.1-06 of the North Dakota Century Code, relating to statutory fees for driving without liability insurance; and to amend and reenact paragraph 25 of subdivision a of subsection 3 of section 39-06.1-10 and section 39-08-20 of the North Dakota Century Code, increasing the number of points assessed for driving without liability insurance and prohibiting such driving.

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

SECTION 1. A new subsection to section 39-06.1-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

For a violation of section 39-08-20, a fee of not less than twenty-five dollars nor more than one hundred dollars.

SECTION 2. AMENDMENT. Paragraph 25 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

(25)	Operating a motor vehicle without liability insurance, as required by section 39-08-20	~~2~~ 6 points

SECTION 3. AMENDMENT. Section 39-08-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-08-20. DRIVING WITHOUT LIABILITY INSURANCE - VIOLATION. No person shall drive a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of such vehicle in the amount required by chapter 39-16.1. ~~No statutory fee shall be assessed for a violation of this section.~~

Approved March 3, 1981

CHAPTER 392

SENATE BILL NO. 2179
(Committee on Transportation)
(At the request of the Highway Department)

MOTORCYCLE VIOLATIONS, AMBER LIGHT USE, RACING

AN ACT to create and enact a new subsection to section 39-10-03 of the North Dakota Century Code, relating to use of amber lights by class A emergency vehicles; to amend and reenact section 39-06.1-09, paragraph 14 of subdivision a of subsection 3 of section 39-06.1-10, subsection 1 of section 39-08-03.1, and subsection 2 of section 39-24-08 of the North Dakota Century Code, defining moving violations to include motorcycle violations, point assessments for racing, exhibition driving and snowmobile regulations; and to repeal section 39-10-70 of the North Dakota Century Code, relating to racing of vehicles.

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

* SECTION 1. AMENDMENT. Section 39-06.1-09 of 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 section 39-06.1-06 and section 39-06.1-13, a "moving violation" means a violation of section 39-09-02, or an equivalent ordinance; or a violation of section 39-04-22; subsection 1 of section 39-04-37; sections 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 chapters 39-10, 39-10.2, or 39-21, or equivalent ordinances, except section 39-21-01 and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

SECTION 2. AMENDMENT. Paragraph 14 of subdivision a of subsection 3 of section 39-06.1-10 of 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 2 of House Bill No. 1404, chapter 389.

(14)	~~Drag~~ Racing or drag racing motor vehicles in violation of section 39-08-03.1, or equivalent ordinance	10 points

SECTION 3. AMENDMENT. Subsection 1 of section 39-08-03.1 of 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 ~~in a race~~, 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 be assessed a fee of forty dollars.

SECTION 4. A new subsection to section 39-10-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any law enforcement officer as provided in paragraph 2 of subdivision a of subsection 1 of section 39-01-01 having stopped another vehicle along a highway, and while still involved in that incident, where flashing red or combination red and white lights were used in making the stop, may switch to the use of amber lights, visible under normal atmospheric conditions for at least five hundred feet [152.4 meters], for the purpose of maintaining traffic flow.

SECTION 5. AMENDMENT. Subsection 2 of section 39-24-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The commissioner shall have the authority in the interest of public health, welfare, and safety to regulate, restrict, or prohibit, by rule or regulation, the operation of snowmobiles on those highways under his jurisdiction. The commissioner's authority to prohibit the use of snowmobiles shall be limited to the roadways, shoulders, inslopes, and medians within the right of way, except where such action is necessary to avoid an obstacle. Notwithstanding the racing prohibitions in ~~sections~~ section 39-08-03.1 ~~and 39-10-70~~, the commissioner may, on a case-by-case basis, permit organized and bona fide snowmobile races on the ditch bottoms, backslopes, and the top of the backslopes of the highway rights of way under his jurisdiction. The planning, organization, route selection, and safety precautions of any such race shall be the sole responsibility of the permittee. It is expressly provided that the commissioner, and the

department and the employees thereof, shall incur no liability whatsoever for permitting such races.

SECTION 6. REPEAL. Section 39-10-70 of the North Dakota Century Code is hereby repealed.

Approved March 18, 1981

CHAPTER 393

SENATE BILL NO. 2177
(Committee on Transportation)
(At the request of the Highway Department)

POINT REDUCTION METHODS

AN ACT to amend and reenact subsection 2 of section 39-06.1-13 of the North Dakota Century Code, relating to methods for reduction of points against drivers licenses.

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 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 3, 1981

CHAPTER 394

HOUSE BILL NO. 1638
(Hedstrom)

DRIVING WHILE UNDER THE INFLUENCE

AN ACT to amend and reenact subsection 1 of section 39-08-01 of the North Dakota Century Code, relating to driving under the influence of intoxicating liquor or controlled substances or a combination thereof.

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

SECTION 1. AMENDMENT. Subsection 1 of section 39-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. No person shall 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:

   a. He is an habitual user of narcotic drugs or is under the influence of a narcotic drug;

   b. He is under the influence of intoxicating liquor; ~~or~~

   c. He is under the influence of any controlled substance to a degree which renders him incapable of safely driving~~.~~; or

   d. He is under the influence of a combination of intoxicating liquor and a controlled substance to a degree rendering him incapable of safely driving.

Approved March 26, 1981

CHAPTER 395

HOUSE BILL NO. 1484
(Richie, D. Olson)

PENALTY FOR DWI

AN ACT to amend and reenact subsection 2 of section 39-08-01 of the North Dakota Century Code, relating to the penalty for driving while under the influence of intoxicating liquor or controlled substances.

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

SECTION 1. AMENDMENT. Subsection 2 of section 39-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A person violating any provision of this section is guilty of a class B misdemeanor for the first conviction in a twenty-four-month period, and of a class A misdemeanor for the second conviction in a twenty-four-month period. The minimum penalty for such violation shall be either three days in jail or a fine of one hundred dollars, or both such fine and imprisonment. ~~Upon a second conviction for a violation occurring within eighteen months of a previous violation resulting in a prior conviction, such person shall be punished by imprisonment in the county jail for not less than three days nor more than thirty days, and in the discretion of the court, a fine of not less than one hundred fifty dollars nor more than five hundred dollars.~~ In the event the complaint does not include the allegation that, if convicted, such conviction would be the second ~~such~~ or subsequent violation within the time limit as provided in this section, the court may take judicial notice of such fact if indicated by the records of the state highway department or make such finding based on other evidence.

Approved April 1, 1981

CHAPTER 396

HOUSE BILL NO. 1524
(Hughes)

EMERGENCY CARE LIABILITY

AN ACT to amend and reenact section 39-08-04.1 of the North Dakota Century Code, relating to liability arising out of emergency care provided at the scene of an accident.

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

SECTION 1. AMENDMENT. Section 39-08-04.1 of 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~~, except a physician acting pursuant to sections 43-17-37 and 43-17-38~~ who, in good faith, shall administer emergency care at or near the scene of an accident or disaster to the victims of the accident or disaster shall not be held liable for any damages resulting from the rendering of that care.

The provisions of this section shall not be construed to relieve the person rendering emergency care from liability for injury or death to the victim proximately resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the care. Further, liability is not relieved if the emergency care was rendered for remuneration or with the expectation of remuneration.

Approved March 5, 1981

CHAPTER 397

SENATE BILL NO. 2213
(Senators Vosper, Nelson)
(Representatives Olafson, A. Olson)

FARM IMPLEMENT WIDTH LIMIT

AN ACT to amend and reenact subdivision c of subsection 1 of section 39-12-04 and section 39-12-06 of the North Dakota Century Code, relating to movement of farm implements on public highways.

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

SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 39-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

c. Implements of husbandry being moved by resident farmers, ranchers, or dealers between sunrise and sunset. Furthermore, the limitation shall not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, or dealers on public state, county, or township highway systems other than interstate highway systems.

SECTION 2. AMENDMENT. Section 39-12-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-12-06. LIMITATIONS ON EXTENDING OF LOAD BEYOND SIDE OF MOTOR VEHICLE. No motor vehicle carrying any load beyond the lines of the left fenders of such vehicle nor extending more than twelve inches [30.48 centimeters] beyond the line of the fenders on the right side of such vehicle shall be operated on the highways, except as permitted by section 39-12-04. The state highway department shall have authority to revoke permits when such holder violates or abuses the privilege or conditions of permit.

Approved April 8, 1981

CHAPTER 398

SENATE BILL NO. 2221
(Moore)

HAYSTACK MOVING EQUIPMENT LENGTH LIMIT

AN ACT to amend and reenact subsection 3 of section 39-12-04 of the North Dakota Century Code, relating to length limitations for vehicles on certain highways.

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

* SECTION 1. AMENDMENT. Subsection 3 of section 39-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A length limitation as follows:

   a. A single unit vehicle with two or more axles including the load thereon shall not exceed a length of forty feet [12.19 meters].

   b. A combination of two units including the load thereon shall not exceed a length of sixty-five feet [19.81 meters].

   c. A combination of three units including the load thereon shall not exceed a length of sixty-five feet [19.81 meters]. Combinations of three units are permissible only as follows:

      (1) A truck tractor and semitrailer may draw a trailer or semitrailer converted to a trailer by use of a dolly and fifth wheel.

      (2) A motor vehicle may draw three motor vehicles attached thereto by a triple saddle mount method.

      (3) Two implements of husbandry may be towed by a truck or farm tractor operated by resident farmers between sunrise and sunset at a speed limit not to exceed twenty-five miles [40.23 kilometers] per hour. The two-implement-of-

* NOTE: Subdivision c of subsection 3 of section 39-12-04 was also amended by section 1 of House Bill No. 1195, chapter 399.

husbandry limit shall not apply to a packer-grain drill combination or to other combinations of implements of husbandry which the commissioner determines by rule are consistent with public highway safety.

(4) A truck may draw two trailers, subject to any rules adopted by the commissioner that are consistent with public highway safety.

d. A combination of two or three units including the load thereon may be operated on and over those highways in the state designated by the commissioner and shall not exceed a length of seventy-five feet [22.86 meters], subject to any rules adopted by the commissioner that are consistent with public highway safety.

e. Length limitations shall not apply to:

(1) Building moving equipment.

(2) Emergency tow trucks towing disabled lawful combinations of vehicles to a nearby repair facility.

(3) Vehicles and equipment owned and operated by the armed forces of the United States or the national guard of this state.

(4) Structural material of telephone, power, and telegraph companies.

(5) Truck-mounted haystack moving equipment, provided such equipment does not exceed a length of ~~fifty~~ fifty-six feet [~~15.24~~ 17.07 meters].

Approved March 9, 1981

CHAPTER 399

HOUSE BILL NO. 1195
(Committee on Transportation)
(At the request of the Highway Department)

LENGTH LIMITATION AND OVERWEIGHT ASSESSMENTS

AN ACT to amend and reenact subdivision c of subsection 3 of section 39-12-04 and section 39-12-17 of the North Dakota Century Code, relating to civil assessments for overweight motor vehicles, and width, height, and length of motor vehicles.

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

* SECTION 1. AMENDMENT. Subdivision c of subsection 3 of section 39-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

c. A combination of three units including the load thereon shall not exceed a length of sixty-five feet [19.81 meters]. Combinations of three units are permissible only as follows:

(1) A truck tractor and semitrailer may draw a trailer or semitrailer ~~converted-to-a-trailer--by use-of-a-dolly-and-fifth-wheel~~.

(2) A motor vehicle may draw three motor vehicles attached thereto by a triplesaddle mount method.

(3) Two implements of husbandry may be towed by a truck or farm tractor operated by resident farmers between sunrise and sunset at a speed limit not to exceed twenty-five miles [40.23 kilometers] per hour. The two-implement-of-husbandry limit shall not apply to a packer-grain drill combination or to other combinations of implements of husbandry which the commissioner determines by rule are consistent with public highway safety.

* NOTE: Subsection 3 of section 39-12-04 was also amended by section 1 of Senate Bill No. 2221, chapter 398.

(4) A truck may draw two trailers, subject to any rules adopted by the commissioner that are consistent with public highway safety.

SECTION 2. AMENDMENT. Section 39-12-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-12-17. TRIAL - CHARGES. At the trial of the action, the court shall hear testimony concerning the facts and if it is found that such vehicle or vehicles were moved upon the highways, streets, or roads of this state at a weight in excess of the limitations imposed under the provisions of section 39-12-03 or as limited by the provisions of section 39-12-05, charges for the extraordinary use of the highways, streets, or roads shall be assessed as follows:

1. The storage charges and costs of the action shall be assessed; and

2. An additional charge shall be assessed as follows:

   a. One cent per pound [453.59 grams] for each pound [453.59 grams] of weight in excess of the legal limit, up to three thousand pounds [1360.77 kilograms] of excess weight;

   b. Four cents per pound [453.59 grams] for each pound [453.59 grams] which exceeds the legal limit by over three thousand [1360.77 kilograms] but is less than five thousand pounds [2267.96 kilograms] of excess; ~~and~~

   c. Eight cents per pound [453.59 grams] for each pound [453.59 grams] which exceeds the legal limit by over five thousand pounds [2267.96 kilograms], but is not more than ten thousand pounds [4535.92 kilograms]; and

   d. Ten cents per pound [453.59 grams] for each pound [453.49 grams] which exceeds the legal limit by over ten thousand pounds [4535.92 kilograms] but is less than twenty thousand pounds [9071.84 kilograms] of excess weight.

   e. Twenty cents per pound [453.59 grams] for each pound [453.59 grams] which exceeds the legal limit by more than twenty thousand pounds [9071.84 kilograms].

Approved March 2, 1981

CHAPTER 400

HOUSE BILL NO. 1314
(Goetz, Wald)

MOBILE HOME SALE BY REALTOR

AN ACT to amend and reenact section 39-18-08 of the North Dakota Century Code, relating to sales by a real estate broker or salesman of a used mobile home.

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

SECTION 1. AMENDMENT. Section 39-18-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-18-08. SALES BY REAL ESTATE BROKER OR SALESMAN OF USED MOBILE HOME. Notwithstanding any other provision of law, a person licensed as a real estate broker or salesman may sell or offer to sell, buy or offer to buy, solicit prospective purchasers of, solicit or obtain listings of, or negotiate the purchase, sale, or exchange of any mobile home if the mobile home ~~is at least two years older than the current year model mobile homes~~ has been previously sold by a mobile home dealer.

No real estate broker who engages in the activities authorized by this section ~~shall~~ may maintain any place of business where two or more mobile homes are displayed and offered for sale by ~~such person~~ the broker, unless ~~said~~ the broker is also licensed as a mobile home dealer pursuant to this chapter.

Approved March 9, 1981

CHAPTER 401

SENATE BILL NO. 2045
(Legislative Council)
(Interim Administrative Rules Committee)

RANDOM MAINTENANCE PROGRAM

AN ACT to repeal chapter 39-21.1 of the North Dakota Century Code, relating to motor vehicle inspections under the random motor vehicle maintenance program operated by the highway patrol, and section 4 of chapter 30 of the 1977 Session Laws of North Dakota, relating to discontinuation of the program.

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

SECTION 1. REPEAL. Chapter 39-21.1 of the North Dakota Century Code and section 4 of chapter 30 of the 1977 Session Laws of North Dakota are hereby repealed.

Approved January 30, 1981

CHAPTER 402

SENATE BILL NO. 2418
(Senator Vosper)
(Representative A. Olson)

SNOWMOBILE TRAIL TAX

AN ACT to amend and reenact section 39-24-03 of the North Dakota Century Code to increase the amount of the snowmobile trail tax.

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

SECTION 1. AMENDMENT. Section 39-24-03 of 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 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 ~~four~~ 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.

Approved March 19, 1981

CHAPTER 403

SENATE BILL NO. 2296
(Senators Vosper, Erickson, Nelson)
(Representative Olafson)

SNOWMOBILE REGISTRATION FAILURE PENALTY

AN ACT to amend and reenact section 39-24-11 of the North Dakota Century Code to provide a penalty for failure to register a snowmobile.

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

SECTION 1. AMENDMENT. Section 39-24-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-24-11. PENALTIES. Any person who ~~shall violate~~ violates subdivision b or subdivision c of subsection 5 of section 39-24-09 shall be guilty of a class B misdemeanor. Any person who violates any other provision of section 39-24-09 shall be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register as required by section 39-24-02 shall be assessed a fee of fifteen dollars. Any person who violates any other provision of this chapter for which a specific penalty is not provided shall be assessed a fee of ten dollars.

Approved March 25, 1981

CHAPTER 404

SENATE BILL NO. 2079
(Legislative Council)
(Legislative Audit and Fiscal Review Committee)

ABANDONED MOTOR VEHICLE DISPOSAL FUND AND TAX

AN ACT to provide for a transfer to the highway fund; and to amend and reenact sections 39-26-11 and 39-26-12 of the North Dakota Century Code, relating to the abandoned motor vehicle disposal fund and the tax on motor vehicle registrations.

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

SECTION 1. AMENDMENT. Section 39-26-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-26-11. ABANDONED MOTOR VEHICLE DISPOSAL FUND. There is hereby established in the state treasury a special fund which shall be known as the abandoned motor vehicle disposal fund. ~~Any moneys in such fund shall be dedicated to the purposes expressed in this chapter.~~ All moneys derived from the investment of the fund are to be credited to the fund.

SECTION 2. AMENDMENT. Section 39-26-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-26-12. TAX ON INITIAL MOTOR VEHICLE ~~REGISTRATIONS~~ CERTIFICATES OF TITLE - WHEN TAX IS SUSPENDED. There is hereby imposed a tax of two dollars on each initial North Dakota certificate of title issued to a passenger motor vehicle or a truck motor vehicle. The proceeds of such tax shall be paid into the abandoned motor vehicle disposal fund in the state treasury. ~~Any moneys collected under the provisions of this chapter, not appropriated by the legislative assembly, shall remain in the abandoned motor vehicle fund in the state treasury.~~ No registration plates or title certificate shall be issued unless such tax is paid. Expenses of the fund arising from the provisions of this chapter shall be paid from the fund within the limits of legislative appropriation. If on the first day of July in any year the amount of uncommitted money in the abandoned motor vehicle disposal fund is five hundred thousand dollars or more, the tax shall be suspended and the amount in excess of five hundred thousand dollars shall be transferred to the highway fund. If the tax has been suspended and

on the first day of July in any year the amount of uncommitted money in the abandoned motor vehicle disposal fund is one hundred thousand dollars or less the tax shall be reimposed on and after January first of the succeeding year.

SECTION 3. TRANSFER. On July 1, 1981, the amount by which the balance in the abandoned motor vehicle disposal fund exceeds $500,000 shall be transferred from the abandoned motor vehicle disposal fund to the highway fund in the state treasury.

Approved April 1, 1981

MUNICIPAL GOVERNMENT

CHAPTER 405

HOUSE BILL NO. 1079
(Legislative Council)
(Interim Political Subdivisions Committee)

INCORPORATION REQUISITES

AN ACT to create and enact a new section to chapter 40-02 of the North Dakota Century Code, relating to appeals from final actions by boards of county commissioners on petitions for incorporation; and to amend and reenact sections 40-02-01, 40-02-02, 40-02-04, 40-02-05, 40-02-06, 40-02-07, 40-02-10, 40-02-11, and 40-02-12 of the North Dakota Century Code, relating to the requisites of incorporation as a city, requirement of census, examination of survey, map, and census, notice of petition, petition for incorporation, notice of election, election returns, division of new city, and order of incorporation.

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

SECTION 1. AMENDMENT. Section 40-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-01. REQUISITES ~~OF~~ FOR INCORPORATION AS CITY. Any contiguous territory in this state, not exceeding four square miles in area, not already included within the corporate limits of any incorporated municipality, may become incorporated as a city whether such territory is located in one or more counties, under the following conditions:

1. If ~~such~~ the territory ~~shall have~~ has residing therein a population of not ~~less than fifty nor~~ more than five hundred inhabitants, it may become incorporated as a city under the council or modern council form of government~~;~~.

~~2.~~ If ~~such~~ the territory ~~shall have~~ has residing therein a population of not less than five hundred inhabitants, it may become incorporated as a city under the council or modern council form of government, or as a city under the commission system of government.

2. If the proposed municipal corporation has, in the view of the board of county commissioners of the county in which

the proposed municipal corporation is located, all the qualities necessary to ensure continued viability as a functioning unit of municipal government.

SECTION 2. AMENDMENT. Section 40-02-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-02. CENSUS REQUIRED. Prior to the commencement of any proceedings to incorporate territory as a municipality, the persons intending to ~~make~~ submit the petition for ~~such~~ incorporation shall cause ~~an accurate~~ a census of the resident population of ~~such~~ the territory to be taken ~~as of some day~~ not more than sixty days previous to the time when the petition is ~~presented~~ submitted to the board of county commissioners as provided in this chapter. ~~Such~~ The census shall show the name of every elector and of every head of a family residing within ~~such~~ the territory on ~~such~~ that day and the number of persons then belonging to ~~such~~ that family, and the census shall be verified by the affidavit of the person taking ~~the same~~ it.

SECTION 3. AMENDMENT. Section 40-02-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-04. SURVEY, MAP, AND CENSUS SUBJECT TO EXAMINATION - NOTICE. The survey, map, and census required under the provisions of this chapter, when completed and verified, shall be left for a period of not less than thirty days at some convenient place within the territory described therein for examination by those having any interest in the application for incorporation. There shall be attached to such survey, map, and census a notice ~~as to the~~ which explains:

1. The purpose of the map, survey, and census ~~and that an application by~~;
2. That a petition for incorporation is to be ~~made~~ circulated and will be ~~presented for hearing~~ submitted to the board of county commissioners at a time certain as specified in the notice~~.~~;
3. That upon receipt of the petition the board of county commissioners will designate a time and place to consider the petition; and
4. That a notice of the time and place for the hearing will be published once a week for two weeks prior to the hearing in the official county newspaper and in other newspapers as the board of county commissioners may deem appropriate.

Copies of such notice, together with a statement showing where the survey, map, and census may be examined, shall be posted for at least thirty days in three conspicuous and public places within the territory to be affected.

SECTION 4. AMENDMENT. Section 40-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-05. PETITION FOR INCORPORATION - CONTENTS - CENSUS AND SURVEY TO ACCOMPANY. A petition for the incorporation of a municipality under this chapter shall be addressed to the board of county commissioners of the county in which the proposed municipality is located and if such municipality is located in more than one county, to the board of county commissioners of the county wherein the greater part of the territory is situated, and shall be signed by not less than one-third of the electors residing within the territory described in such petition, and by the owners of not less than fifty percent in assessed value of the property located within the territory described in such petition. ~~Such~~

1. The petition shall show:

~~1.~~ a. The boundaries of the proposed municipality, and the assessed valuation of all property located within such boundaries;

~~2.~~ b. The number of inhabitants residing within such boundaries;

~~3.~~ c. The name of the proposed municipality, which shall be different from that of every other municipality in this state;

~~4.~~ d. A ~~prayer~~ request that the question of incorporating the territory described in the petition as a city under the council form of government or a city under the commission system of government, as the case may be, be submitted to the qualified voters residing within ~~such~~ the territory.

2. The petition, when submitted, shall be accompanied by:

a. An incorporation plan showing how municipal services, including fire and police protection, street construction and maintenance, sewers, water, garbage disposal, planning, zoning, accounting, assessment, financing, and legal services, will be provided; and

b. Any other information that may reasonably be required by the board of county commissioners to whom the petition is addressed including, but not limited to, population, population density, per capita assessed valuation, proximity to populated areas, likelihood of significant growth, need for services, present cost and adequacy of services, and effect of proposed action and alternative actions on adjacent areas.

The petition shall be filed in the office of the county auditor, accompanied by a verified copy of the census required under this

chapter and by a duplicate map of the survey of the proposed municipality, and shall be ~~presented~~ submitted to the board of county commissioners at the time indicated in the notice described in section 40-02-04 or as soon thereafter as the board can receive and consider the same. The board of county commissioners to whom the petition is addressed shall designate a time and place for consideration of the petition and shall notify the petitioners of that time and place. The petitioners shall then cause a notice containing the substance of the petition, and the time and place it will be heard to be published once a week for two consecutive weeks in the official county newspaper or newspapers of the county or counties and in other newspapers as deemed appropriate by the board of county commissioners of each county embracing the territory to be incorporated.

SECTION 5. AMENDMENT. Section 40-02-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-06. BOARD OF COUNTY COMMISSIONERS TO CONSIDER PETITION. Before hearing the petition, the board of county commissioners shall require proof, either by affidavit or by oral examination of witnesses before it, that notice as required by section 40-02-05 was given and that the survey, map, and census were subject to examination in the manner and for the period required by this chapter. All interested persons shall have the opportunity to comment at the hearing. The board shall have the authority to approve or disapprove, with or without amendment, the petition for incorporation. Before taking action on a petition, the board may consider such factors as the permanent nature of the community, the necessity for incorporation shown by the community, the ability of the community to assume municipal responsibilities, and the showing that the burdens and benefits of incorporation will be equal and just.

The board of county commissioners shall make a written record of its findings on each of the assertions contained in the petition and shall provide any interested person with a copy of those findings. If the board is satisfied that the ~~provisions--of--this chapter--have--been-fully-complied-with~~ petition should be approved, it shall make an order fixing the time and the places within the boundaries of the proposed municipality at which an election may be held to determine the question of incorporation as ~~prayed--for~~ requested in the petition. If the territory described in the petition is located in more than one county, the board shall, after consultation with the board of the other county involved, designate a separate election place in each county in which any part of the territory described in the petition is situated. The board shall name the persons to act as judges of the election in each such election place.

SECTION 6. AMENDMENT. Section 40-02-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-07. NOTICE OF ELECTION. The board of county commissioners to which a petition is ~~addressed~~ submitted under this chapter shall give notice of the election ~~to be held to determine~~ on the question whether or not the municipality described in the petition shall be organized. ~~Such~~ The notice shall be ~~given by publication of the same~~ published in one issue of a newspaper or newspapers published within the territory described in the petition, and such publication shall be made at least ten days prior to the date set for ~~such~~ the election. If no newspaper is published within ~~such~~ the territory, ~~such~~ the notice shall be published in the official county newspaper or newspapers and in other newspapers as deemed appropriate by the board of county commissioners of each county embracing the territory to be incorporated.

SECTION 7. AMENDMENT. Section 40-02-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-10. ELECTION RETURNS - TO WHOM MADE - DUTY OF BOARD OF COUNTY COMMISSIONERS. The election officials acting in each place in which votes are cast in an election held under this chapter shall return to the board of county commissioners which ordered the election a verified statement of the results of the election showing the number of votes cast for and against incorporation ~~to~~ at their voting place. ~~Such~~ The returns shall be verified by the affidavit of the election officials. The returns shall be canvassed by the board of county commissioners, and the results of the canvass and of the election shall be entered upon the minutes of the proceedings of such board. If a majority of the votes cast at the election favored incorporation, the board shall make an order declaring that the territory described in the petition has been incorporated as a city under the council form of government or as a city under the commission system of government, as the case may be, by the name described in the petition, stating ~~such~~ that name, and shall cause ~~such~~ the order to be entered in the minutes of its proceedings. If the territory is located in more than one county, a certified copy of such order shall be submitted immediately to each of the other counties within which a portion of the territory described in the order is situated. The auditor of each county to which a certified copy of the order is submitted shall make a record thereof in the minutes of the board of county commissioners of such county.

SECTION 8. AMENDMENT. Section 40-02-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-11. DIVISION INTO ~~DISTRICTS OR~~ WARDS. ~~After the return of the election provided for in this chapter, if~~ If a majority of the votes cast at ~~such~~ the election provided for in this chapter favored incorporation as a municipality, the board of county commissioners which ordered the election shall, if the territory has been incorporated as a city under the council form of government, proceed to divide the municipality into ~~districts or~~ wards ~~as follows:~~

~~1.--If the territory has been incorporated as a city under the council form of government, it~~. The city shall not be divided into wards unless it has more than six hundred inhabitants, and if it has more than six hundred inhabitants, one ward shall be formed for each two aldermen to which the city is entitled. In cities of more than fifteen thousand inhabitants, however, the number of wards shall be limited to seven originally, and such number may be increased thereafter as provided in this title~~.~~.

~~2.--If the territory has been incorporated as a city under the commission system of government, it shall be divided into not less than three nor more than seven wards.~~

Each ~~district or~~ ward shall be formed from contiguous territory, and all ~~districts or~~ wards shall be numbered consecutively and shall have, as nearly as practicable, the same number of inhabitants. After the election of aldermen ~~or commissioners, as the case may be,~~ it shall thereafter be the duty of the governing body of the city to form or establish wards ~~and election districts~~ pursuant to law.

SECTION 9. AMENDMENT. Section 40-02-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-12. ORDER OF INCORPORATION - RECORDING - FILING - AS EVIDENCE. An order ~~or~~ of incorporation of a city under the council form of government, under the provisions of this chapter, as made by the board of county commissioners to which the petition for incorporation is addressed, shall be conclusive evidence of the incorporation of the territory described in the order in all suits by or against the municipality described therein. The board shall cause a certified copy of ~~such~~ the order to be filed for record in the office of the register of deeds of each county affected and a certified copy ~~thereof to~~ shall also be filed in the office of the secretary of state.

SECTION 10. A new section to chapter 40-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

APPEAL OF BOARD OF COUNTY COMMISSIONERS' ACTION - SCOPE OF REVIEW. Any final action taken by a board of county commissioners on a petition for incorporation may be appealed to the district court. The review on appeal shall extend only to the determination of whether the board of county commissioners has pursued its authority regularly and has not exceeded its jurisdiction or abused its discretion under the provisions of this chapter.

Approved March 3, 1981

CHAPTER 406

SENATE BILL NO. 2286
(Senator Lashkowitz)
(Representative Swiontek)

COMMISSION FORM OF GOVERNMENT

AN ACT to amend and reenact sections 40-04-08 and 40-04-10 of the North Dakota Century Code, relating to procedures for changing from a commission system of city government.

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

SECTION 1. AMENDMENT. Section 40-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-04-08. CHANGE FROM OR REVERSION TO COMMISSION SYSTEM OF GOVERNMENT - PETITION REQUIRED. Any city which shall have operated for more than six years under or since changing from the city commission system of government may change its governmental organization ~~thereunder~~ and adopt the city council form of government or the modern council form of government or revert to the city commission form of government. The proceeding to change or revert shall be initiated either by a resolution by the governing body or by a petition asking for such change signed by not less than ~~forty~~ twenty-five percent of the qualified electors of the city. In no event, however, shall the petition contain less than thirty signatures. In any city having six or more municipal election precincts, not more than twenty percent of the petitioners may reside in any single precinct. For the purpose of this section the term "qualified electors of the city" shall mean the total number of electors voting for the office of the chief executive officer of the city at the preceding ~~general~~ city election. The signatures to such petition need not be appended to a single paper, but one of the signers upon each paper shall make oath before an officer competent to administer oaths that each signature appearing upon such paper is the genuine signature of the person whose name it purports to be and that such person purports to be not less than eighteen years of age and a resident of the city. Each petition, in addition to the names of the signers, shall contain the name of the street upon and the number of the house in which each petitioner resides~~,-and-the-length of-his-residence-in-the-city~~. Any petitioner shall be permitted to withdraw his name from a petition within five days after the petition is filed. If the proceeding to change from or revert to a

commission system of government is initiated by petition, the question may not be placed on the ballot more often than every four years.

SECTION 2. AMENDMENT. Section 40-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-04-10. PROCEDURE WHEN PETITION TO CHANGE FROM OR REVERT TO COMMISSION SYSTEM OF GOVERNMENT IS FILED - ~~SPECIAL ELECTION~~ ELECTION - BALLOT. When a petition to change from or revert to the commission system of government, together with the city auditor's certificate of sufficiency, is filed with the governing body of a ~~municipality,~~ city, or when a resolution to change or revert has been adopted, the governing body shall call a special election at which only the question of changing from or reverting to the commission system of government will be submitted. The date of such election shall not be less than ~~thirty~~ sixty days nor more than ninety days after the date of the auditor's certificate that a sufficient petition 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 ballot to be used at the election ~~provided for in this section~~ shall be include the issue presented in the petition or resolution in substantially one of the following ~~form~~ forms:

CHANGE FROM COMMISSION SYSTEM OF GOVERNMENT

Shall the city of ---------- change from its organization under the commission system of government and become a city under the council form of government?

Yes / /

No / /

Shall the city of ---------- change from its organization under the commission system of government and become a city under the modern council form of government with a five-man council?

Yes / /

No / /

Shall the city of ---------- change from its organization under the commission 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 commission system of government and become a city under the modern council form of government with an eleven-man council?

Yes / /

No / /

REVERSION TO COMMISSION SYSTEM OF GOVERNMENT

Shall the city of ---------- revert from the council form of government to the commission system of government?

Yes / /

No / /

Shall the city of ---------- revert from the modern council form of government with a five-man council to the commission system of government?

Yes / /

No / /

Shall the city of ---------- revert from the modern council form of government with a seven-man council to the commission system of government?

Yes / /

No / /

Shall the city of ---------- revert from the modern council form of government with an eleven-man council to the commission system of government?

Yes / /

No / /

Approved March 31, 1981

CHAPTER 407

HOUSE BILL NO. 1480
(Metz)

CONTROL OF FINANCES

AN ACT to amend and reenact subsection 2 of section 40-05-01 of the North Dakota Century Code, relating to the powers of municipalities to control finances.

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

SECTION 1. AMENDMENT. Subsection 2 of section 40-05-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Finances and property. To control the finances, to make payment of its debts and expenses, to contract debts and borrow money, to establish charges for any city or other services, and to control the property of the corporation.

Approved March 3, 1981

CHAPTER 408

HOUSE BILL NO. 1241
(E. Pomeroy)

MARIJUANA POSSESSION PROHIBITION BY ORDINANCE

AN ACT to create and enact a new subsection to section 40-05-02 of the North Dakota Century Code to allow cities to prohibit by ordinance the possession of not more than one-half ounce of marijuana.

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

SECTION 1. A new subsection to section 40-05-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

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.

Approved March 11, 1981

CHAPTER 409

SENATE BILL NO. 2064
(Legislative Council)
(Interim Judiciary "A" Committee)

ORDINANCE VIOLATION SENTENCING ALTERNATIVES

AN ACT to amend and reenact sections 40-05-06 and 40-18-13 of the North Dakota Century Code, relating to the maximum fines and penalties which may be imposed for the violation of a municipal ordinance and the imposition of alternative sentences or suspended sentences.

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

SECTION 1. AMENDMENT. Section 40-05-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-05-06. CITY FINES AND PENALTIES LIMITED.

1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city shall not exceed five hundred dollars, and the imprisonment shall not exceed thirty days for one offense.

2. For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which shall not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06.

3. For every violation of a city ordinance prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

This section shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02 for the violation of a city

ordinance, nor shall this section limit the use of deferred or suspended sentences pursuant to chapter 12-53.

SECTION 2. AMENDMENT. Section 40-18-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-13. SENTENCING ALTERNATIVES - SUSPENSION OF SENTENCE OR IMPOSITION OF SENTENCE. ~~A~~ Subject to section 40-05-06, a municipal judge may utilize the sentencing alternatives provided by section 12.1-32-02 and may suspend any sentence imposed by him or suspend the imposition of any sentence during the good behavior of ~~the~~ any person ~~so sentenced~~ adjudged to have committed an offense, or for other reasonable cause, pursuant to chapter 12-53.

Approved March 5, 1981

CHAPTER 410

HOUSE BILL NO. 1589
(Boyum)

PRIVATE GARBAGE COLLECTION CONTRACTS

AN ACT to permit garbage collection by more than one contractor in cities with a population of five thousand or more persons.

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

SECTION 1. GARBAGE REMOVAL - NUMBER OF CONTRACTORS ALLOWED. In any city with a population of not less than five thousand persons, the governing body shall, if permitted by ordinance or by law to allow more than one person or firm to contract with commercial enterprises for the private collection or removal of garbage, allow all persons or firms wishing to do so to enter into private garbage removal contracts with commercial enterprises.

Approved April 6, 198.

CHAPTER 411

HOUSE BILL NO. 1274
(Representatives Wentz, Lang, Mattson)
(Senators Leibhan, Wright)

ALDERMEN'S COMPENSATION INCREASED

AN ACT to amend and reenact section 40-08-07 of the North Dakota Century Code, relating to compensation of city aldermen.

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

SECTION 1. AMENDMENT. Section 40-08-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-08-07. COMPENSATION OF ALDERMEN. The aldermen shall receive such compensation for their services as shall be fixed by ordinance, but ~~such~~ the compensation shall not exceed the following limitations based upon the population of the city according to the latest state or federal census:

1. In cities not exceeding ~~one~~ two thousand in population, to each alderman not to exceed ~~thirty~~ fifty dollars per month.

2. In cities over ~~one~~ two thousand and not exceeding ~~two~~ six thousand in population, to each alderman not to exceed ~~forty~~ ninety dollars per month.

3. In cities over ~~two~~ six thousand and not exceeding ~~four~~ thirty thousand in population, to each alderman not to exceed ~~fifty~~ one hundred seventy-five dollars per month.

4. ~~In--cities--over--four--thousand--and--not--exceeding--six thousand-in-population,-to-each--alderman--not--to--exceed seventy-dollars-per-month.~~

5. ~~--In--cities--over--six--thousand--and--not--exceeding-eight thousand-in-population,-to-each--alderman--not--to--exceed ninety-dollars-per-month.~~

~~6.--In--cities--over--eight--thousand-and-not-exceeding-twelve thousand-in-population,-to-each-alderman-not-to-exceed-one hundred-twenty-five-dollars-per-month.~~

~~7.--In--cities--over--twelve-thousand-and-not-exceeding-thirty thousand-in-population,-to-each-alderman-not-to-exceed-one hundred-fifty-dollars-per-month.~~

8. In cities having a population of over thirty thousand, to each alderman not to exceed ~~one-hundred-seventy-five~~ four hundred dollars per month.

Approved March 11, 1981

CHAPTER 412

SENATE BILL NO. 2065
(Legislative Council)
(Interim Judiciary "A" Committee)

ORDINANCE VIOLATION PENALTY DEPOSIT

AN ACT to amend and reenact section 40-11-13 of the North Dakota Century Code, relating to the disposition of fines and forfeitures imposed for the violation of municipal ordinances.

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

SECTION 1. 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 MUNICIPAL TREASURY. All fines, penalties, and forfeitures collected for offenses against the ordinances of a municipality, including those fines, penalties and forfeitures collected as a result of a judgment of a district court or county court of increased jurisdiction rendered pursuant to section 40-18-19, shall be paid into ~~its~~ the municipality's treasury at such time and in such manner as may be prescribed by ordinance.

Approved March 6, 1981

CHAPTER 413

HOUSE BILL NO. 1458
(Meiers, Boyum)

MUNICIPAL JUDGE'S ELECTION OPTIONAL

AN ACT to amend and reenact sections 40-14-01 and 40-15-01 of the North Dakota Century Code, relating to the election of municipal judges.

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

SECTION 1. AMENDMENT. Section 40-14-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-14-01. OFFICERS TO BE ELECTED IN COUNCIL CITIES. The following officers shall be elected in each city operating under the council form of government:

1. A mayor~~,~~; and

2. The aldermen required under the provisions of sections 40-08-03 and 40-08-04.

~~3.--A-municipal-judge.~~

Each city operating under the council form of government may choose to have a municipal judge who shall be elected.

SECTION 2. AMENDMENT. Section 40-15-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-15-01. OFFICERS TO BE ELECTED IN COMMISSION CITIES. The following officers shall be elected in each city operating under the commission system of government:

1. A president of the board of city commissioners; and

2. Four city commissioners~~,--and~~

~~3.--A-municipal-judge~~.

Each city operating under the commission system of government may choose to have a municipal judge who shall be elected.

Approved March 20, 1981

CHAPTER 414

SENATE BILL NO. 2423
(Lashkowitz, Stenehjem)

MUNICIPAL COURT APPEAL BOND REQUIREMENT

AN ACT to amend and reenact section 40-18-19 of the North Dakota Century Code, relating to bail bonds on appeals from municipal court determinations.

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

* SECTION 1. AMENDMENT. Section 40-18-19 of the 1979 Supplement to 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 to the county court of increased jurisdiction as provided for in section 27-08-21 from a judgment of conviction in a municipal judge's court in the same form and manner as appeals are taken ~~and perfected~~ from a judgment of conviction of a defendant in county justice court, and in accordance with sections 33-12-34, ~~33-12-35,~~ and 33-12-39, and shall be tried in the district court or county court of increased jurisdiction in accordance with ~~sections 33-12-40 and~~ section 33-12-41, ~~and bail shall be taken in accordance with sections 33-12-36 and 33-12-37, and witnesses may be placed under bond as provided for in section 33-12-38~~. 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. On all appeals from a determination in a municipal judge's court the 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 conviction for the violation of a municipal ordinance.

Approved March 25, 1981

* NOTE: Section 40-18-19 was also amended by section 99 of House Bill No. 1061, chapter 320, and by section 30 of House Bill No. 1069, chapter 91.

CHAPTER 415

HOUSE BILL NO. 1293
(Unhjem)

SPECIAL ASSESSMENT REQUIREMENTS

AN ACT to amend and reenact sections 40-22-15 and 40-24-07 of the North Dakota Century Code, relating to exemption of sewer and water improvements from the requirement of issuing a resolution of necessity, and the time period for payment of special assessments for street improvements.

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

SECTION 1. AMENDMENT. Section 40-22-15 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-15. RESOLUTION DECLARING IMPROVEMENTS NECESSARY - EXCEPTION FOR SEWER AND WATER ~~MAINS~~ IMPROVEMENTS - CONTENTS OF RESOLUTION - PUBLICATION OF RESOLUTION. After the engineer's report required by section 40-22-10 has been filed and approved, the governing body of the municipality, by resolution, shall declare that it is necessary to make the improvements described therein. ~~Such~~ A resolution shall not be required, however, if the improvement ~~consists of the construction or alteration of sewer or water mains~~ constitutes a water or sewer improvement as described in subsection 1 of section 40-22-01, unless it is determined that the cost thereof shall be paid in part as is provided in section 40-22-16, nor 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 the district, has been received. The resolution shall refer intelligibly to the engineer's report, and shall include a map of the municipality showing the proposed improvement districts. The resolution shall then be published once each week for two consecutive weeks in the official newspaper of the municipality.

SECTION 2. AMENDMENT. Section 40-24-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-07. STREET IMPROVEMENT ASSESSMENTS EXTENDED OVER A PERIOD OF NOT MORE THAN ~~TEN~~ THIRTY YEARS. Special assessments for the expense of opening, widening, grading, graveling, or extending streets shall be payable in equal annual amounts extending over a period of not more than ~~ten~~ thirty years.

Approved April 1, 1981

CHAPTER 416

HOUSE BILL NO. 1254
(Black, Gates)

INTEREST ALLOWABLE ON SPECIAL ASSESSMENTS

AN ACT to amend and reenact sections 40-24-02, 40-29-11, 40-33-05, and 40-54-08 of the North Dakota Century Code, relating to interest allowable on special assessments levied by cities and also special assessments for sidewalks, municipal utilities, and gravel surfacing of city streets.

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

* SECTION 1. AMENDMENT. Section 40-24-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-02. PAYMENT OF SPECIAL ASSESSMENTS ~~WHEN-DUE-AND-PAYABLE~~ - INTEREST. All special assessments levied under ~~the-provisions--of~~ this title may be paid without interest within ten days after they have been approved by the governing body and thereafter shall bear interest at ~~a~~ an annual rate ~~of~~ not exceeding ~~eight-percent-per-annum-or-not-exceeding~~ two percentage points above the average net annual interest rate on any warrants or bonds for the payment of which they are pledged~~,-whichever-is-higher,~~ on the total amount thereof remaining ~~from-time-to-time~~ unpaid.

SECTION 2. AMENDMENT. Section 40-29-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-29-11. ~~EXTENSION--OF~~ PAYMENT OF ASSESSMENTS - ~~MAY-BE-PAID-IN-SINGLE-INSTALLMENT~~ INTEREST. All assessments for sidewalks shall be payable in equal annual amounts extending over a period of not exceeding ten years and shall bear interest at ~~a~~ an annual rate of not more than ~~seven-percent-per-annum-on~~ two percentage points above the average net annual interest rate on any warrants for the total amount of ~~such~~ the assessments remaining ~~from-time-to-time~~ unpaid. Anyone ~~who-chooses-to~~ may pay the sidewalk assessment in one single payment ~~may--do--so~~, and anyone who has paid any one or more installments may pay the balance in one payment.

* NOTE: Section 40-24-02 was also amended by section 11 of Senate Bill No. 2122, chapter 269.

* SECTION 3. AMENDMENT. Section 40-33-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-33-05. PAYMENT OF COST OF PLANT, SYSTEM, OR LINE BY SPECIAL ASSESSMENT WARRANTS - ~~REGULATIONS--GOVERNING~~ PAYMENT OF ASSESSMENTS - INTEREST. If the governing body of the municipality deems it advisable to pay the whole or any part of the cost of a municipal utility by special assessment warrants, it shall create a special assessment district by ordinance~~,--and--such~~. The district shall include, as nearly as may be determined, all of the property in the municipality which will be benefited by the improvement, and ~~such--district~~ may include the entire municipality or a portion thereof. The governing body thereafter shall adopt a resolution of necessity and hold a hearing thereon, estimate the amount of the cost of the improvement, let a contract or contracts therefor, create a fund for the district, issue and sell the warrants of the municipality drawn on the fund, complete the work of the improvement, and assess the property benefited thereby ~~in-the-form and~~ upon ~~the~~ notice and in the form and manner specified by the provisions of chapters 40-22 through 40-26 insofar as such provisions are applicable to an improvement being made under this chapter. The special assessments levied shall be payable in equal annual installments extending over a period of not more than twenty years and shall bear interest at ~~a~~ an annual rate of not more than ~~seven-percent-annually-on~~ two percentage points above the average net annual interest rate on any warrants for the total amount of the assessments remaining unpaid ~~from-time-to-time~~.

SECTION 4. AMENDMENT. Section 40-54-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-54-08. PAYMENT OF ASSESSMENTS - ~~EFFECT~~ INTEREST. All assessments for gravel projects shall be payable in equal annual amounts extending over such period as may be determined by the governing body, not exceeding three years, and shall bear interest at ~~a~~ an annual rate of not more than ~~six-percent-per-annum-on~~ two percentage points above the average net annual interest rate on any warrants for the total amount of ~~such~~ the assessments remaining ~~from time-to-time~~ unpaid. Anyone ~~who-chooses-to~~ may pay such assessments in one single payment ~~may-do-so~~, and anyone who has paid any one or more installments may pay the balance in one payment. When the assessment against any lot or tract ~~shall-have~~ has been paid, the lien against ~~said~~ the lot or tract shall be canceled and annulled.

Approved March 11, 1981

* NOTE: Section 40-33-05 was also amended by section 15 of Senate Bill No. 2122, chapter 269.

CHAPTER 417

HOUSE BILL NO. 1655
(Representatives Strinden, Kloubec)
(Senator Hanson)
(Approved by the Committee on Delayed Bills)

MUNICIPAL PIPELINE AUTHORITY

AN ACT to create and enact chapter 40-33.3 of the North Dakota Century Code, relating to the creation and powers of a municipal pipeline authority; and to amend and reenact section 6-09.4-02, subsections 5 and 6 of section 6-09.4-03, and sections 6-09.4-06 and 6-09.4-08 of the North Dakota Century Code, relating to the lending and bonding authority of the municipal bond bank within the Bank of North Dakota.

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

SECTION 1. AMENDMENT. Section 6-09.4-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-02. LEGISLATIVE POLICY. It is declared to be the policy of the state of North Dakota to foster and promote the provision of adequate capital markets and facilities for borrowing money by political subdivisions and for the financing of their respective public improvements. It is in the public interest to encourage political subdivisions to continue their independent undertakings of public improvements and the financing thereof by making funds available at reduced interest costs, especially during periods of restricted credit or money supply. Current credit and municipal bond market conditions require the exercise of the powers of the state to further and implement such policies by authorizing a state instrumentality to be created to borrow money and to issue its bonds to make funds available at reduced rates and on favorable terms for borrowing by political subdivisions through the purchase or holding of ~~the--bonds~~ marketable securities of political subdivisions in fully marketable form or in another form adequate to secure bonds issued by the state instrumentality and by granting broad powers to accomplish and to carry out the policies of the state.

SECTION 2. AMENDMENT. Subsections 5 and 6 of section 6-09.4-03 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. "Municipal security" means a bond or evidence of debt issued by a political subdivision and payable from taxes or from rates, charges, or assessments, but ~~shall~~ does not include bonds issued pursuant to chapter 40-57, and also means a pledge of property or revenues by a municipal pipeline authority.

6. "Political subdivision" means a county, city, school district, township, park district, airport authority, city or county housing authority, municipal parking authority, municipal pipeline authority, irrigation district, board of drainage commissioners, fire protection district, or water ~~management~~ resource district.

SECTION 3. AMENDMENT. Section 6-09.4-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-06. LENDING AND BORROWING POWERS GENERALLY. The bond bank is authorized to lend money to political subdivisions through the purchase of municipal securities of political subdivisions which, in the opinion of the attorney general, are legally sufficient. The bond bank is authorized to lend money to political subdivisions through the holding of municipal securities of political subdivisions which are in the form of a pledge of property or revenues of a project where the political subdivisions are expressly authorized to pledge the property or revenues with the bond bank. The bond bank may hold such bonds for any length of time it finds to be necessary. The bond bank, for the purposes authorized by this chapter, is authorized to issue its bonds payable solely from the funds available to the bond bank which are authorized or pledged for payment of bond bank obligations, and to otherwise assist political subdivisions as provided in this chapter.

Bonds of the bond bank issued under this chapter shall not be in any way a debt or liability of the state and shall not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or be or constitute a pledge of the faith and credit of the state, but all such bonds shall be payable solely from revenues or funds pledged or available for their payment as authorized in this chapter. Each bond shall contain on its face a statement to the effect that the bond bank is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on such bonds. Specific funds pledged to fulfill the bond bank's obligations are obligations of the bond bank.

All expenses incurred in carrying out the purposes of this chapter shall be payable solely from revenues or funds provided or to be provided under this chapter and nothing in this chapter shall be construed to authorize the bond bank to incur any indebtedness or liability on behalf of or payable by the state.

SECTION 4. AMENDMENT. Section 6-09.4-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-08. BONDS OF THE BOND BANK. Bonds of the bond bank shall be authorized by resolution of the industrial commission and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Bonds of the bond bank, issued to provide funds to a municipal pipeline authority, are to mature not more than thirty years from the date of issue. Bonds of the bond bank may be sold at public or private sale at such time or times and at such price or prices as the bond bank shall determine.

SECTION 5. Chapter 40-33.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

40-33.3-01. MUNICIPAL PIPELINE AUTHORITIES - CREATION. Any two or more cities each of which is over forty thousand population may form a municipal pipeline authority by executing an agreement authorized by a resolution of the governing body of each city and approved by not less than a majority of the qualified electors voting on the question at any regular or special election in each of those cities. Any city may become a member of an existing municipal pipeline authority, without regard to population, upon executing an agreement with the authority.

40-33.3-02. MUNICIPAL PIPELINE AUTHORITY - AGREEMENT REQUIREMENTS. The agreement to form a municipal pipeline authority shall state:

1. That the authority is created and incorporated under this chapter as a municipal corporation and a political subdivision of the state.

2. The name of the authority, which is to include the words "municipal pipeline authority".

3. The names of the cities which have approved the agreement.

4. The qualifications of member cities, any limitations upon their number, and any conditions of membership.

5. The location of the registered office of the authority.

6. Any other provision for regulating the business of the municipal pipeline authority or the conduct of its affairs

which may be agreed upon by the member cities, consistent with this chapter.

40-33.3-03. AGREEMENT FILED WITH SECRETARY OF STATE - CERTIFICATE OF INCORPORATION. The agreement and a certified copy of the resolution of the governing body of each city shall be filed for record with the secretary of state. If the agreement conforms to the requirements of section 40-33.3-02, the secretary of state shall record it and issue and record a certificate of incorporation. The certificate shall state the name of the municipal pipeline authority and the fact and date of incorporation. Upon the issuance of the certificate of incorporation, the authority shall exist as a municipal corporation and a political subdivision of the state. The certificate of incorporation is conclusive evidence of incorporation.

40-33.3-04. AMENDMENT OF AGREEMENT. The agreement may be amended at any meeting of the representatives of the member cities for which notice, stating the purpose, is given to each representative of each member city and unless the agreement provides otherwise, is effective when ratified by resolutions of the governing bodies of a majority of the member cities and approved by a majority of the qualified electors voting on the question at any regular or special election in each of those member cities constituting the majority. Each amendment and the resolutions of the governing bodies approving it shall be filed for record with the secretary of state.

40-33.3-05. PAYMENT OF EXPENSES OF CITY REPRESENTATIVES. Each member city may appropriate money for the payment of expenses of the formation of the municipal pipeline authority and of its representatives in exercising functions as members of the authority.

40-33.3-06. MUNICIPAL PIPELINE AUTHORITY - POWERS. A municipal pipeline authority is a municipal corporation and a political subdivision of the state and has all of the powers provided by this section. The representatives of the member cities, as the board of directors of the authority, shall exercise the powers of the authority unless otherwise provided by the agreement. An authority:

1. May plan, acquire, construct, reconstruct, operate, maintain, repair, extend, or improve one or more facilities for the transmission or distribution of liquids or of natural or synthetic gas; or may acquire any interest in or any right to capacity of a project and may act as agent or designate one or more of the other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, or improvement of the project.

2. May cooperate with other persons in the development of sources and supplies of liquids or of natural or synthetic gas.

3. May apply to any public agency for consents, authorizations, or approvals required for any project within its powers and take all actions necessary to comply with the conditions thereof.

4. May acquire, own, hire, use, operate, lease as lessor or lessee, and dispose of property and interests in property, and make improvements to property.

5. May acquire all property that it deems necessary for carrying out the purposes of this chapter, whether in fee simple absolute or a lesser interest, by condemnation and the exercise of the power of eminent domain in accordance with chapter 32-15. A municipal pipeline authority may not exercise the power of eminent domain with respect to any property owned by any person as part of a system, whether existing, under construction, or being planned, of facilities for the transmission or distribution of liquids or of natural or synthetic gas.

6. May establish, levy, and collect or may authorize, by contract, franchise, lease, or otherwise, the establishment, levying, or collection of, rents, rates, and other charges for the services afforded by the authority and the use of any property or facility owned or controlled by the authority.

7. May contract with any person for the construction of any project or for the sale, transmission, or distribution of liquids or of natural or synthetic gas by any project, or for any interest therein or any right to capacity thereof, upon such terms as the authority determines. If a payment bond is secured as provided in chapter 48-01, no lien may be filed under chapter 35-27.

8. May purchase, sell, exchange, or transmit liquids or natural or synthetic gas within and outside the state and within or outside the United States, in such amounts as it determines to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and may enter into agreements with any person with respect to that purchase, sale, exchange, or transmission, on such terms and for such period of time as the board of directors determines.

9. May mortgage, pledge, and grant a security interest in any or all or its property or revenues to secure the repayment of moneys loaned to it or advanced to it by the municipal bond bank as the result of a bond issue under chapter 6-09.4.

10. May procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it deems desirable.

11. May acquire, hold, use, and dispose of income, revenues, funds, and money.

12. Subject to any agreement, may invest money not required for immediate use, including proceeds from the sale of any bonds, in such obligations, securities, and other investments as the authority deems prudent, notwithstanding the provisions of any other law relating to the investment of public funds.

13. May contract for and accept any gifts or grants or loans of funds or property or financial or other aid in any form from any person, and may comply, subject to this chapter, with the terms and conditions thereof.

14. Shall pay to each taxing authority within whose taxing jurisdiction its property is situated, in lieu of taxes on its property, the amount of the taxes which would be payable if its property were owned by a private person. For this purpose the property of a municipal pipeline authority is to be valued in the same manner and by the same procedure as the property of private utility companies.

15. May sue and be sued, complain, and defend in its name.

16. May perform any act authorized by this chapter through or by means of its officers, agents, or employees or by contract with any person.

17. May issue revenue bonds, in anticipation of the collection of revenues from a facility authorized by this chapter, to finance the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, or improvement of a facility. Such bonds shall be payable in not more than thirty years from the date of issuance. The authority shall determine the denomination, date, time and manner of payment of the bonds.

Approved March 19, 1981

CHAPTER 418

HOUSE BILL NO. 1551
(Unhjem)

PUBLIC LIBRARIES

AN ACT to create and enact a new section to chapter 54-24.2 of the North Dakota Century Code, relating to the definition of "other public funds" for purposes of state aid to public libraries; to amend and reenact sections 40-38-02, 40-38-06, 40-38-08, 40-38-11, 54-24.2-04, and 54-24.2-05 of the North Dakota Century Code, relating to a library fund, vouchers, and donations for public library services; joint public library services by cities and counties; and maintenance of local effort and limitations for state aid to public libraries; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 40-38-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-38-02. LIBRARY FUND - LEVY - ~~COLLECTION~~-- KEPT SEPARATE - EXEMPTION FOR MUNICIPALITY LEVYING TAX - INCREASING LEVY.

1. For the purpose of establishing and maintaining public library service, the governing body of a municipality or county authorizing the same shall establish a library fund. ~~Such~~ The library fund shall consist of annually levying and causing to be collected as other taxes are collected, a municipal or county tax not to exceed four mills on the net taxable assessed valuation of property in ~~such~~ the municipality and not to exceed two mills on the net taxable assessed valuation of property in ~~such~~ the county, and any other moneys received for library purposes from federal, state, county, municipal, or private sources.

2. The city auditor or county treasurer shall keep ~~such~~ the fund separate and apart from the other money of the county or municipality~~,--and--it-shall~~ and promptly transmit all funds received pursuant to this section within thirty days

of receipt to the board of directors. The funds may not revert to or be considered funds on hand by the governing body at the end of any fiscal year. ~~Such~~ The fund shall be used exclusively for the establishment and maintenance of public library service.

3. Whenever a tax for county library service is levied, any municipality already levying a tax for public library service under the provisions of this section or other provisions of law shall, upon written application to the county board of ~~such~~ the county, be exempted from ~~such~~ the county tax levy to the extent that the municipality making ~~such~~ the application levies taxes for a library fund during the year for which ~~such~~ the tax levy is made. If ~~such~~ the municipality has been totally exempted from participation in any prospective county library program, the phrase "not less than fifty-one percent of the voters of such municipality or county as determined by the total number of votes cast at the last general election" as stated in section 40-38-01 shall mean fifty-one percent of the total number of votes cast at the last general election in ~~such~~ the county less the total number of votes cast at the last general election in ~~such~~ the municipality~~, and if~~. If an election on the question is held, the voters of any municipality so exempted from the county library tax shall not be entitled to vote on the establishment or discontinuance of the county library service.

4. Upon motion of the governing body or upon petition of not less than twenty-five percent of the voters in the last general election of any city, school district, township, or county, filed not less than sixty days before the next regular election, the governing body shall submit to the voters at the next regular election the question of whether ~~such~~ the governing body shall increase the mill levy a specified amount for public library service above the mill levy limitation set out in this section. Upon approval by sixty percent of the voters voting in ~~such~~ the election, the governing body shall increase the levy for public library service in the amount approved by the voters.

SECTION 2. AMENDMENT. Section 40-38-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-38-06. VOUCHERS - HOW DRAWN. The duly bonded secretary or treasurer of the board of directors may draw money from the library fund upon vouchers of the board of directors without any other audit.

SECTION 3. AMENDMENT. Section 40-38-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-38-08. DONATIONS - HOW ACCEPTED - BOARD OF DIRECTORS AS TRUSTEE. All persons desirous of making donations of money, books, personal property, or real estate for the benefit of the library may vest the same in the board of directors. The board shall hold and control all property accepted for the use of the library and reading room as a special trustee. ~~The treasurer of the city or other political subdivision establishing such library shall be ex officio treasurer of the board as such special trustee, and shall, under the direction of the board, keep, invest, and disburse all funds and securities so vested in said board. Such treasurer shall be deemed a public employee and as such insured in the state bonding fund in the amount fixed by the board and at the expense of the board, as are other public employees under the provisions of chapter 26-23.~~

SECTION 4. AMENDMENT. Section 40-38-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-38-11. ~~CONSOLIDATION OR MERGER OF~~ JOINT PUBLIC LIBRARY SERVICES BY CITIES AND COUNTIES. ~~Upon the approval of the electors of the city or county thereof, and with the approval of the state library, public library service maintained by any city or county may be merged or consolidated with any other existing library service maintained by any other cities or counties. The merger or consolidation shall become effective only if approved by each individual city or county considering the question. Such mergers and consolidations shall include provision for a single library board representing the various cities or counties levying funds for support of library services.~~

1. Upon compliance with section 40-38-01 for the establishment of public library services, public library services may be jointly provided through a written agreement between the governing bodies of any city or county or both to establish and maintain joint library services with one or more cities or counties or both.

2. A party shall be bound to an agreement entered into under subsection 1 for an initial five-year term and subsequent five-year terms unless it provides other parties to the agreement with notice of intent to withdraw from the agreement at least two years before the proposed date of withdrawal.

3. The parties to the agreement shall appoint a single joint library board to govern public library services covered by the agreement. The method of representation on the ~~consolidated or merged~~ joint library board and the establishment of the initial board with staggered terms shall be determined in the ~~merger or consolidation agreements. Such consolidated or merged~~ agreement. Provided, the joint library board shall consist of an equal number of appointees from each party to the agreement and, in any case, shall consist of not less than

five members nor more than eleven members. No member of the board shall serve for more than two consecutive three-year terms, after which an interval of one year must elapse before the same member may be reappointed.

4. The joint library board shall have all power and ~~responsibilities~~ duties provided in sections 40-38-04 through 40-38-09. ~~The--treasurer-of-the-consolidated-or merged-library-board-shall--receive--and--retain--all--tax funds--levied--for-public-library-service-by-the-governing boards-of-all--cities--and--counties--represented--on--the consolidated-or-merged-library-board.~~

5. A joint library fund shall be established for the public library services covered by the agreement. Each city or county represented in the agreement shall provide its pro rata share of funds for the services, as specified in the agreement, from the funds received under section 40-38-02.

6. The joint library board shall appoint, and may remove, a treasurer to administer the joint library fund. The treasurer may be a treasurer of one of the parties to the agreement or a member of the board or both. The city auditor and county treasurer of each city or county represented in the agreement and the state librarian shall promptly transmit all funds authorized under subsection 5 of this section and chapter 54-24.2, respectively, directly to the treasurer of the joint library board. The treasurer shall pay out moneys belonging to the ~~consolidated--or--merged~~ joint library board only upon properly drawn vouchers, pursuant to order of the joint library board~~,--by-library-board-treasurer's-checks~~. The funds received by the ~~consolidated-or-merged-library-board~~ treasurer shall not revert to or be considered funds on hand by any governmental unit furnishing the same, at the end of any biennium or fiscal year. The ~~consolidated-or merged-library-board~~ treasurer shall be bonded in such amount as may be specified by resolution adopted by the ~~consolidated-or-merged~~ joint library board. ~~This--section shall-not-be-construed-as-prohibiting-an-agreement-between political--subdivisions--for--the---joint---provision---of libraries--and-library-services-pursuant-to-chapter-54-40, which--agreement--does--not--encompass---the---merger---or consolidation-of-existing-library-services.~~

7. The agreement shall include provisions for the dissolution of the joint library board and distribution of assets in the event the agreement is terminated.

8. Joint libraries established and operated under this section are eligible to receive financial aid under chapter 54-24.2 to the extent that each city and county represented in the agreement would be eligible for the aid.

9. Agreements for public library services between cities or counties or both may be provided under this section or other provisions of this chapter and may not be provided under chapter 54-40 or other provisions of law.

10. After July 1, 1981, the establishment of joint library services pursuant to this section shall not be permitted unless approved by the electors of each individual city or county considering the question.

SECTION 5. A new section to chapter 54-24.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

DEFINITION - OTHER PUBLIC FUNDS. "Other public funds", as used in sections 54-24.2-03 and 54-24.2-05, means moneys appropriated for public library services by the governing body of the political subdivision providing public library services under chapter 40-38 in addition to the mill levy made for public library services.

SECTION 6. AMENDMENT. Section 54-24.2-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-24.2-04. MAINTENANCE OF LOCAL EFFORT. No public library ~~shall be~~ is eligible to receive any funds appropriated under this chapter during a fiscal year if the ~~total of the mill~~ governing body has diminished the:

1. Mill levy on the taxable valuation ~~and the mill levy equivalent of other public funds received and deposited in the library fund for the operation of the library has been diminished from~~ below the average of the three preceding fiscal years. ~~Excluded are Comprehensive Employment Training Act funds, Library Services and Construction Act funds, and other grants of a nonrecurring nature~~; or

2. Appropriation for public library services below an amount equal to the revenue derived from the maximum mill levy for public library services authorized under section 40-38-02.

SECTION 7. AMENDMENT. Section 54-24.2-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-24.2-05. LIMITATIONS. For public libraries operated by cities, funds granted under this chapter shall not exceed thirty-three percent of the total ~~budget from local funds as determined by the operating expenditures of~~ expenditure of mill levy moneys and other public funds during the preceding year. For public libraries operated by counties, funds granted under this chapter shall not exceed the following percent of the total ~~budget from local funds as~~

~~determined by the operating expenditures of~~ expenditure of mill levy moneys and other public funds during the preceding year:

less than $10,000	100 percent
$10,000 - ~~$19,000~~ 19,999	75 percent
$20,000 - ~~$29,000~~ 29,999	67 percent
$30,000 - ~~$49,000~~ 50,000	50 percent
over $50,000	33 percent

SECTION 8. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 11, 1981

CHAPTER 419

HOUSE BILL NO. 1263
(Martinson)

MUNICIPAL ARTS COUNCIL

AN ACT to provide for the discretionary establishment of a municipal arts council and for the levying of up to five mills to fund such council to promote the arts in local communities; and to create and enact a new subsection to section 57-15-10 of the North Dakota Century Code to exempt the mill levy for municipal arts councils from city mill levy limitations.

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

SECTION 1. MUNICIPAL ARTS COUNCIL - ESTABLISHMENT - ELECTION. The question of establishing a municipal arts council shall be submitted to the electors upon resolution of the governing body or upon the petition of not less than twenty-five percent of that number of electors of the city who voted at the last general election, filed with the governing body not less than sixty days before the next regular election. The municipal arts council may be discontinued within any city by any of the methods by which it may be established, except that once established, such council shall not be discontinued until after it has been in operation for at least five years from the date of establishment.

SECTION 2. MUNICIPAL ARTS FUND - LEVY - COLLECTION - KEPT SEPARATE. For the purpose of establishing and maintaining the municipal arts council, the governing body of a city authorizing the same shall establish a municipal arts fund. The fund shall consist of revenues from any city property tax authorized by this section, which levy may be made by the city at the direction of the municipal arts council in any amount, but not to exceed five mills on the net taxable assessed valuation of property in the city; and any other moneys received from federal, state, county, city, or private sources. The city auditor shall keep the municipal arts fund separate and apart from the other money of the city, and it shall not revert to or be considered funds on hand by the governing body at the end of any fiscal year. The municipal arts fund shall be used exclusively for the establishment and maintenance of the municipal arts council and for grants by the council to appropriate arts organizations in the city. Upon motion of the governing body

or upon petition of not less than twenty-five percent of the voters in the last general election of the city, filed not less than sixty days before the next regular election, the governing body shall submit to the voters at the next regular election the question of whether such governing body shall annually levy a specified amount not to exceed five mills for the municipal arts council.

SECTION 3. BOARD OF DIRECTORS - APPOINTMENT - TERM OF OFFICE - NO COMPENSATION - FILLING VACANCIES - ORGANIZATION. The governing body of a city which has established a municipal arts council shall appoint a board of not less than five nor more than nine directors who must be residents of the city as members of the council. The terms of office of the members of the first council appointed under this section shall be staggered so that, as near as possible, an equal number of terms will expire in each of the first three years. The members, at their first meeting, shall determine the length of their respective terms by lot. Thereafter, the number of members required to fill expired terms shall be appointed each year, and thereafter each member shall hold office for a term of three years from the first day of July in the year of the appointment and until a successor has been appointed. No member of the council shall serve for more than two consecutive terms, after which an interval of one year must elapse before the same member may be reappointed. All vacancies on the municipal arts council shall be reported by the council to the governing body of the city and shall be filled by the governing body. Appointments made to fill unexpired terms shall be for the remainder of the term only. No compensation shall be paid or allowed to a council member. Immediately after the appointment of its members, a municipal arts council shall meet and organize by electing a president and a secretary.

SECTION 4. GENERAL POWERS AND DUTIES OF A MUNICIPAL ARTS COUNCIL. A municipal arts council shall have the following powers and duties:

1. To make and adopt such bylaws and rules relating to the duties of the officers and members of the council as may be expedient and not inconsistent with the provisions of this chapter.

2. To control, exclusively, the expenditures of all moneys collected for or contributed to the municipal arts fund.

3. To employ qualified personnel to administer the provisions of this chapter.

SECTION 5. BOARD OF DIRECTORS MAY PURCHASE, BUILD, OR LEASE BUILDING FOR OFFICES - MUNICIPAL ARTS COUNCIL OFFICE FUND - PUBLIC HEARING REQUIRED. The municipal arts council, with the approval of the city governing body, may build, lease, lease-purchase, or purchase office space for the municipal arts council and purchase a site therefor. Such lease, purchase, or contract shall not be valid without the approval of the governing body of the city. Prior to any actions on such proposals, the governing body shall hold a

public hearing on the proposals. Notice of the hearing shall be published at least once, not less than six days prior to the hearing, in a newspaper of general circulation within the city. The governing body shall seek the advice and comment of the general public at the hearing. After such hearing, the governing body of a city may establish by resolution a municipal arts council building fund for the purpose of construction, enlargement, or alteration of a building or for the purchase of an existing building to be used for offices for the municipal arts council. The city auditor shall place in the building fund all moneys for such purposes as may be appropriated by the governing body or received for such purposes from federal, state, county, city, or private sources. The building fund shall not revert to the general fund of the city without authorization by formal resolution from both the municipal arts council and the governing body of the city.

SECTION 6. VOUCHERS - HOW DRAWN. The secretary of the council may draw money from the municipal arts fund upon vouchers of the board of directors without any other audit. However, no vouchers may be drawn payable to the fund created under section 5 of this Act.

SECTION 7. DONATIONS - HOW ACCEPTED - COUNCIL AS TRUSTEE. All persons desirous of making donations of money, personal property, or real estate for the municipal arts fund may vest the same in the municipal arts council. The council shall hold and control all property accepted as a special trustee. The city auditor shall be ex officio treasurer of the council as such special trustee, and shall, under the direction of the council, keep, invest, and disburse all funds and securities so vested in said board. The treasurer shall be deemed a public employee and as such bonded through the state bonding fund in the amount fixed by the council and at the expense of the council, as are other public employees under the provisions of chapter 26-23.

SECTION 8. ANNUAL REPORT OF MUNICIPAL ARTS COUNCIL - CONTENTS - TO WHOM MADE. A municipal arts council shall make a report on July first of each year to the governing body of the city, stating:

1. The condition of the property donated to the fund.
2. The various sums of money received from all sources.
3. How much money has been expended and for what purpose.
4. Such other statistics, information, and suggestions as the council may deem of general interest.

Copies of the report shall be filed with the governing body of the city.

SECTION 9. CONTRIBUTIONS BY POLITICAL SUBDIVISION TO ESTABLISHMENT OF MUNICIPAL ARTS COUNCIL WITHOUT ELECTION AUTHORIZED. To aid and facilitate the organization of the municipal arts

council, the governing body of any city where the population is less than two thousand five hundred may appropriate annually from its general fund, or from any other moneys received for similar purposes from federal, state, and private sources, a sum not to exceed five dollars per capita. Such appropriation shall be made without submitting the same to vote as provided in section 40-38-02.

SECTION 10. A new subsection to section 57-15-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Taxes levied for the purpose of establishing and maintaining a municipal arts council.

Approved March 11, 1981

CHAPTER 420

HOUSE BILL NO. 1129
(Unhjem)

FISCAL YEAR OF MUNICIPALITIES

AN ACT to amend and reenact sections 40-40-03, 40-40-04, 40-40-06, 40-40-10, and 40-40-12 of the North Dakota Century Code, relating to the fiscal year of municipalities and to dates for preparing the municipal budgets; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 40-40-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-03. FISCAL YEAR OF MUNICIPALITY. The fiscal year of each municipality shall commence on the first day of ~~July~~ January of each year and shall terminate on the ~~thirtieth~~ thirty-first day of ~~June~~ December of ~~the following~~ that same year.

SECTION 2. AMENDMENT. Section 40-40-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-04. MUNICIPALITY TO PREPARE PRELIMINARY BUDGET STATEMENT. The governing body of each municipality, annually ~~between July first and July twenty-fifth~~ on or before September tenth, shall make, on suitable blanks prescribed by the state tax commissioner and state auditor, an itemized statement known as the preliminary budget statement showing the amounts of money which, in the opinion of the governing body, will be required for the proper maintenance, expansion, or improvement of the municipality during the fiscal year, and giving such other information relating to the finances of the municipality as the tax commissioner and state auditor may require.

SECTION 3. AMENDMENT. Section 40-40-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-06. NOTICE OF PRELIMINARY BUDGET STATEMENT - CONTENTS - HOW GIVEN. After the governing body has prepared the preliminary budget statement, the auditor of the municipality shall give notice that:

1. The preliminary budget is on file in the office of the auditor and that such budget may be examined by anyone requesting to do so;

2. The governing body shall meet at the time and place specified in the notice as prescribed by subsection 3 for the purpose of adopting the final budget and making the annual tax levy, but no later than ~~the first Wednesday in August~~ October first; and

3. The governing body shall hold a public session at such time and place designated in the notice of hearing at which any taxpayer may appear and discuss with such body any item of proposed expenditures or may object to any item thereof or to the amount of any such item.

The notice shall contain a statement of the total proposed expenditures under each group provided for in the preliminary budget and of the total proposed expenditures under all such groups, but need not contain any detailed statement of the proposed expenditures. Such notice shall be published at least once, not less than six days prior to the budget hearing, in a newspaper published in the municipality, if there is one, and if no newspaper is published in the municipality, the notice shall be published not less than six days prior to such meeting in the official city newspaper as provided by section 40-01-09.

SECTION 4. AMENDMENT. Section 40-40-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-10. CERTIFIED COPIES OF LEVY AND FINAL BUDGET SENT TO COUNTY AUDITOR. Immediately after the completion of the final budget and the adoption of the annual tax levy by the governing body of a municipality in accordance with the provisions of this chapter, and in no case later than ~~September first~~ October tenth, the auditor of the municipality shall send to the county auditor two certified copies of the levy as adopted and two certified copies of the final budget.

SECTION 5. AMENDMENT. Section 40-40-12 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-12. COUNTY AUDITOR TO TRANSMIT ANNUAL TAX LEVY AND FINAL BUDGET TO STATE AUDITOR. On or before ~~September tenth~~ January first of each year, the county auditor shall transmit to the state auditor one copy of the final budget.

SECTION 6. EFFECTIVE DATE. The definition contained in section 1 of this Act shall become effective on January 1, 1983. For the purposes of this Act, the period between July 1, 1981, and December 31, 1982, shall be utilized by cities to change from the fiscal year procedures in effect on the effective date of this Act to the new fiscal year period required by this Act.

Approved March 11, 1981

CHAPTER 421

SENATE BILL NO. 2084
(Legislative Council)
(Interim Political Subdivisions Committee)

EXTRATERRITORIAL ZONING AUTHORITY

AN ACT to amend and reenact section 40-47-01.1 of the North Dakota Century Code, relating to territorial authority of municipal zoning regulations.

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

SECTION 1. AMENDMENT. Section 40-47-01.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-47-01.1. TERRITORIAL AUTHORITY OF ZONING REGULATIONS. Based upon the population of the city as determined by the last official regular or special federal census or, in case of a city incorporated subsequent to such census, a census taken in accordance with chapter 40-02, the governing body of a city may, by ordinance, extend the application of a city's zoning regulations:

1. To each quarter quarter section of unincorporated territory the majority of which is located within one-half mile [.80 kilometer] of its limits in any direction if it is a city having a population of less than five thousand.

2. To each quarter quarter section of unincorporated territory the majority of which is located within one mile [1.61 kilometers] of its limits in any direction if it is a city having a population of five thousand or more, but less than twenty-five thousand.

3. To each quarter quarter section of unincorporated territory the majority of which is located within two miles [3.22 kilometers] of its limits in any direction if it is a city having a population of twenty-five thousand or more.

Provided, that where two or more noncontiguous cities have boundaries at a distance where there would be an overlap of zoning authority under this section, each city is authorized to control the

zoning of land on its side of a line established in proportion to the authority each city has to zone land outside its limits in accordance with this section or pursuant to mutual agreement. The governing body may thereafter enforce such regulation in the area to the same extent as if such property were situated within the city's corporate limits. This territorial authority shall not authorize the application of zoning regulations to territory outside the corporate limits of land attached to a city by a strip of land not more than one hundred feet [30.48 meters] wide, nor shall this territorial authority authorize application of zoning regulations to territory outside the corporate limits of land included within such a strip of land. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313; 43 U.S.C. 752.

Approved March 5, 1981

CHAPTER 422

HOUSE BILL NO. 1479
(Metz)

APPOINTMENT OF PARK BOARD CLERK

AN ACT to amend and reenact section 40-49-08 of the North Dakota Century Code, relating to the alternate appointment of a park district clerk.

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

SECTION 1. AMENDMENT. Section 40-49-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-49-08. ORGANIZATION OF BOARD OF PARK COMMISSIONERS - MUNICIPAL AUDITOR TO ACT AS TREASURER OF BOARD OR BOARD TO APPOINT CLERK. On the third Tuesday in April after their election, the members of the board of park commissioners shall organize the board by selecting a president and a vice president. The auditor of the municipality shall be ex officio treasurer of the park district ~~and~~ 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 ~~furnish~~ obtain such bond as may be required by the board.

Approved March 11, 1981

CHAPTER 423

HOUSE BILL NO. 1354
(Unhjem)

LOT OWNERS LISTED IN CERTIFIED PLAT

AN ACT to amend and reenact section 40-50-04 of the North Dakota Century Code, relating to the listing of owners of individual lots in a certified plat.

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

SECTION 1. AMENDMENT. Section 40-50-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-50-04. INSTRUMENTS OF DEDICATION - CERTIFYING AND RECORDING OF PLAT. The plat shall contain a written instrument of dedication, which shall be signed and acknowledged by the owner of the land. When there is divided ownership, it shall be indicated under each signature the lot or parts of lots in which each party claims an interest. All signatures on the plat shall be written with black ink, not ball point. The instrument of dedication shall contain a full and accurate description of the land platted. The 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 certificate shall be sworn to before any officer authorized to administer an oath. The plat shall be presented for approval to the governing body affected by such plat together with a title opinion stating the name of the owner of record.

Every plat, when duly certified, signed, and acknowledged, shall be filed and recorded in the office of the county register of deeds. No plat shall be recorded until it is approved by the governing body affected by the plat and a certificate evidencing such approval is presented to the register of deeds. In the case of divided ownership, fee simple title to such lot or lots shall be conveyed to the owners listed on said plat in accordance with section 40-50-05.

Approved March 16, 1981

CHAPTER 424

SENATE BILL NO. 2083
(Legislative Council)
(Interim Political Subdivisions Committee)

CONSOLIDATION OF CITIES

AN ACT to provide for the consolidation of cities after approval by a majority of those voting on the question in the involved cities; and to provide for prior review of the desirability of consolidation.

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

SECTION 1. LEGISLATIVE INTENT. The legislative assembly recognizes that a viable government capable of providing essential services is necessary to the general welfare of the citizens of every city in this state. The legislative assembly further recognizes that some cities have become and will continue to become incapable of providing adequate services to their citizens and that a process is necessary to allow these dysfunctional cities to consolidate with other nearby cities in order to better serve the people of this state.

SECTION 2. CONSOLIDATION - RESOLUTION OR PETITION - ELECTION. The governing body of any city may, by resolution, or shall, upon petition by ten percent of the number of qualified voters of the city who voted for governor at the last general election at which a governor was elected, place on the ballot at the next general election to be held in that city the following question:

> Shall the city governing body appoint a committee from its membership to meet with members of the governing board of the city of ----------, as a municipal consolidation review commission, to draft a proposal for consolidating the city of ---------- with the city of ----------.

SECTION 3. STUDY COMMITTEE. Upon passage by a simple majority of the votes cast in each of the cities seeking consolidation in the manner provided by section 2 of this Act, the governing body of each of the cities seeking consolidation shall appoint an equal number of the members of each governing body who shall convene as the municipal consolidation review commission to make a finding as to whether or not there is sufficient reason to

further consider consolidation of the cities seeking consolidation. If the commission finds insufficient reason, no further consideration shall be given to the matter of consolidation of the cities. If the commission finds sufficient reason for consolidation, it shall develop a recommended plan of consolidation, holding such hearings on the plan as it deems appropriate. The commission shall submit its recommended plan to the voters of both cities. Upon receiving a majority affirmative vote of the electors of each city, voting at a special election or any regular election, the review commission's recommended plan shall become effective on July first of the next year.

Approved March 6, 1981

CHAPTER 425

SENATE BILL NO. 2326
(Nething, Lodoen)

RECREATION SYSTEM OR PARK DISTRICT LEVY MAXIMUM

AN ACT to amend and reenact section 40-55-09 and subsection 3 of section 57-15-12 of the North Dakota Century Code, relating to the number of mills which may be approved by the voters of a municipality, school district, or park district for a public recreation system or a park district.

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

SECTION 1. 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. Upon ~~the~~ adoption of ~~such~~ the public recreation system proposition at an election by a majority of the votes cast upon ~~such~~ the proposition, the governing body of ~~such~~ the municipality, school district, 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 ~~three~~ eight and five-tenths mills if the same is authorized as herein provided, on each dollar of the net taxable assessed valuation of all taxable property within the corporate limits or boundaries of ~~such~~ the municipality, school district, or park district~~,--such~~. This tax is to be in addition to the maximum of taxes permitted to be levied in such municipality, school district, or park district. The mill levy herein authorized may be raised to not more than ~~three~~ eight and five-tenths mills when ~~such~~ the increase is approved by the citizens of the municipality, school district, or park district after ~~the~~ submission of ~~such~~ 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 ~~such~~ the municipality, school district, or park district, shall continue to levy ~~such~~ the tax annually for public recreation purposes until ~~such--time--as~~ 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 ~~such~~ 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. Nothing in this ~~section of this~~ chapter shall be construed to 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.

SECTION 2. AMENDMENT. Subsection 3 of section 57-15-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Whenever the board of park commissioners ~~deem~~ deems it advisable to raise moneys by taxes in excess of the levy herein provided, for any purpose for which the park district is authorized to expend moneys raised by taxes, ~~such~~ the board of park commissioners shall submit to the voters of the district the question of increasing the levy by a certain number of mills, but not to exceed ~~ten~~ fifteen mills, on the dollar of the net taxable assessed valuation of the district ~~and when~~. When authorized by a majority of the qualified electors of the park district voting on the question at an election in which the question has been submitted, the board may increase the levy in the amount so authorized. ~~Such~~ This excess levy may be continued from year to year by action of the park board except that if a petition containing the signatures of not less than ten percent of the electors of the park district, as determined by the city auditor of the municipality in which the park district is situated, is presented to the park board requesting an election on the question of continuing the excess levy, ~~such~~ that question shall be submitted to the electors of the park district at the next regular park district election. If the majority of the voters at ~~such~~ that election determine not to continue the excess levy, no further excess levy shall be made except that ~~such~~ the election shall not affect the tax levy in the calendar year in which the election is held.

Approved March 18, 1981

CHAPTER 426

SENATE BILL NO. 2317
(Dykshoorn)

MUNICIPAL LAND USE FOR MIDA PROJECT

AN ACT to amend and reenact the paragraph following subsection 12 of section 40-57-03 of the North Dakota Century Code, relating to the powers of a municipality under the Municipal Industrial Development Act of 1955.

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

SECTION 1. AMENDMENT. The paragraph following subsection 12 of section 40-57-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

No municipality ~~shall--have--the--power-to~~ may operate any project referred to in this chapter as a business or in any manner whatsoever, except as the lessor thereof. No debt on the general credit of the municipality ~~shall~~ may be incurred in any manner for any purpose under ~~the--provisions--of~~ this chapter, except as otherwise provided by section 40-57-19. No municipality may pay out of its general fund for, or otherwise contribute to the cost of, construction of a project, ~~nor-can-it-use-any-land-already-owned--by or--in--which-the-municipality-has-an-interest,-for-the-construction thereof-of-a--project~~, except as otherwise provided by section 40-57-19.

Approved March 6, 1981

CHAPTER 427

SENATE BILL NO. 2398
(Cussons)

NEW INDUSTRY TAX EXEMPTION

AN ACT to create and enact a new section to chapter 40-57.1 of the North Dakota Century Code, relating to a tax exemption for new industries occupying existing buildings; 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 40-57.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 prior to the commencement of project operations.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 11, 1981

CHAPTER 428

SENATE BILL NO. 2303
(Hanson, Holmberg, Melland, Reiten)

LOCAL DEVELOPMENT CORPORATION TAX EXEMPTION

AN ACT to create and enact two new sections to chapter 40-57.1 of the North Dakota Century Code, relating to local development corporations and property tax exemptions on speculative industrial buildings and properties owned by these corporations under the new industry tax exemption provisions.

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

SECTION 1. A new section to chapter 40-57.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

LOCAL DEVELOPMENT CORPORATION - DEFINITION - REQUIREMENTS - PURPOSE. As used in section 2 of this Act, a "local development corporation" means a profit or nonprofit corporation incorporated under the laws of this state, formed for the purpose of furthering the economic development of its community and environs, with authority to promote and assist the growth and development of business concerns in the areas covered by its operations. The operations of the corporation must be limited to a specified area in this state. The controlling interest in the corporation must be held by at least twenty-five persons residing or doing business in the community or its environs. These persons must control not less than seventy-five percent of the voting control of the corporation. No shareholder or member of the corporation may own in excess of twenty-five percent of the voting control in the corporation if that shareholder or member has a direct pecuniary interest in any project or business concern which will occupy the property of the corporation. The primary objective of the corporation must be to benefit the community through increased employment, payroll, business volume, and corresponding factors rather than monetary profits to its shareholders or members. Any monetary profits or other benefits going to the shareholders or members must be merely incidental to the primary objective of the corporation.

SECTION 2. A new section to chapter 40-57.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

PROPERTY TAX EXEMPTION ON SPECULATIVE INDUSTRIAL BUILDINGS AND PROPERTIES OWNED BY A LOCAL DEVELOPMENT CORPORATION. A municipality may, in its discretion, grant partial or complete exemption from ad valorem taxation on buildings, structures, and improvements constructed and owned by a local development corporation for the express purpose of attracting new industry to this state. This exemption from ad valorem taxation is only available on new buildings, structures, and improvements while they remain unoccupied. Once the building, structure, or improvement is occupied, the exemption continues until the next annual assessment date following the first occupancy. This section does not affect the eligibility for property and income tax exemption of a new business or industry available under other provisions of this chapter, provided application for those tax exemptions is made prior to occupancy. A written request for the exemption is to be filed by the local development corporation with the municipality. The request will be reviewed at an official meeting of the governing body and will be placed on the agenda for final action at the next official meeting. The governing body of the municipality shall notify the county director of tax equalization with respect to any exemption granted under this section.

Approved March 19, 1981

CHAPTER 429

SENATE BILL NO. 2314
(Lips, Tierney)

CITY LODGING TAX

AN ACT to allow a city tax on rental accommodations of up to two percent to promote tourism, providing for administration and collection of the tax by the state tax commissioner, and providing penalties.

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

SECTION 1. CITY LODGING TAX - IMPOSITION - AMOUNT - DISPOSITION. The governing body of any city may, by resolution, 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 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 Act. This Act shall not apply to home rule cities nor limit the authority of a home rule city to levy any taxes authorized by other provisions of law.

SECTION 2. CITY VISITORS' PROMOTION FUND - VISITORS' COMMITTEE - ESTABLISHMENT - PURPOSE. The governing body of any city which imposes a city tax pursuant to section 1 of this Act shall establish a city visitors' promotion fund and a visitors' committee which shall serve as an advisory committee to the city governing body in administering the proceeds from the tax 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 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 3. BUDGET - CONTRACTS - 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 created by section 2. The proceeds from this tax shall not be used for any type of capital construction or purchase of real property.

SECTION 4. COLLECTION BY TAX DEPARTMENT - ADMINISTRATIVE EXPENSES ALLOWED - RULES AND REGULATIONS. The tax imposed by this Act shall be collected 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 quarterly to each city as taxes collected for that city's visitors' promotion fund shall be reduced by three percent as an administrative fee necessary to defray the cost of collecting the tax 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 Act. 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 imposed by this Act.

Approved March 31, 1981

CHAPTER 430

HOUSE BILL NO. 1463
(Moore)

TAX INCREMENT FINANCING PROPERTY ASSESSMENT

AN ACT to amend and reenact subsection 2 of section 40-58-20 of the North Dakota Century Code, relating to the assessment of property in an urban renewal area for the purpose of tax increment financing; and to provide retroactive application.

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

SECTION 1. AMENDMENT. Subsection 2 of section 40-58-20 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The auditor shall compute and certify the original taxable value of each lot and parcel of real estate in the area, as last assessed and equalized before the date of the request, including the taxable value of any lot or parcel theretofore acquired by the municipality or its urban renewal agency, as last assessed and equalized before it was acquired. However, any real property acquired by the city or the city's urban renewal agency prior to July 1, 1973, or more than five years prior to the approval of an urban renewal plan for any urban renewal area, whichever is later, is deemed to have an original taxable value of zero and the county auditor shall so certify.

SECTION 2. RETROACTIVE APPLICATION. The 1981 amendment to subsection 2 of section 40-58-20 is expressly declared to be retroactive to July 1, 1973, and applies to all urban renewal plans for any urban renewal areas established after June 30, 1973.

Approved March 26, 1981

UNIFORM COMMERCIAL CODE

CHAPTER 431

HOUSE BILL NO. 1369
(Conmy)

ENTERPRISES SUBJECT TO BULK TRANSFER PROVISIONS

AN ACT to amend and reenact subsection 3 of section 41-06-02 of the North Dakota Century Code, relating to enterprises subject to the bulk transfer provisions of the uniform commercial code.

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

SECTION 1. AMENDMENT. Subsection 3 of section 41-06-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The enterprises subject to this chapter are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell, or whose principal business is a restaurant, cafe, tavern, liquor store, or cocktail lounge, whether or not that business is the sale of merchandise from stock.

Approved March 5, 1981

CHAPTER 432

SENATE BILL NO. 2115
(Committee on Industry, Business, and Labor)
(At the request of the Secretary of State)

PURCHASE MONEY SECURITY INTEREST FILING TIME

AN ACT to amend and reenact subsection 2 of section 41-09-22 and subsection 4 of section 41-09-33 of the North Dakota Century Code, relating to the time limit for filing to perfect a purchase money security interest.

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

SECTION 1. AMENDMENT. Subsection 2 of section 41-09-22 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If the secured party files with respect to a purchase money security interest before or within ~~ten~~ twenty days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

SECTION 2. AMENDMENT. Subsection 4 of section 41-09-33 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ~~ten~~ twenty days thereafter.

Approved March 11, 1981

CHAPTER 433

HOUSE BILL NO. 1112
(Committee on Industry, Business, and Labor)
(At the request of the Secretary of State)

UNIFORM COMMERCIAL CODE FILING FEES

AN ACT to amend and reenact section 41-09-42 of the North Dakota Century Code, relating to the fees for uniform commercial code filings in the secretary of state's office.

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

SECTION 1. AMENDMENT. Section 41-09-42 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-42. (9-403) WHAT CONSTITUTES FILING - DURATION OF FILING - EFFECT OF LAPSED FILING - DUTIES OF FILING OFFICER - FEES.

1. Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

2. Except as provided in subsection 6, a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five-year period, whichever occurs later. Upon lapse, the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

3. A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection 2. Any such continuation

statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection 2 of section 41-09-40, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection 2 unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection 6 shall be retained.

4. Except as provided in subsection 7, a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

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 ~~provided--by--section 11-18-05~~ follows:

   a. For filing and indexing any statement 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.

   b. For making certified copies of any recorded instrument, three dollars.

   c. For completing a certificate requesting information, three 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 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.

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 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.

7. When a 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 is filed as a fixture filing, it shall be filed for record. Upon payment of the fee required for recording the same, the filing officer shall also record the financing statement and index it in the same fashion as if the financing statement were a mortgage of the real estate described.

Approved March 12, 1981

NUISANCES

CHAPTER 434

HOUSE BILL NO. 1461
(Dietz, Dotzenrod)

AGRICULTURAL OPERATION NOT A NUISANCE

AN ACT concerning agricultural operations, and providing that no such operation shall be deemed a public or private nuisance.

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

SECTION 1. AGRICULTURAL OPERATION - DEEMED NOT NUISANCE.

1. An agricultural operation is not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began; except that the provisions of this subsection shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation.

2. As used in this Act, "agricultural operation" means the science and art of production of plants and animals useful to man, by a corporation as provided in chapter 10-06, a partnership, or a proprietorship, and including, to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise, and shall include horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.

3. The provisions of subsection 1 of this section shall not affect or defeat the right of any person to recover damages for any injury or damage sustained by him on account of any pollution of or change in the condition of the waters of any stream or on account of any overflow of lands of any such person.

4. Any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation a nuisance or provides for the abatement thereof as a nuisance under the circumstances set forth in this

section is void; except that the provisions of this subsection shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation or from an agricultural operation located within the corporate limits of any city as of the effective date of this Act.

5. This section shall not be construed to invalidate any contracts made prior to the enactment of this Act, but, insofar as contracts are concerned, it is only applicable to contracts and agreements to be made on or after the effective date of this Act.

Approved March 16, 1981

OCCUPATIONS AND PROFESSIONS

CHAPTER 435

SENATE BILL NO. 2349
(Wenstrom)

OCCUPATIONAL LICENSING

AN ACT to amend and reenact section 43-01-02, subsection 1 of section 43-02.1-02, subsection 1 of section 43-02.1-03, subsection 1 of section 43-02.1-04, subsection 1 of section 43-02.1-05, section 43-09-02, subsection 8 of section 43-11-16, section 43-12.1-05, subsection 11 of section 43-17-31, subsection 2 of section 43-23-08, sections 43-25-07, 43-26-04, 43-28-04, 43-28-11, 43-28-18, 43-29-02, 43-30-05, 43-31-07, 43-32-02, 43-32-18, 43-32-20, 43-34-02, 43-35-03, 43-36-02, and subsection 2 of section 43-37-05 of the North Dakota Century Code, relating to occupations, the licensing thereof, restrictions on competition therein, and gubernatorial appointments to regulatory boards and commissions; and to repeal sections 43-11-36 and 43-13-29 of the North Dakota Century Code, relating to setting of fees and prohibition on advertising.

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

SECTION 1. AMENDMENT. Section 43-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-02. ABSTRACTERS' BOARD OF EXAMINERS - APPOINTMENT - TERM OF OFFICE - VACANCIES. The abstracters' board of examiners shall consist of three members each of whom shall be appointed by the governor for a term of six years, with the terms of office so arranged that one term and only one shall expire on March thirty-first of every odd-numbered year. One member of the board shall be an abstracter ~~recommended--by--the-North-Dakota-title-association~~. Each member of the board shall qualify by taking the oath required of civil officers and shall hold his office until his successor is appointed and qualified. Any vacancy on the board shall be filled by appointment by the governor for the unexpired term.

SECTION 2. AMENDMENT. Subsection 1 of section 43-02.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state board of public accountancy shall consist of five members appointed by the governor ~~from a list of qualified nominees submitted to him by nominating committees formed from the certified public accountants and licensed public accountants in North Dakota~~. Four members of the board shall be residents of this state who hold certified public accountant certificates issued under the laws of this state and one member of the board shall be a resident of this state who is a licensed public accountant under the laws of this state. ~~The licensed public accountants shall nominate the licensed public accountant member of the board and the certified public accountants shall nominate the certified public accountant members of the board.~~ At the time when the number of licensed public accountants in this state drops below twenty-five, the licensed public accountants will lose their representative on the board, except that the licensed public accountant then serving on the board shall be allowed to complete his term of office. Subsequently, the board shall consist of five certified public accountants. The terms of office shall be so arranged that one term and only one shall expire on June thirtieth of each year. Their successors shall be appointed for terms of five years. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold his office until his successor is appointed and qualified. A vacancy on the board shall be filled by appointment by the governor from a new list of at least three nominees submitted to him by the appropriate nominating committee.

SECTION 3. AMENDMENT. Subsection 1 of section 43-02.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The board shall issue a certificate to practice as a certified public accountant to any person who:

   a. ~~Is, or in good faith has declared his intention to become, a citizen of the United States;~~

   ~~b.~~ Is a resident of North Dakota;

   ~~c.~~ b. Is eighteen years of age or over;

   ~~d.~~ c. Is of good moral character;

   ~~e.~~ d. Has had at least four years of public accounting experience on his own account or in the office of a public accountant in active practice, or in an accounting or auditing position with the government of the United States or a state, or is a graduate of an accredited four-year college or university with an academic emphasis in accounting; and

~~f.~~ e. Has passed the Uniform Certified Public Accountant Examination together with any additional examination prescribed by the board;

provided, however, that the board may refuse to grant a certificate if such person is at the time of his application certified in any other state and that certificate is not then in good standing, or if such person has ever been certified in any state but is not certified at the time of his application.

SECTION 4. AMENDMENT. Subsection 1 of section 43-02.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Within one year of July 1, 1975, a license to practice public accountancy in the state of North Dakota shall be granted to any natural person submitting a written application on forms provided by the board together with an application fee in an amount to be fixed by regulation of the board and not to exceed one hundred dollars and meeting all of the following qualifications without having to take an examination therefor:

   a. ~~Applicant--must--be--a-citizen-of-the-United-States-or have--duly--declared--his--intention--of--becoming---a citizen.~~

   ~~b.~~ Applicant must be a resident of North Dakota or have a place of business in North Dakota or be regularly employed herein.

   ~~c.~~ b. Applicant must be of good moral character.

   ~~d.~~ c. Applicant must have attained the age of eighteen years.

   ~~e.~~ d. Applicant must meet one of the following additional qualifications on or before July 1, 1976:

      (1) Applicant must be one who holds himself out to the public as a public accountant and who has been engaged in the practice of public accountancy as his principal occupation for at least the two-year period immediately preceding his application.

      (2) Applicant must be one who for at least the two-year period immediately preceding his application has been an employee whose principal duty has been the practice of accounting for a certified public accountant or a public accountant engaged in the practice of public accountancy as his principal occupation.

(3) Applicant must be one serving in the armed forces of the United States who immediately prior to entering such service held himself out to the public as a public accountant and who was engaged in the practice of public accounting as his principal occupation for at least the two-year period immediately preceding his entrance into the armed forces. An applicant who was serving in the armed forces on July 1, 1975, shall have one year from the date of his discharge to apply for his license.

(4) Applicant must be one engaged for at least the two-year period immediately preceding his application in an accounting or auditing position with the government of the United States or a state for which an examination in accountancy or qualifying experience or education in accountancy is required.

SECTION 5. AMENDMENT. Subsection 1 of section 43-02.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The board may suspend for a period not to exceed five years or may revoke a certificate or a license to practice, or both, under this chapter for any of the following reasons:

   a. If the holder thereof has been convicted of an offense determined by the board to have a direct bearing upon the holder's ability to serve the public as a certified or licensed public accountant, or the board finds, following conviction of an offense, that the holder is not sufficiently rehabilitated under section 12.1-33-02.1.

   b. If the holder thereof has been convicted of an offense involving moral turpitude.

   c. For fraud or misrepresentation in the application for the certificate or license or in the examination for the certificate.

   d. For failing to adhere to the code of professional ethics as prescribed by the board.

   e. ~~For the failure of the holder of a certificate or license, if at the time the certificate or license was issued he was not a citizen of the United States, to qualify as a citizen within the time allowed by law.~~

   ~~f.~~ If the out-of-state certificate or license of a nonresident who has been certified or licensed in

North Dakota under the provisions of subsection 4 of section 43-02.1-03 or subsection 3 of section 43-02.1-04 is suspended, revoked, or canceled in the state where it originally was issued.

~~g.~~ f. For failure to register as provided by section 43-02.1-06.

~~h.~~ g. For violation of any of the provisions of this chapter, or of any of the officially promulgated rules and regulations of the board.

SECTION 6. AMENDMENT. Section 43-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-09-02. STATE ELECTRICAL BOARD - MEMBERS - TERMS OF OFFICE - VACANCIES. The state electrical board shall consist of five members appointed by the governor for a term of five years with their terms of office so arranged that one term and only one term shall expire on June thirtieth of each year. One member of the board shall represent the public and shall not be directly associated with the electrical industry. ~~One member of the board shall be selected from three names submitted by each of the following groups: consumer members of rural electric cooperatives, master licensed electricians, licensed journeyman electricians, and investor owned electric utilities.~~ The board shall include a master electrician who is a contractor, a journeyman electrician, a consumer member of a rural electric cooperative, and a person associated with an investor owned utility. A member of the board shall qualify by taking the oath of office required of civil officers and shall hold his office until his successor is appointed and qualified. The governor shall fill any vacancy by appointment for the unexpired term of office.

SECTION 7. AMENDMENT. Subsection 8 of section 43-11-16 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Agrees not to:

   a. Conduct a clinical department for fees after registration by the board, until such school has been operating for a period of at least twenty percent of the total hours of instruction required by this chapter;

   b. Permit any student to practice on any person not an instructor or registered student of such school until such student has completed at least twenty percent of the total hours of instruction required by this chapter;

   c. Compensate any of its basic students in any way; and

~~d.--Repealed by S.L. 1975, ch. 402, § 3.~~

~~e.--Advertise the fees charged for clinical service, and~~

SECTION 8. AMENDMENT. Section 43-12.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-05. BOARD OF NURSING - COMPOSITION - TERM OF OFFICE. There shall be a state board of nursing whose members shall be appointed by the governor which shall consist of five registered nurses, three licensed practical nurses, and one public member. ~~Sixty days prior to the expiration of the term of any registered nurse member, the North Dakota state nurses association and any other duly organized professional nursing organization recognized by the state board of nursing shall submit to the governor a list of registered nurses qualified to serve, such list to contain in number at least three names for each vacancy to be filled. Sixty days prior to the expiration of the term of any licensed practical nurse member, the North Dakota licensed practical nurses association shall submit to the governor a list of licensed practical nurses qualified to serve, the list shall contain in number at least three names for each vacancy to be filled. The governor shall appoint to the board a public member.~~ Each board member shall be appointed for a term of three years. No appointee shall be appointed for more than two consecutive terms. An appointment for an unexpired term of more than eighteen months will constitute a full term. ~~The members of the North Dakota board of nursing holding office on July 1, 1977, shall serve as members of the board until the expiration of their respective terms or until their successors have been appointed.~~

SECTION 9. AMENDMENT. Subsection 11 of section 43-17-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. The advertising for the practice of medicine in ~~any unethical or unprofessional~~ an untrue or deceptive manner.

* SECTION 10. AMENDMENT. Subsection 2 of section 43-23-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In addition to the requirements established by subsection 1, an applicant for a broker's or salesman's license must be at least eighteen years of age ~~and shall be a citizen of the United States and a North Dakota resident~~.

SECTION 11. AMENDMENT. Section 43-25-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-07. REQUISITES FOR EXAMINATION - SUBJECTS - MINIMUM PASSING GRADE - FEES. Any person who shall furnish to the North Dakota board of massage satisfactory proof that he or she is eighteen years of age or more, a high school graduate, ~~a bona fide citizen of the United States~~ and a bona fide resident of the state

* NOTE: Subsection 2 of section 43-23-08 was also amended by section 2 of House Bill No. 1162, chapter 447.

of North Dakota for at least ~~six--months~~ one month immediately preceding his or her application to take the examination, and of good moral character and temperate habits, and shall present a diploma or credentials issued by a recognized, approved school of massage or like institution of not less than one thousand hours of study and who passes a reasonable demonstrative, oral, and written examination, conducted by and under the supervision and direction of said board in the art of body massage by hand, or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths, and shall pay the fees hereinafter specified, which fees shall accompany the application to the secretary-treasurer of the board, shall be entitled to be registered and to be issued a certificate of registration as masseur or masseuse. Minimum requirements for certificate of registration shall be a general average in said examination of seventy-five percent in all subjects involved and not less than fifty percent in any one subject.

Any applicant failing to pass said requirements shall be entitled within six months to a reexamination upon payment of an additional fee of ten dollars, but two such reexaminations shall exhaust the privilege under the original application.

Conviction of an offense shall not disqualify a person from registration under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a masseur or masseuse, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 12. AMENDMENT. Section 43-26-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-26-04. STATE EXAMINING COMMITTEE - MEMBERS - TERMS - APPOINTMENTS - VACANCIES. The state examining committee for physical therapists, hereinafter the "committee," shall administer this chapter. The committee shall consist of three registered physical therapists, two licensed physicians, and a citizen who is not a health care professional. The governor shall appoint the committee members for a term of five years, staggered so the terms of no more than two members shall expire each year. No person shall serve more than two full consecutive terms. Terms shall begin on July first. ~~The health care appointments will be made from a list of three qualified physical therapists submitted by the North Dakota physical therapy association if a physical therapist is to be appointed, or from a list of three qualified physicians submitted by the state board of medical examiners if a physician is to be appointed. The governor shall appoint the citizen member at large.~~ Appointments to the committee to fill a vacancy occurring for other than the expiration of a term shall only be made for the remainder of the unexpired term. Each physical therapist appointed must have had at least three years of physical therapy experience in North

Dakota immediately prior to appointment, and must practice in North Dakota during the term. Each physician appointed must have practiced medicine at least three years in North Dakota immediately prior to appointment and must practice in North Dakota during the term. Each member of the state examining committee, before entering upon the discharge of his or her duties, shall take and file with the secretary of state the oath of office prescribed for state officials.

* SECTION 13. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-04. QUALIFICATIONS AND APPOINTMENT OF MEMBERS OF THE BOARD - LIMITED VOTE.

1. No person shall be appointed as a dentist member of the board unless that person:

~~1.~~ a. Is a duly licensed and registered dentist.

~~2.~~ b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding his appointment.

~~3.--Is--recommended--for--such-appointment-by-the-North-Dakota dental-association.~~

~~4.~~ c. Never has served as a member of the board for an entire five-year term.

~~At--least--ninety--days-before-the-expiration-of-a-term-of any--member--of--the--board,--the--North---Dakota---dental association-shall-make-its-recommendation-to-the-governor. Not-less-than-three-candidates-shall--be--recommended--for each--appointment.--If-the-recommendations-are-not-made-in the-required-time,-the-governor-shall-make-the-appointment from-the-last-recommendations-of-the-association.~~

2. No person shall be appointed as the dental hygienist member of the board unless that person:

a. Is a duly licensed and registered dental hygienist in accordance with the provisions of chapter 43-20.

b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.

c. Never has served as a member of the board for an entire five-year term.

* NOTE: Section 43-28-04 was also amended by section 3 of House Bill No. 1226, chapter 450.

3. The dental hygienist member of the board shall exercise full voting privileges in all areas with the following exceptions:

a. The issuance, suspension, and revocation of dental licenses.

b. Any disciplinary action taken against dentists.

c. The examination of dentists for licensure.

* SECTION 14. AMENDMENT. Section 43-28-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-11. EXAMINATION REQUIRED - APPLICATION - QUALIFICATIONS - FEES. Any person who desires to obtain a license to practice dentistry in this state shall make application to the secretary-treasurer of the board on such forms as it may provide and shall submit to an examination by the board. The application shall be verified under oath to the effect that all of the statements contained therein are true of applicant's own knowledge. Applicant shall enclose with his application a recent autographed picture of himself and the sum of seventy-five dollars. Additional costs of simultaneous examination as set out in section 43-28-12.1 and chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant must show proof that he has the following qualifications:

1. Is a graduate of a dental college recognized by the board.

2. ~~Is a citizen of the United States or has filed a declaration of his intention to become a citizen of the United States and that his application for naturalization has been approved by the proper authorities.~~

~~3.~~ Is a person of good moral character.

** SECTION 15. AMENDMENT. Section 43-28-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-18. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE AND CERTIFICATE. The board may revoke or suspend the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional or immoral conduct;

2. ~~Been denied admission to citizenship in the United States;~~

~~3.~~ 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 dentist, or the board determines, following conviction for any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1;

* NOTE: Section 43-28-11 was also amended by section 5 of House Bill No. 1580, chapter 445.

** NOTE: Section 43-28-18 was also amended by section 11 of House Bill No. 1580, chapter 445.

~~4.~~ 3. Has been adjudged mentally ill and not judicially restored by the regularly constituted authorities;

~~5.~~ 4. Been guilty of habitual intemperance or addicted to the use of drugs;

~~6.~~ 5. Employed or permitted unlicensed persons to practice dentistry in the office under his control;

~~7.~~ 6. Become grossly negligent in the practice of his profession;

~~8.~~ 7. Practiced fraud and deceit in obtaining his license or in the practice of dentistry;

~~9.~~ 8. Employed a solicitor or agent to obtain business;

~~10.~~ 9. Willfully betrayed confidential relations;

~~11.~~ 10. Practiced dentistry under a trade name or a false name other than a partnership name containing the names of one or more of the partners or deceased partners; provided, however, that a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of such association;

~~12.~~ 11. Shared any professional fee with anyone or paid anyone for sending or referring patients to him, provided, however, that this shall not prohibit licensed dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a licensed dentist from employing any other licensed dentist or licensed dental hygienist;

~~13. Given a public demonstration of any dental operation under any circumstances, except such as may be approved by the board;~~

~~14.~~ 12. Used any advertising of any character tending to mislead and deceive the public;

~~15. Used any advertising in which reference is made to the character or quality of the services performed or to be performed, to the materials or medicines used by him or to any price, cost, charge, fee or terms of credit for services performed or for materials used;~~

~~16. Used a display sign in a larger area than six hundred square inches [3870.96 square centimeters] or containing letters more than six inches [15.24 centimeters] in height;~~

~~17.--Used--artificial-lighting-or-illumination-of-any-kind-as-a part-of-a-sign-or-which-has-the-effect-of-making-any--sign more-prominent-or-conspicuous;~~

~~18.--Advertised--any--free--dental-work,-free-examination,-free consultation,-a-guarantee-of-any-dental-services,--or--the painless-performance-of-any-dental-operation;~~

~~19.--Used--in--connection--with--any-advertising-any-artificial teeth,-dentures-or-any-representation-of-a--tooth,--teeth, bridgework-or-any-portion-of-the-human-head;~~

~~20.--Used--any-newspaper-advertising-except-a-professional-card in-the-local-press,-or-in-programs,-year-books--and--other similar--publications,-which-do-not-occupy-more-space-than four-column-inches-[10.16-centimeters]-and--which--do--not include--more--than--the--dentist's--name,-title,-address, telephone-number-and-office-hours,-provided-that-a-dentist who--has-a-specialty-may-announce-that-fact-if-he-has-been authorized-to-do-so-by-the-board;~~

~~21.~~ 13. Controls or owns a dental laboratory or X-ray laboratory or operates the same in connection with his office, and has advertised such dental or X-ray laboratory in a manner prohibited herein;

~~22.~~ 14. Made any false or untrue statements in his application for an examination to obtain a license to practice dentistry;

~~23.~~ 15. Made any false representations that he is the holder of a license or certificate of registration to practice dentistry;

~~24.~~ 16. Made any false claims that he is a graduate of a dental college or the holder of any diploma or degree from such college; and

~~25.~~ 17. Violated any of the provisions of this chapter.

SECTION 16. AMENDMENT. Section 43-29-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-29-02. STATE BOARD OF VETERINARY MEDICAL EXAMINERS - APPOINTMENTS - QUALIFICATIONS - TERMS - VACANCIES. The state board of veterinary medical examiners shall consist of three members appointed by the governor for terms of three years each, with their terms of office so arranged that one term and only one shall expire each year. Members of the board shall hold their respective offices until their successors are appointed and qualified. Each member shall be a reputable, practicing and licensed veterinarian in North Dakota for five years immediately prior to the appointment, and shall be the holder of a diploma or degree granted by a veterinary school, or by a college or university recognized by the board.

~~The North Dakota veterinary medical association shall, at each annual meeting, nominate three veterinarians qualified to serve on the state board of veterinary examiners. Such names shall be certified to the governor by the secretary of such association and the appointment by the governor shall be made from the nominees so submitted.~~

If any vacancy occurs on the board due to resignation, death, removal from the state, or suspension as herein provided, or for any other reason, the governor shall fill such vacancy ~~from the roster of qualified licensed veterinarians within the state until the next succeeding first day of July~~.

The governor may, after due notice and hearing, remove any member of the board of veterinary examiners for misconduct, incapacity, or neglect of duty.

SECTION 17. AMENDMENT. Section 43-30-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-05. QUALIFICATIONS OF APPLICANT. A person is qualified to receive a license as a private detective:

1. Who is at least eighteen years of age.

2. ~~Who is a citizen of the United States.~~

~~3.~~ Who establishes, to the satisfaction of the attorney general, that he is a person of honesty, truthfulness and integrity.

~~4.~~ 3. Who has not been convicted of an offense determined by the attorney general to have a direct bearing upon the person's ability to serve the public as a private detective, or who, following conviction of any offense, is determined, pursuant to section 12.1-33-02.1, not to be sufficiently rehabilitated.

~~5.~~ 4. Who has filed with the attorney general a bond executed by the applicant and by a reputable surety company to be approved by the attorney general in the penal sum of five thousand dollars conditioned for the faithful and honest conduct of the business of such applicant, which bond shall be in the form prescribed by the attorney general and shall be taken in the name of the people of the state of North Dakota and shall provide that any person injured by the breach of the conditions of such bond may bring an action on said bond in the name of the people of the state of North Dakota for the use of such person so injured to recover legal damages suffered by reason of such breach; provided, however, that the aggregate liability of the surety for all such damages shall, in no event, exceed the sum of said bond. The surety on such bond shall have a right to cancel such bond upon giving thirty days' notice

in writing to the attorney general and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation.

~~6.~~ 5. Who has passed a satisfactory examination conducted by the attorney general to determine his competency to receive a license as a private detective.

SECTION 18. AMENDMENT. Section 43-31-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-31-07. QUALIFICATIONS OF APPLICANT. A person is qualified to receive a license as an examiner:

1. Who is at least eighteen years of age.

2. ~~Who is a citizen of the United States.~~

~~3.~~ Who establishes that he is a person of honesty, truthfulness, integrity, and moral fitness.

~~4.~~ 3. Who has not been convicted of an offense determined by the attorney general to have a direct bearing upon a person's ability to serve the public as an examiner, or who, following conviction of any offense, is not determined, pursuant to section 12.1-33-02.1, to be rehabilitated, or who has not been released or discharged under other than honorable conditions from any of the armed services of the United States.

~~5.~~ 4. Who has passed an examination conducted by the attorney general, or under his supervision, to determine his competency to obtain a license to practice as an examiner except that an examiner who was continually engaged in the administration of examinations for the two-year period immediately prior to July 1, 1975, or who had successfully completed a training course prior to July 1, 1975, from a school deemed acceptable by the attorney general, and who was previously exempt from the provisions of this chapter as an examiner in the exclusive employ of the state of North Dakota, a county, municipality, or political subdivision thereof as then provided by section 43-31-15 shall be exempt from the requirement of an examination.

~~6.~~ 5. Who has satisfactorily completed a polygraph examiners course approved by the attorney general and has satisfactorily completed not less than six months of internship training.

SECTION 19. AMENDMENT. Section 43-32-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-32-02. STATE BOARD OF PSYCHOLOGIST EXAMINERS - HOW APPOINTED - QUALIFICATIONS. The governor shall appoint a state board of psychologist examiners consisting of five members, each of whom shall have the following qualifications:

1. ~~Be a citizen of the United States;~~

~~2.~~ Be a resident of this state.

~~3.~~ 2. After the first five appointments, shall be a licensed psychologist under this chapter.

~~4.~~ 3. Has, at least five years prior to appointment, received a doctorate degree in psychology from a school or college as defined in this chapter.

~~5.~~ 4. Has been actively engaged in the practice of teaching or research of psychology for a period of at least five years.

~~6.~~ 5. As to at least one member, is currently engaged primarily in rendering service in psychology and as to at least one member, is engaged primarily in teaching, training or research in psychology.

~~At least thirty days before any appointment is to be made, the North Dakota psychological association shall recommend five persons to the governor for such appointment.~~

SECTION 20. AMENDMENT. Section 43-32-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-32-18. LICENSING OF PSYCHOLOGISTS WITHOUT EXAMINATION - QUALIFICATIONS OF APPLICANTS.

1. For a period of one year from July 1, 1967, the board shall waive examination of a candidate for licensing if it appears that such action is in the public interest, and it shall issue a license upon payment of the required fee, to any applicant who makes application and furnishes evidence satisfactory to the board that he:

   a. Is of good moral character.

   b. Is not found by the board to be engaged in unethical practices.

   c. Has received a doctorate in psychology from an accredited school or college or has training deemed equivalent by the board in both subject matter and extent of training.

~~d.--Is-a-citizen-of-the-United-States-or-intends-to-become a-citizen-and-files-an-affidavit-as-to-such--with--the board.~~

2. At its discretion, the board may at any time issue a license without examination, upon payment of the required fee, to any diplomate of the American board of examiners in professional psychology.

SECTION 21. AMENDMENT. Section 43-32-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-32-20. LICENSING - WRITTEN AND ORAL EXAMINATION - QUALIFICATIONS OF APPLICANTS. The board shall issue a license as a psychologist to each applicant who shall file an application upon a form and in such a manner as the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that he:

1. Is of good moral character.

2. Is not found by the board to be engaged in unethical practices.

3. Has received from an accredited school or college as defined by this chapter a doctorate, with a program of studies substantially psychological in nature.

4. ~~Is--a--citizen-of-the-United-States-or-intends-to-become-a citizen-and-files-an-affidavit-as-to-such-with-the--board.~~

~~5.~~ Demonstrates professional competence as shown by passing such examinations, written or oral, or both, as the board deems necessary.

~~6.~~ 5. Has not, within the preceding six months, failed an examination given.

SECTION 22. AMENDMENT. Section 43-34-02 of the 1979 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 social service board of North Dakota.

2. One member of the board shall be a physician appointed to the board for a three-year term by the governor ~~from--a list--of--three--names--submitted--by--the--state--medical association~~.

3. One member of the board shall be a hospital administrator appointed to the board for a three-year term by the governor ~~from a list of three names submitted by the North Dakota hospital association~~.

4. Three members of the board shall be licensed nursing home administrators appointed to the board for three-year terms by the governor ~~from a list of names submitted by the North Dakota hospital association. The association shall submit three names for each appointive position~~.

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 ~~from a list of three names submitted by the North Dakota health care association~~.

6. One member of the board shall be a nurse appointed to the board for a three-year term by the governor ~~from a list of three names submitted by the North Dakota state nurses' association~~.

7. Any vacancies occurring in the appointments made by the governor shall be filled ~~in the same manner as was used in naming the prior appointee~~ by the governor.

8. Appointive members may be removed by the governor for cause after due notice and hearing.

SECTION 23. AMENDMENT. Section 43-35-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-03. STATE BOARD OF WATER WELL CONTRACTORS - MEMBERS' APPOINTMENT - QUALIFICATION. The state board of water well contractors shall consist of the state engineer and the state health officer, or their duly authorized designees, and two water well contractors appointed by the governor ~~from a list of five names submitted by the North Dakota well drillers association~~, and one member appointed at large by the governor.

SECTION 24. AMENDMENT. Section 43-36-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-36-02. BOARD - APPOINTMENTS - TERMS. A state board of registration for professional soil classifiers is hereby created whose duty it shall be to administer the provisions of this chapter. The board shall consist of three professional soil classifiers appointed by the governor ~~from among a list of nominees submitted to him by the Professional Soil Classifiers Association of North Dakota~~ and two members at large appointed by the governor. The members of the board shall be appointed for five years, staggered so the term of one member shall expire June thirtieth of each year and so that the terms of the members at large do not expire in consecutive years. Each member of the board shall receive a certificate of his appointment from the governor and shall file with the secretary of

state his written oath and affirmation of the faithful discharge of his official duties. On the expiration of the term of any member, the governor shall in the manner hereinbefore provided appoint for a term of five years a registered professional soil classifier or a member at large to take the place of the member whose term on said board is about to expire. A member may be reappointed to succeed himself. Each member shall hold office until a successor has been duly appointed and has qualified.

SECTION 25. AMENDMENT. Subsection 2 of section 43-37-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The board shall be comprised of seven members who shall be appointed by the governor ~~from--names--submitted--to--the governor--by--the--state-association~~. Appointees shall be residents of this state for at least one year immediately preceding their appointment, and shall be engaged in rendering services to the public, in teaching, or in research in audiology or speech pathology for at least three years preceding their appointment. Two board members shall be audiologists, two shall be speech pathologists, one shall be an otolaryngologist, one shall be a hearing aid specialist, and one member who shall be a consumer.

SECTION 26. REPEAL. Sections 43-11-36 and 43-13-29 of the North Dakota Century Code are hereby repealed.

Approved March 19, 1981

CHAPTER 436

HOUSE BILL NO. 1352
(Unhjem)

ABSTRACTERS' BOARD OF EXAMINERS

AN ACT to amend and reenact sections 43-01-04, 43-01-10, 43-01-11, and 43-01-14 of the North Dakota Century Code, relating to compensation payable to the abstracters' board of examiners, examination fees payable to the board, amount of abstracters' surety, and registration fees payable to the board.

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

SECTION 1. AMENDMENT. Section 43-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-04. COMPENSATION. A member of the board shall receive ~~five~~ thirty dollars for each day he actually is engaged in the performance of the duties of his office and such mileage as is provided for in section 54-06-09. In addition thereto, he shall receive for expenses ~~five dollars a day while absent from home~~ the amounts provided by law for state officers in section 44-08-04. All funds collected or received by the board shall be deposited and disbursed in accordance with section 54-44-12.

SECTION 2. AMENDMENT. Section 43-01-10 of 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 section 43-01-09, subsection 2, shall make application therefor to the board and shall pay to the secretary-treasurer thereof an examination fee of ~~twenty-five~~ two hundred fifty dollars. 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 at the time and place specified in the notice, and the board shall examine him 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 ~~said abstracters~~[1] board ~~of examiners~~ after passage of this chapter.

2. Any person desiring to obtain a certificate of registration under this chapter shall make application to ~~said abstracters~~[1] the board ~~of examiners therefor~~ and shall pay to the secretary-treasurer of ~~said~~ the board an examination fee of ~~twenty-five~~ forty dollars except as hereinafter provided. Such application shall be upon a form to be prepared by ~~said~~ the board and to contain such information as may be desired by it. Thereupon ~~said~~ 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 at such meeting. Whereupon ~~said~~ the board shall proceed to examine such applicant or applicants under such rules and regulations as may be ~~by said board prescribed~~ 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, section 43-01-09, subsection 2, and who shall make application to the ~~abstracters~~[1] board ~~of examiners~~ prior to the expiration of said certificate of authority shall upon the payment of a fee of five 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 five dollar fee 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 ~~two~~ five dollars ~~and fifty cents~~ to the secretary-treasurer of ~~said~~ the board. ~~Said~~ The board may issue temporary certificates of registration in ~~their~~ its discretion ~~between meetings of said board~~.

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 3. AMENDMENT. Section 43-01-11 of 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 a surety bond ~~running to~~ in favor of the state ~~of North Dakota~~, or an abstracters' liability policy to be approved by the ~~abstracters'~~ board ~~of examiners~~ 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 abstracter's liability policy. Such bond, or abstracter's liability policy, however, shall not be less than ~~ten~~ one hundred thousand dollars. The bond or liability policy shall be conditioned for the payment by the abstracter 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 abstracter. ~~Said~~ The board shall file all surety bonds in the office of the county auditor of the county in which the applicant has his place of business. All abstracters' liability policies shall be endorsed to provide that cancellation cannot be effected by either the abstracter or the insurance company without ten days' written notice to the abstracters' board of examiners, who shall file said endorsed policy or a certificate thereof in the office of the county auditor of the county in which the applicant has his place of business. It shall be permissible under this section to file an abstracter's liability policy in the deductible form, provided that the deductible provision shall not exceed ~~five hundred~~ one thousand dollars.

SECTION 4. AMENDMENT. Section 43-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-14. CERTIFICATION OF AUTHORITY - FEE - RENEWAL. A certificate of authority shall be issued to an applicant who successfully passes the examination of the board and complies with the other provisions of this chapter, upon the payment of the registration fee of ~~twenty-five~~ forty dollars which shall be in addition to the examination fee. A certificate shall be valid for five years after the date thereof. A certificate shall be renewed by the board upon application, made within thirty days prior to the

expiration date, accompanied by the sum of twenty-five dollars and an affidavit that the applicant has for use in his business a complete set of abstract books or records of all instruments of record in the office of the register of deeds in and for the county in which the applicant has his place of business or has been engaged in good faith in the preparation of such books or records for not less than six months.

Approved March 5, 1981

CHAPTER 437

HOUSE BILL NO. 1495
(Gates, Koski)

ABSTRACTER'S FEES

AN ACT to amend and reenact section 43-01-18 of the North Dakota Century Code, relating to the fees of abstracters; and declaring an emergency.

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

SECTION 1. AMENDMENT. Section 43-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-18. FEES CHARGEABLE BY ABSTRACTER. An abstracter may charge the following fees, and no more for making and certifying to an abstract:

1. For ~~the--first~~ each entry on an abstract or continuation thereof, three dollars.

2. ~~For--every--entry--other-than-the-first-entry,-two-dollars and-twenty-five-cents.~~

~~3.~~ For a complete certification covering the records of the several county offices, ~~twenty~~ forty dollars.

~~4.~~ 3. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title an additional fee of seven dollars and fifty cents, for each quarter section [64.75 hectares] or portion thereof in excess of one, may be charged.

~~5.~~ 4. For a certification covering premises in more than one block in any subdivision in the same abstract of title, an additional fee of seven dollars and fifty cents, for such premises in each additional block in excess of one, may be charged.

~~6.~~ 5. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, state tax

liens, mechanics' liens and mechanics' lien notices, one dollar and fifty cents.

~~7.~~ 6. For all miscellaneous instruments, one dollar and fifty cents for the first one hundred words, and one dollar for each additional hundred words or fraction thereof.

~~8.~~ 7. Such fees as may be fixed by special statute.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 5, 1981

CHAPTER 438

SENATE BILL NO. 2121
(Committee on Industry, Business, and Labor)
(At the request of the Secretary of State)

CONTRACTOR'S LICENSE REQUIREMENTS

AN ACT to amend and reenact sections 43-07-05, 43-07-07, 43-07-09, 43-07-10, and 43-07-19 of the North Dakota Century Code, relating to contractors' license fees, expiration and renewal of contractors' licenses, and nonresident contractors' appointment of agent for service of process.

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

SECTION 1. AMENDMENT. Section 43-07-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-05. CLASSES OF LICENSES. Four classes of licenses shall be issued under ~~the provisions of~~ this chapter, which shall be designated as class A, B, C, and D licenses. The holders of such licenses shall be entitled to engage in the contracting business within this state subject to the following limitations:

1. The holder of a class A license shall be subject to no limitation as to the value of any single contract project.

2. The holder of a class B license shall not be entitled to engage in the construction of any single contract project of a value in excess of ~~one~~ two hundred ~~twenty-five~~ fifty thousand dollars.

3. The holder of a class C license shall not be entitled to engage in the construction of any single contract project of a value in excess of ~~sixty~~ one hundred twenty thousand dollars.

4. The holder of a class D license shall not be entitled to engage in the construction of any single contract project of a value in excess of ~~twenty-five~~ fifty thousand dollars.

SECTION 2. AMENDMENT. Section 43-07-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-07. LICENSE FEES. At the time of making application for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:

1. For a class A license, the sum of two hundred fifty dollars.

2. For a class B license, the sum of one hundred fifty dollars.

3. For a class C license, the sum of one hundred dollars.

4. For a class D license, the sum of ~~twenty-five~~ fifty dollars.

All moneys collected by the registrar under this chapter shall be deposited by him with the state treasurer, who shall credit them to the general fund of the state.

SECTION 3. AMENDMENT. Section 43-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-09. DUTY OF REGISTRAR - EXPIRATION OF LICENSE. The registrar shall investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license shall be issued to such applicant until the expiration of ten days from and after the filing of the application. The license issued on an original application shall entitle the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current ~~calendar~~ fiscal year ending February first.

SECTION 4. AMENDMENT. Section 43-07-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-10. RENEWAL OF LICENSE. Any license issued under the provisions of this chapter may be renewed for each successive ~~calendar~~ fiscal year by obtaining from the registrar a certificate of renewal thereof. For the purpose of obtaining such certificate of renewal, the licensee shall file with the registrar an application therefor, which application shall be accompanied by a list in duplicate showing each contract or subcontract obtained by the licensee during the ~~calendar~~ preceding fiscal year in North Dakota for which a license was required under this chapter, the nature of the work contracted or subcontracted, and, if a performance bond was required by the contract, the name and address of the corporation or other person who issued the bond. The registrar shall within a reasonable time forward one copy of such list to the state tax commissioner and shall also indicate whether or not the license of the applicant was renewed by him. The application for such certificate of renewal must be made to the registrar on or before the first day of ~~January~~ February of each successive ~~calendar~~ fiscal year. At the time of filing the

application for a certificate of renewal, the applicant shall pay to the registrar a license fee equal to twenty percent of the license fee for the original license. If any applicant for a certificate of renewal shall apply for a renewal under a class different from the license theretofore issued to him, such new license shall be issued only upon the showing and under the terms and conditions and upon the payment of the same fee required for the issuance of an original license of the class applied for. All certificates of renewal wherein the applicant does not apply for a change in the class of license shall be issued by the registrar to the applicant when the application is properly filed and the license renewal fee is paid.

SECTION 5. AMENDMENT. Section 43-07-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-19. NONRESIDENT CONTRACTORS - AGENT FOR SERVICE OF PROCESS. Every applicant for a contractor's license who is not a resident of the state of North Dakota shall furnish to the secretary of state of the state of North Dakota a written appointment by which such applicant appoints the secretary of state of the state of North Dakota as his true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing shall be evidence of said contractor's consent that any such process against him which is so served upon the secretary of state shall be of the same legal force and effect as if served upon him personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-22 of the North Dakota Century Code and having a current registered agent and registered address on file in the corporate division of the secretary of state's office need not appoint the secretary of state as agent for service of process under the provisions of this section of law. Within ten days after service of the summons upon the secretary of state, notice of such service together with the summons and complaint in the action shall be sent to the defendant contractor at his last known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process served upon him under the provisions of this section. Such record shall show the day and hour of service. Whenever service of process shall have been made as provided in this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against him.

Approved March 6, 1981

CHAPTER 439

SENATE BILL NO. 2355
(Grotberg)

CONSTRUCTION CONTRACT RETAINAGE

AN ACT to create and enact a new section to chapter 43-07 of the North Dakota Century Code, relating to the limit on retention of payment under construction contracts.

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:

ALLOWABLE RETENTION OF ESTIMATES - INTEREST ON RETAINAGE. Contracts entered into between persons for the performance of work to be done by a contractor, except those contracts subject to section 40-22-37 or section 48-02-07, or contracts governed by federal statutes or regulations which require other provisions with respect to retention, are subject to a maximum retention on amounts due under the contract as follows: retention of ten percent of each estimate presented shall be allowable until such time as the project is fifty percent complete, with no further retainage on estimates during the continuance of the contract. If the owner, governing board, or authorized committee invests the retained estimate funds, the interest earned on those retained funds shall be payable at the time of final payment on the contract to the contractor on whose account the moneys were held.

Approved March 31, 1981

CHAPTER 440

SENATE BILL NO. 2367
(Tennefos)

PRE-NEED FUNERAL SERVICE CONTRACT PAYMENTS

AN ACT to create and enact subsection 6 of section 43-10.1-01 of the North Dakota Century Code, relating to definitions used in pre-need funeral service contracts; and to amend and reenact section 23-06-03.1, subsections 2 and 3 of section 43-10.1-01, and subsection 4 of section 43-10.1-03 of the North Dakota Century Code, relating to the deposit of funds collected from and the definitions used in pre-need funeral service contracts.

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

SECTION 1. AMENDMENT. Section 23-06-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-03.1. PAYMENTS ON PRE-NEED FUNERAL CONTRACTS TO BE DEPOSITED IN A BANK OR TRUST COMPANY - BANK SHALL KEEP RECORD OF DEPOSIT. Whenever payments are made to any person upon pre-need funeral service contracts, ~~all payments made under the contract~~ one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise shall be deposited within thirty days in a bank or trust company carrying federal deposit insurance and located within the state of North Dakota. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. Such funds may be released by the bank or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death shall be furnished to the bank or trust company as prima facie evidence of death. Such funds may be released by the bank or trust company to the person making such payment, prior to the death of the person for

whose benefit the funds are paid, upon a five day written notice by registered or certified mail made by the bank or trust company to the depositor at the request of the person making such payment.

Any bank or trust company receiving such a deposit shall keep a complete record thereof, showing the name of the depositor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 43-10.1-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Pre-need funeral service contract" means any contract, other than a contract of insurance, under which for a specified consideration paid in advance in a lump sum or by installments, a person promises, upon the death of a beneficiary named or implied in the contract, to furnish professional service or personal property to be used in funeral services, or to furnish cemetery merchandise.

3. "Professional service or personal property to be used in funeral services" means all personal property, services, supplies, and equipment normally performed or furnished by a licensed embalmer, a licensed funeral establishment, or a cemetery association including any inside interment receptacles or containers into which a dead human remains may be directly placed, caskets, crypt beds, catafalques and all other articles of merchandise incident to a funeral service, but excluding any outside interment receptacles into which any inside receptacle or container will be placed, grave lots, grave spaces, grave markers, monuments, tombstones, crypts, niches and mausoleums unless these items are sold by a companion agreement or in contemplation of a trade or barter which includes the sale or rental of any inside interment receptacles or containers into which a dead human remains may be directly placed, caskets, crypt beds, catafalques or other articles of merchandise incident to a funeral service.

SECTION 3. Subsection 6 of section 43-10.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

6. "Cemetery merchandise" means all service or property to be used in funeral services or burials other than "professional service or personal property to be used in funeral services" as defined in subsection 3 above.

SECTION 4. AMENDMENT. Subsection 4 of section 43-10.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The name and address of the bank or trust company in which such consideration was deposited in accordance with section 23-06-03.1. ~~Except--that-a-cemetery-association shall-deposit-not-less-than--fifty--percent--of--the--sale price--of--vaults--and-markers-in-a-trust-fund-as-provided for-in-23-06-03.1.~~

Approved March 18, 1981

CHAPTER 441

HOUSE BILL NO. 1462
(Moore, Kloubec)

BOARD OF OPTOMETRY

AN ACT to amend and reenact sections 43-13-03, 43-13-07, 43-13-08, 43-13-10, and 43-13-16 of the North Dakota Century Code, relating to the state board of optometry, compensation and expenses of board members, compensation for the secretary of the board, meetings of the board, and administration of professional examinations.

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

SECTION 1. AMENDMENT. Section 43-13-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-03. NORTH DAKOTA STATE BOARD OF OPTOMETRY - MEMBERS - APPOINTMENT - QUALIFICATIONS - TERMS OF OFFICE - OATH - VACANCIES. The North Dakota state board of optometry shall consist of ~~five~~ seven members appointed by the governor for a term of five years each, with their terms of office so arranged that at least one term ~~only~~ shall expire on June thirtieth of each year. ~~The~~ Five of the members of the board shall be resident registered optometrists who have an established optometric practice in this state and who are members in good standing of the North Dakota optometric association engaged in the actual practice of optometry in this state. Each member of the board shall qualify by taking the oath required of civil officers and filing the same with the secretary of the board. A member of the board shall hold his office until his successor is appointed and qualified. A vacancy on the board shall be filled by appointment by the governor for the remainder of the unexpired term.

SECTION 2. AMENDMENT. Section 43-13-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-07. COMPENSATION AND EXPENSES OF BOARD MEMBERS. ~~Each~~ A member of the board shall receive ~~twenty-five---dollars~~ as compensation for each day he actually is engaged in performing the duties of his office a per diem as established by the board, ~~and such~~ mileage and travel expenses as are provided for in section 54-06-09, and additional allowance for other necessary expenses

incurred in attending said meeting not to exceed five dollars per day. All funds collected or received by the board shall be deposited and disbursed in accordance with section 54-44-12.

SECTION 3. AMENDMENT. Section 43-13-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-08. SECRETARY OF BOARD - COMPENSATION. The secretary of the board shall receive for clerical expenses and ~~services--such compensation--and~~ other expenses of the board an allowance ~~as-the board-may-deem-just-and-proper,-not-to-exceed-five-dollars-for--each certificate--or--license--issued--or--renewed~~, and a salary or other compensation, as the board shall determine.

SECTION 4. AMENDMENT. Section 43-13-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-10. MEETINGS OF BOARD - QUORUM - WHAT CONSTITUTES. The board shall meet at least once in each year at a place it designates, and in addition thereto whenever and wherever the president and the secretary, for proper cause, call a meeting. ~~Three~~ Four members of the board in actual attendance at any meeting shall constitute a quorum for the transaction of business.

SECTION 5. AMENDMENT. Section 43-13-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-16. EXAMINATION REQUIRED - WHEN GIVEN. Before any person is granted a certificate of registration to practice optometry in this state, he shall pass an examination given by the board. The examination may be conducted by two or more of the professional members of the board at such times and places as are prescribed by it.

Approved March 3, 1981

CHAPTER 442

SENATE BILL NO. 2222
(Senator Peterson)
(Representative A. Olson)

OPTOMETRIST'S PHARMACEUTICAL AGENTS USE

AN ACT to create and enact a new section to chapter 43-13 of the North Dakota Century Code, relating to the state board of optometry's certification of optometrists to use ocular diagnostic pharmaceutical agents.

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

SECTION 1. A new section to chapter 43-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

BOARD MAY AUTHORIZE USE OF OCULAR DIAGNOSTIC PHARMACEUTICAL AGENTS - TRAINING REQUIRED FOR CERTIFICATION - BOARD MAY ADOPT RULES.

1. The board may authorize persons engaging in the practice of optometry under the provisions of this chapter to administer ocular diagnostic pharmaceutical agents. This authorization shall only include the ordering and utilization of such ocular diagnostic pharmaceutical agents. In issuing an original or renewal certificate of registration pursuant to this chapter, the board shall expressly state in a prominent place on the certificate whether the registered person has been certified to prescribe and use ocular diagnostic pharmaceutical agents.

2. Only those optometrists who have duly applied to the board and satisfactorily passed an examination and completed courses prescribed by the board, including courses in general and ocular pharmacology, cardiopulmonary resuscitation, and first aid for adverse reactions, shall be permitted the use of ocular diagnostic pharmaceutical agents. No course or courses in pharmacology shall be approved by the board unless taught by an institution having the capability for both the didactic and clinical instruction in pharmacology, the institution is accredited by a regional or professional accrediting organization recognized and approved by the council on postsecondary

accreditation or the United States office of education, and unless transcript credit for the course or courses is certified to the board by the institution as being equivalent in both hours and content to those courses in pharmacology required of health professional students graduating after June 1972.

3. The board shall adopt rules, including rules setting out requirements for additional educational qualifications necessary to ensure the required professional competency by those practitioners who apply to the board to be certified in the use of ocular diagnostic pharmaceutical agents. In addition to the registration fees charged by the board, an additional reasonable fee may be set for the examination, reexamination, and certification of applicants for use of ocular diagnostic pharmaceutical agents pursuant to this section.

Approved March 9, 1981

CHAPTER 443

SENATE BILL NO. 2189
(Committee on Industry, Business, and Labor)
(At the request of the State Board of Pharmacy)

BOARD OF PHARMACY DEFINITIONS

AN ACT to amend and reenact section 43-15-01 of the North Dakota Century Code, relating to pharmacy definitions.

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

SECTION 1. AMENDMENT. Section 43-15-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-15-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

~~1.--"Pharmacy"-or-"drug-store"-means-every-store-or-shop-where drugs,-medicines,-or-chemicals--are--dispensed,--displayed for--sale,--or--sold,-at-retail-for-medicinal-purposes,-or where-prescriptions-are--compounded,--and--which--is--duly registered-by-the-state-board-of-pharmacy.~~

~~2.--"Board"-means-the-state-board-of-pharmacy.~~

~~3.--"Pharmacist"-means-a-person-to-whom-the-board-has-issued-a certificate-of-registration-to-practice-the-profession--of pharmacy--whose--certificate--has--not--expired,--or--been suspended.~~

~~4.--"Prescription"--means--any--order--for--drugs--or--medical supplies,--where--such--order--is--written--or--signed--or transmitted--by--word--of--mouth,--telephone,-telegram,-or other-means-of-communication-by-a-duly-licensed-physician, optometrist,--dentist,-veterinarian-or-other-practitioner, licensed-by-law-to-prescribe-and-administer-such-drugs--or medical--supplies--intended--to--be--filled,-compounded-or dispensed-by-a-pharmacist.~~

~~5.--"Drugs"---includes---all---substances---and---preparations recognized-in-the--official--United--States--Pharmacopeia, official--Homeopathic--Pharmacopeia--of-the-United-States,~~

~~Official-National-Formulary-and-New-and-Nonofficial-Drugs, or-any-official-supplement-to-any-of-them.~~

~~6.--"Medicine"--means--a-drug-or-combination-of-drugs,-used-in treating-disease-in-man-or-other-animals.~~

~~7.--"Dispense"--includes--sell,--distribute,--leave-with,-give away,-dispose-of,-deliver-or-supply.~~

~~8.--"Original--package"--means-the-original-carton,-case,-can, box,-vial,-bottle-or--other--receptacle,--put--up--by--the manufacturer--or--wholesaler--or--distributor,--with-label attached,-making-one-complete-package-of-the-drug-article.~~

1. "Board" means the state board of pharmacy.

2. "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

3. "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under federal or North Dakota law to be prescribed by a petitioner and dispensed by a pharmacist.

4. "Dispense" or "dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

5. "Distribute" means the delivery of a drug other than by dispensing or administering.

6. "Drug" or "drugs" means:

   a. Articles recognized as drugs in the official United States pharmacopeia, official national formulary, official homeopathic pharmacopeia, other drug compendium or any supplement to any of them;

   b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animal;

   c. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

d. Articles intended for use as a component of any articles specified in subdivisions a, b, or c of this subsection.

7. "Labeling" means the process of preparing and affixing of a label to any drug container exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any label shall include all information required by federal and North Dakota law or regulation.

8. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug:

   a. By a pharmacist or practitioner as an incident to his dispensing or administering of a drug in the course of his professional practice; or

   b. By a practitioner or by his authorization under supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

9. "Manufacturer" means a person engaged in the manufacture of drugs in facilities located within North Dakota.

10. "Medicine" means a drug or combination of drugs, used in treating disease in man or other animals.

11. "Nonprescription drugs" means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.

12. "Original package" means the original carton, case, can, box, vial, bottle or other receptacle, put up by the manufacturer or wholesaler or distributor, with label attached, making one complete package of the drug article.

13. "Person" means an individual, corporation, partnership, association or any other legal entity.

14. "Pharmacist" means a person to whom the board has issued a certificate of registration to practice the profession of

pharmacy whose certificate has not expired, or been suspended.

15. "Pharmacy" or "drug store" means every store or shop where drugs, medicines, or chemicals are dispensed, displayed for sale, or sold, at retail for medicinal purposes, or where prescriptions are compounded, and which is duly registered by the state board of pharmacy.

16. "Practice of pharmacy" means the interpretation and evaluation of prescription orders; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection and drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records therefor; the responsibility for advising, where necessary or where regulated, therapeutic values, content, hazards and use of drugs and devices; and the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management, and control of pharmacy.

17. "Practitioner" means a physician, dentist, veterinarian, scientific investigator or other person (other than pharmacists) licensed by North Dakota and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in North Dakota.

18. "Prescription" means any order for drugs or medical supplies, where such order is written or signed or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed physician, optometrist, dentist, veterinarian or other practitioner, licensed by law to prescribe and administer such drugs or medical supplies intended to be filled, compounded or dispensed by a pharmacist.

19. "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following:

    a. "Caution: Federal law prohibits dispensing without prescription";

    b. "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian";

    or a drug which is required by any applicable federal or North Dakota law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

20. "Radiopharmaceutical service" means, but is not limited to, the compounding, dispensing, labeling and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards, and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management, and control of radiopharmaceuticals.

21. "Wholesaler" means a person with facilities located in this state who buys for resale and distribution to persons other than consumers.

Approved March 18, 1981

CHAPTER 444

HOUSE BILL NO. 1189
(Committee on Industry, Business, and Labor)
(At the request of the State Board of Pharmacy)

PHARMACY RULES AND OFFENSE PENALTIES

AN ACT to create and enact subsections 12, 13, and 14 to section 43-15-10 and a new section to chapter 43-15 of the North Dakota Century Code, relating to powers of the board of pharmacy and to disciplinary penalties for pharmacists; and to amend and reenact subsection 1 of section 43-15-10 of the North Dakota Century Code, relating to powers of the board of pharmacy.

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

SECTION 1. Subsections 12, 13, and 14 to section 43-15-10 of the 1979 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

12. To regulate and control the practice of pharmacy in North Dakota.

13. To adopt, amend, and repeal rules for the regulation of pharmacies and pharmacists providing radiopharmaceutical services, including special training, education, and experience for pharmacists and physical design of space, safeguards and equipment for pharmacies.

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.

SECTION 2. AMENDMENT. Subsection 1 of section 43-15-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. ~~To cancel, revoke, or suspend the certificate and registration of any registered pharmacist who~~ To refuse to issue or renew, or may suspend, revoke or restrict the certificate, registration or permit of any pharmacist or registered pharmacist, upon one or more of the following grounds:

a. Is addicted to any drug habit.

b. Uses any advertising statements of a character tending to deceive or mislead the public.

c. Is a chronic or persistent inebriate.

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 pharmacist examination.

h. ~~Willfully--and--repeatedly--violates~~ Is found by the board in violation of any of the provisions of the laws regulating pharmacists or the rules and regulations established by the board.

i. Unprofessional conduct as that term is defined by the rules and regulations of the board.

j. 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 or intentional misrepresentation by a pharmacist in securing the issuance or renewal of a certificate of registration or pharmacy permit.

SECTION 3. A new section to chapter 43-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

PENALTIES, REINSTATEMENT, CRIMINAL PROSECUTIONS, AND JUDICIAL REVIEW.

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 renew offender's certificate of registration, permit, or license.

   e. Placement of the offender on probation and supervision by the board for a period to be determined by the board.

2. Any person whose certificate of registration, permit, or license to practice pharmacy in North Dakota has been suspended, revoked, or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such certificate of registration, permit, or license. A petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

3. Nothing herein shall be construed as barring criminal prosecutions for violations of this chapter where such violations are deemed as criminal offenses in other statutes of North Dakota or of the United States.

4. All final decisions by the board shall be subject to judicial review pursuant to chapter 28-32.

Approved April 1, 1981

CHAPTER 445

HOUSE BILL NO. 1580
(Martinson)

DENTISTS AND DENTAL HYGIENISTS

AN ACT to amend and reenact sections 43-20-02, 43-20-06, 43-20-07, 43-28-05, 43-28-11, 43-28-12.1, 43-28-12.2, subsection 3 of section 43-28-15, sections 43-28-16, 43-28-17, 43-28-18, 43-28-22, and 43-28-24 of the North Dakota Century Code, relating to license requirements and fees of dentists and dental hygienists, grounds for suspension of dental license, compensation of members of the board of dental examiners, and providing that examinations may be conducted by a designee of the board.

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

SECTION 1. AMENDMENT. Section 43-20-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-20-02. DENTAL HYGIENISTS - QUALIFICATIONS - EXAMINATIONS - REGISTRATION AND LICENSE. Any person of good moral character not already a licensed dental hygienist of this state, being a graduate of an accredited high school or its equivalent, who is a graduate of a school of dental hygiene approved or provisionally approved by the council on education of the American dental association, upon making application for such license and upon the payment of ~~thirty-five~~ forty dollars, may be examined by the North Dakota state board of dental examiners on the subjects considered essential by it for a dental hygienist. Such examinations shall be conducted by the board of dental examiners or by a designee of the board. If the applicant, in the opinion of the board, successfully passes ~~said~~ the examination, the applicant shall be registered and licensed as a dental hygienist. For such applicants as fail to pass a satisfactory initial examination, subsequent examinations may be had before the board upon payment of a fee of ~~ten~~ fifteen dollars for each subsequent examination, but no applicant shall be allowed to take more than three examinations. Applicants for examination shall submit their credentials to ~~said~~ the board at least thirty days prior to the examination date, which date shall correspond to the date of examination for applicants for license to practice dentistry in this state.

The North Dakota board of dental examiners may accept the results of the national board examination as the equivalent to the testing of an applicant by the North Dakota board of dental examiners in all areas covered by the national board examination.

SECTION 2. AMENDMENT. Section 43-20-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-20-06. LICENSE - FEES - DISPLAY. On or before January first of each year, every licensed dental hygienist shall pay to the board of dental examiners a registration fee as required by the board of dental examiners, and in default of such payment, the board, upon twenty days' notice, may revoke or suspend the license of the hygienist in default. The payment of such fee within such twenty-day period, with an additional sum of ~~ten~~ fifteen dollars, shall excuse the default. The board may collect such fee by suit. Such licensed hygienist must display conspicuously at the place of his employment his annual registration license.

SECTION 3. AMENDMENT. Section 43-20-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-20-07. DENTAL HYGIENISTS FROM OTHER STATES. Any dental hygienist duly licensed to practice as such in another state, and who is of good moral character and desirous of removing to this state, and deposits with the board of dental examiners a license from the examining board of the state in which he is licensed, certifying to the fact of his being licensed, and a letter from the secretary of the state dental association, or the secretary of the state dental hygienists association or organization, of such state, certifying that he is of good moral character and professional attainments, may upon the payment of a fee of ~~thirty-five~~ forty dollars, in the discretion of the board, and upon the satisfactory passing of such examinations as the said board shall deem necessary and proper, be granted a license to practice in this state. The board may, however, dispense with examining such an applicant if the state in which the applicant was previously licensed grants reciprocity to dental hygienists licensed in the state of North Dakota.

* SECTION 4. AMENDMENT. Section 43-28-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-05. MEETING OF BOARD - OFFICERS - BOND - COMPENSATION OF MEMBERS - QUORUM. The board shall hold a regular annual meeting, at such place as is designated by it and such special meetings as are necessary. At the regular meeting of the board, the members shall elect from their number a president, vice president, and a secretary-treasurer. The secretary-treasurer shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation the sum of ~~seventy-five~~ eighty-five dollars for each day actually engaged in the duties of his office, ~~fifteen~~

* NOTE: Section 43-28-05 was also amended by section 4 of House Bill No. 1226, chapter 450.

twenty cents per mile [1.61 kilometers] for the distance necessarily traveled in going to and returning from meetings of the board, and not to exceed actual expenses per day for meals and lodging while attending meetings of the board. The secretary-treasurer shall be paid an annual salary equal to fifteen percent of all funds received by the board during the year. ~~Three~~ Four members of the board shall constitute a quorum but a smaller number may adjourn from time to time.

* SECTION 5. AMENDMENT. Section 43-28-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-11. EXAMINATION REQUIRED - APPLICATION - QUALIFICATIONS - FEES. Any person who desires to obtain a license to practice dentistry in this state shall make application to the secretary-treasurer of the board on such forms as it may provide and shall submit to an examination by the board. The application shall be verified under oath to the effect that all of the statements contained therein are true of applicant's own knowledge. Applicant shall enclose with his application a recent autographed picture of himself and the sum of ~~seventy-five~~ one hundred fifty dollars. Additional costs of simultaneous examination as set out in section 43-28-12.1 and chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant must show proof that he has the following qualifications:

1. Is a graduate of a dental college recognized by the board.

2. ~~Is a citizen of the United States or has filed a declaration of his intention to become a citizen of the United States and that his application for naturalization has been approved by the proper authorities.~~

~~3.~~ Is a person of good moral character.

SECTION 6. AMENDMENT. Section 43-28-12.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-12.1. SIMULTANEOUS EXAMINATION. The results of an examination given in another state by that state's equivalent to the North Dakota board of dental examiners may be considered by this state's board as an example of the applicant's fitness to practice dentistry in this state. The other state examination must be observed by a member of this state's board, or by a designee of the board.

SECTION 7. AMENDMENT. Section 43-28-12.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-12.2. CONTINUING EDUCATIONAL REQUIREMENT FOR DENTISTS. Five years from July 1, 1971, or upon the fifth anniversary of the issuance of his license, whichever occurs last, and each five years thereafter, each person licensed to practice dentistry in this state

* NOTE: Section 43-28-11 was also amended by section 14 of Senate Bill No. 2349, chapter 435.

shall provide the board evidence, of a nature suitable to the board, that such licensed person has attended, or participated in such amount of continuing education in dentistry as shall be required by the board. The minimum requirement shall be not less than ~~twenty~~ fifty hours during the preceding five years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.

2. Research, graduate study, teaching, or service as a clinician.

3. Any other such evidence of continuing education the board may approve.

Any licensed dentist who ~~shall fail~~ fails to comply with this requirement shall, at the discretion of the board, be reexamined to determine his competency to continue licensure. If, in the opinion of the board, such licensed dentist does not qualify for further licensed practice, the board shall suspend such license until such time as the dentist shall provide acceptable evidence to the board of his competency to practice.

SECTION 8. AMENDMENT. Subsection 3 of section 43-28-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Pays to the board a fee of ~~seventy-five~~ one hundred fifty dollars.

SECTION 9. AMENDMENT. Section 43-28-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-16. CERTIFICATE - TERM - DISPLAYED IN PLACE OF BUSINESS - RENEWAL - FEE. A certificate of registration issued under the provisions of this chapter shall be valid for only one year and shall be renewed on or before the first day of January in each year. The fee for renewal of the certificate shall not exceed ~~fifty~~ seventy-five dollars. The holder of a license and certificate of registration shall display the same conspicuously in his place of business. The certificate of registration or the renewal thereof, shall be prima facie evidence of the right of the holder to practice dentistry in this state during the time for which it is issued. All fees provided for in this chapter may be collected by the board in a civil action.

SECTION 10. AMENDMENT. Section 43-28-17 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-17. FAILURE TO PAY ANNUAL FEE - REVOCATION OF LICENSE. Whenever a licensed dentist fails to pay the annual fee for the renewal of his certificate of registration, after thirty days' written notice of such default, the board may revoke his license to practice dentistry forthwith and notify such dentist thereof. The payment of the annual fee within the thirty-day period, with an additional sum of ~~twenty-five~~ fifty dollars, will excuse the default.

* SECTION 11. AMENDMENT. Section 43-28-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-18. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE AND CERTIFICATE. The board may revoke or suspend the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional or immoral conduct~~;~~.

2. ~~Been denied admission to citizenship in the United States;~~

~~3.~~ 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 dentist, or the board determines, following conviction for any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1~~;~~.

~~4.~~ 3. ~~Has been~~ Been adjudged mentally ill and not judicially restored by the regularly constituted authorities~~;~~.

~~5.~~ 4. Been guilty of habitual intemperance or addicted to the use of drugs~~;~~.

~~6.~~ 5. Employed or permitted unlicensed persons to practice dentistry in the office under his control~~;~~.

~~7.~~ 6. Become grossly negligent in the practice of his profession~~;~~.

~~8.~~ 7. Practiced fraud and deceit in obtaining his license or in the practice of dentistry~~;~~.

~~9.~~ 8. Employed a solicitor or agent to obtain business~~;~~.

~~10.~~ 9. Willfully betrayed confidential relations~~;~~.

~~11.~~ 10. Practiced dentistry under a trade name or a false name other than a partnership name containing the names of one or more of the partners or deceased partners; provided, however, that a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of such association~~;~~.

* NOTE: Section 43-28-18 was also amended by section 15 of Senate Bill No. 2349, chapter 435.

~~12.~~ 11. Shared any professional fee with anyone or paid anyone for sending or referring patients to him, provided, however, that this shall not prohibit licensed dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a licensed dentist from employing any other licensed dentist or licensed dental hygienist~~;~~.

~~13. Given a public demonstration of any dental operation under any circumstances, except such as may be approved by the board;~~

~~14.~~ 12. Used any advertising of any character tending to mislead and deceive the public~~;~~.

~~15.~~ 13. ~~Used any advertising in which reference is made to the character or quality of the services performed or to be performed, to the materials or medicines used by him or to any price, cost, charge, fee or terms of credit for services performed or for materials used;~~

~~16. Used a display sign in a larger area than six hundred square inches [3870.96 square centimeters] or containing letters more than six inches [15.24 centimeters] in height;~~

~~17. Used artificial lighting or illumination of any kind as a part of a sign or which has the effect of making any sign more prominent or conspicuous;~~

~~18. Advertised any free dental work, free examination, free consultation, a guarantee of any dental services, or the painless performance of any dental operation;~~

~~19. Used in connection with any advertising any artificial teeth, dentures or any representation of a tooth, teeth, bridgework or any portion of the human head;~~

~~20. Used any newspaper advertising except a professional card in the local press, or in programs, year books and other similar publications, which do not occupy more space than four column inches [10.16 centimeters] and which do not include more than the dentist's name, title, address, telephone number and office hours, provided that a dentist who has a specialty may announce that fact if he has been authorized to do so by the board;~~

~~21. Controls or owns~~ Controlled or owned, or presently controls or owns a dental laboratory or X-ray laboratory, or operates the same in connection with his office, and has advertised such dental or X-ray laboratory in a manner prohibited herein~~;~~.

~~22.~~ 14. Made any false or untrue statements in his application for an examination to obtain a license to practice dentistry~~;~~.

~~23.~~ 15. Made any false representations that he is the holder of a license or certificate of registration to practice dentistry~~;~~.

~~24.~~ 16. Made any false claims that he is a graduate of a dental college or the holder of any diploma or degree from such college~~;--and~~.

~~25.~~ 17. Violated any of the provisions of this chapter.

SECTION 12. AMENDMENT. Section 43-28-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-22. REINSTATEMENT OF LICENSE - RENEWAL OF CERTIFICATE - WHEN ISSUED - FEES. No dentist shall be reinstated, and no license and certificate of registration shall be reissued, except on the following conditions:

1. Where the license and certificate of registration have been revoked for cause upon one or more of the grounds specified in this chapter, a dentist may be reinstated only:

   a. Upon application to the board for reexamination.

   b. Upon payment of examination fees required by this chapter.

   c. Upon successfully passing said reexamination.

   d. Upon payment of an additional administrative fee to be fixed by the board, which shall not exceed ~~fifty~~ seventy-five dollars.

2. Where the license and certificate of registration has been revoked for nonpayment of annual registration fees required by this chapter, said dentist may be reinstated upon payment to the board of the amount of renewal fees then in default, with an additional administrative fee to be fixed by the board not to exceed ~~fifty~~ seventy-five dollars; provided, however, that the board after an investigation, may require a dentist whose license has been revoked for nonpayment of the annual registration fee to submit to a reexamination as to his qualification to practice dentistry before he is reinstated, if the board in the exercise of its discretion finds and determines that the best interests of the public, and the applicant, will be served thereby.

SECTION 13. AMENDMENT. Section 43-28-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-24. DUPLICATE LICENSE AND CERTIFICATE - WHEN ISSUED - FEE. If a license or certificate of registration to practice dentistry in this state is lost or destroyed, the board shall issue and deliver a duplicate license or certificate upon satisfactory proof by applicant of the loss or destruction thereof. The fee for such duplicate license shall be ~~ten~~ twenty dollars and the fee for issuing a duplicate certificate of registration shall be ~~five~~ ten dollars.

Approved March 12, 1981

CHAPTER 446

SENATE BILL NO. 2381
(Olin)

OIL AND GAS BROKER REGISTRATION

AN ACT to repeal chapter 43-22 of the North Dakota Century Code, relating to the registration, bonding, and activities of persons engaged in the business of buying leases, mineral rights, royalties, or other interests in oil or gas properties and certain other described minerals.

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

SECTION 1. REPEAL. Chapter 43-22 of the North Dakota Century Code is hereby repealed.

Approved March 25, 1981

CHAPTER 447

HOUSE BILL NO. 1162
(Committee on Industry, Business, and Labor)
(At the request of the Real Estate Commission)

REAL ESTATE LICENSE AND TRUST FUND STANDARDS

AN ACT to amend and reenact section 43-23-04, subsection 2 of section 43-23-08, and section 43-23-14.1 of the North Dakota Century Code, relating to compensation of the North Dakota real estate commission, license standards for real estate brokers and salesmen, and handling of funds by brokers.

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

SECTION 1. AMENDMENT. Section 43-23-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-04. COMMISSION - COMPENSATION. The members of the commission shall receive ~~twenty-five~~ fifty dollars for each day actually engaged in the service of the commission and shall be paid actual and necessary traveling expenses to be paid only from the fund derived from fees collected in the administration of this chapter. All moneys or fees collected or received by the commission shall be deposited and disbursed in accordance with section 54-44-12.

* SECTION 2. AMENDMENT. Subsection 2 of section 43-23-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In addition to the requirements established by subsection 1, an applicant for a broker's or salesman's license must be at least eighteen years of age ~~and shall be a citizen of the United States and a North Dakota resident~~.

SECTION 3. AMENDMENT. Section 43-23-14.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-14.1. HANDLING OF FUNDS BY BROKERS. Every broker shall, at all times, maintain in his name or firm name, a separate trust account designated as such in a federally insured ~~bank or other federally insured depository~~ financial institution in this

* NOTE: Subsection 2 of section 43-23-08 was also amended by section 10 of Senate Bill No. 2349, chapter 435.

state in which he shall immediately place as a demand deposit all funds not his own coming into his possession, ~~including~~ in accordance with rules and regulations promulgated by the commission. This requirement shall extend to funds in which he may have some future interest or claim and ~~including~~ shall include, but not be limited to, earnest money deposits. Provided, the deposit of funds may be made in an interest-bearing account in a federally insured bank, trust company, savings and loan association or credit union if all parties having an interest in the funds have so agreed in writing and if a copy of the agreement is maintained on file by the broker. No broker shall commingle his personal funds or other funds in a trust account, except that a broker may deposit and keep a sum not to exceed one hundred dollars in such account from his personal funds, which sum shall be specifically identified and deposited to cover service charges related to the trust account. In conjunction with such account, he shall maintain at his usual place of business, books, records, contracts and other necessary documents so that the adequacy of such account may be determined at any time. Trust accounts and other records shall be open to inspection by the commission and its duly authorized agents at all times during regular business hours at the broker's usual place of business.

Approved March 2, 1981

CHAPTER 448

HOUSE BILL NO. 1287
(Wald, Goetz)

REAL ESTATE LICENSE REQUIREMENT

AN ACT to amend and reenact section 43-23-05 of the North Dakota Century Code, relating to the real estate license required for a partnership, association, or corporation.

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

SECTION 1. AMENDMENT. Section 43-23-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-05. REAL ESTATE LICENSE REQUIRED. No person shall act as a real estate broker, real estate salesman, or mortgage broker or advertise or assume to act as such real estate broker, real estate salesman, or mortgage broker without a license issued by the real estate commission. No person shall be entitled to collect any fees, compensation, or commission as a real estate broker, real estate salesman, or mortgage broker without having first complied with the provisions of this chapter. No copartnership, association, or corporation shall be granted a license, unless ~~every member~~ at least one partner, shareholder, or officer of ~~such~~ the copartnership, association, or corporation, actually engaged as a real estate broker, real estate salesman, or mortgage broker as defined herein, shall hold a license as a real estate broker, and unless every employee who acts as a real estate salesman or mortgage broker for such copartnership, association, or corporation shall hold a license as a real estate salesman or mortgage broker.

Approved February 20, 1981

CHAPTER 449

HOUSE BILL NO. 1288
(Representatives Unhjem, Hughes, Mushik)
(Senators Goodman, Hanson)

CONTINUING EDUCATION REQUIREMENTS FOR REALTORS

AN ACT to create and enact a new section to chapter 43-23 of the North Dakota Century Code, relating to continuing education requirements for real estate brokers and salesmen.

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

SECTION 1. A new section to chapter 43-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

LICENSE RENEWAL - CONTINUING EDUCATION REQUIRED. Commencing January 1, 1984, and every three years thereafter, each applicant for renewal of a broker's or salesman's license shall, in addition to the requirements of section 43-23-08, submit proof of participation in not less than twenty-four hours of approved continuing education. If a broker or salesman will not have been licensed three years on the date he or she is required to certify continuing education hours, the number of required hours may be reduced in accordance with rules promulgated by the commission. The commission shall set standards for the approval of lectures, seminars, courses of instruction, and correspondence courses that qualify for satisfaction of this requirement, and shall maintain a current list of lectures, seminars, courses of instruction, and correspondence courses so approved. Lectures, seminars, courses of instruction, and correspondence courses shall not require passing of a test to qualify for satisfaction of this requirement. Licensees shall have the option of attending an approved course of instruction in person or taking an approved correspondence course. Attendance at a course or the completion of a correspondence course shall be documented in accordance with procedures established by the commission. The commission may adopt rules concerning implementation of this section pursuant to chapter 28-32.

No license shall be renewed by the commission unless the proper certification showing fulfillment of the continuing education requirements of this section and the appropriate licensing fees are submitted to the commission on or before the thirty-first day of December immediately preceding the year for which the license is

issued. Any licensee failing to comply with this section shall not engage in any activity for which a license is required under this chapter, and any license not renewed by the thirty-first day of March of the year for which the license is issued shall be declared forfeit and canceled by the commission. Any person whose license has been forfeited and canceled and who desires relicensure shall be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules and regulations of the commission.

The commission may exempt licensees from the continuing education requirements of this section for reasons relating to the licensee's health, military service, or for other good cause. Licensees who have held a real estate license for fifteen continuous years on January 1, 1984, shall be exempt from the requirements of this section.

Approved March 26, 1981

CHAPTER 450

HOUSE BILL NO. 1226
(Representative Eagles)
(Senator Cussons)

BOARD OF DENTAL EXAMINERS

AN ACT to amend and reenact sections 43-28-02, 43-28-03, 43-28-04, and 43-28-05 of the North Dakota Century Code, relating to the state board of dental examiners and providing for one member of the board to be a dental hygienist.

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

SECTION 1. AMENDMENT. Section 43-28-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-02. EXCEPTIONS. The provisions of this chapter shall not apply:

1. To the filling of written prescriptions of a licensed and registered dentist by any person or legal entity, for the construction, reproduction or repair of prosthetic dentures, bridges, plates or appliances, to be used or worn as substitutes for natural teeth, provided, that such person or legal entity shall not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television or otherwise to the general public to construct, reproduce, repair prosthetic dentures, bridges, plates or other appliances to be used or worn as substitutes for natural teeth.

2. To students enrolled in and regularly attending any dental college recognized as such by the board, if their acts are done in dental college and under the direct supervision of their instructor; or to students who are in training in dental colleges recognized as such by the board and who are continuing their training and performing the duties of an extern under the supervision of a licensed and registered dentist who has received approval to supervise such externships by the appropriate accrediting committee, including the North Dakota board of dental examiners.

3. To legally qualified and licensed physicians, surgeons, and other practitioners authorized by law, who perform any act defined herein as the practice of dentistry in emergency cases.

4. To a duly licensed and registered dentist of another state temporarily operating in this state as a clinician or lecturer under the auspices of a dental college, a reputable dental, dental hygienist or dental assistant society.

5. ~~To a dental hygienist, regularly licensed and registered who practices in the manner provided by this chapter.~~

6. To the practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States army, navy, public health service, coast guard, veterans bureau or director of the dental division of the North Dakota state health department.

SECTION 2. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-03. STATE BOARD OF DENTAL EXAMINERS - MEMBERS - APPOINTMENT - TERMS OF OFFICE - OATH - VACANCIES. The state board of dental examiners shall consist of ~~five~~ six members to be appointed by the governor. The membership of the board shall include five dentist members and one dental hygienist member. Appointment to the board shall be for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there will be two new board members appointed, one of whom shall be a dentist and the other a dental hygienist. The first five-year term of the dental hygienist will commence on July 1, 1981, and continue through March 15, 1986. Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member shall serve more than one entire five-year term of office, and any member who has not served an entire five-year term may be reappointed to the board. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board shall be filled by the governor by appointment.

* SECTION 3. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-04. QUALIFICATIONS AND APPOINTMENT OF MEMBERS OF THE BOARD - LIMITED VOTE.

1. No person shall be appointed as a dentist member of the board unless that person:

~~1.~~ a. Is a duly licensed and registered dentist.

* NOTE: Section 43-28-04 was also amended by section 13 of Senate Bill No. 2349, chapter 435.

~~2.~~ b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding his appointment.

~~3.~~ c. Is recommended for such appointment by the North Dakota dental association.

~~4.~~ d. Never has served as a member of the board for an entire five-year term.

At least ninety days before the expiration of a term of any dentist member of the board, the North Dakota dental association shall make its recommendation to the governor. Not less than three candidates shall be recommended for each appointment. If the recommendations are not made in the required time, the governor shall make the appointment from the last recommendations of the association.

2. No person shall be appointed as the dental hygienist member of the board unless that person:

a. Is a duly licensed and registered dental hygienist in accordance with the provisions of chapter 43-20.

b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.

c. Never has served as a member of the board for an entire five-year term.

3. The dental hygienist member of the board shall exercise full voting privileges in all areas with the following exceptions:

a. The issuance, suspension, and revocation of dental licenses;

b. Any disciplinary action taken against dentists; and

c. The examination of dentists for licensure.

* SECTION 4. AMENDMENT. Section 43-28-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-05. MEETING OF BOARD - OFFICERS - BOND - COMPENSATION OF MEMBERS - QUORUM. The board shall hold a regular annual meeting, at such place as is designated by it and such special meetings as are necessary. At the regular meeting of the board, the members shall elect from their number a president, vice president, and a secretary-treasurer. The secretary-treasurer shall furnish a bond in the amount fixed by the board. Each member of the board shall

* NOTE: Section 43-28-05 was also amended by section 4 of House Bill No. 1580, chapter 445.

receive as compensation the sum of seventy-five dollars for each day actually engaged in the duties of his office, fifteen cents per mile [1.61 kilometers] for the distance necessarily traveled in going to and returning from meetings of the board, and not to exceed actual expenses per day for meals and lodging while attending meetings of the board. The secretary-treasurer shall be paid an annual salary equal to fifteen percent of all funds received by the board during the year. ~~Three~~ Four members of the board shall constitute a quorum but a smaller number may adjourn from time to time.

Approved March 3, 1981

OFFICES AND OFFICERS

CHAPTER 451

HOUSE BILL NO. 1117
(Committee on State and Federal Government)
(At the request of the Secretary of State)

NOTARIAL SEAL, OATH, AND BOND DEPOSIT

AN ACT to amend and reenact section 44-06-04 of the North Dakota Century Code, relating to filing of notary oath in the secretary of state's office and clerk of the district court offices.

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

SECTION 1. AMENDMENT. Section 44-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-06-04. FILING OF OATH, BOND, AND IMPRESSION OF NOTARIAL SEAL. Each notary public, before entering upon the duties of such office, shall provide himself with an official seal bearing his name and shall:

~~1.--Deposit~~ deposit a legible impression of such seal, together with his oath and bond, in the office of the secretary of state~~;--and~~

~~2.--File--his-commission-for-record-in-the-office-of-the-clerk of-the-district-court-of-the--county--of--which--he--is--a resident--and-deposit-with-such-clerk-an-impression-of-his seal-together-with--his--official--signature;---The--clerk shall--record--such--information--in-a-book-to-be-kept-for that-purpose;-and-the-person-complying-with-the-provisions of--this-subsection-is-a-notary-public-during-the-time-the commission-is-in-force.~~

Approved March 2, 1981

CHAPTER 452

HOUSE BILL NO. 1507
(A. Olson, Reed)

FEES CHARGED BY NOTARIES PUBLIC

AN ACT to amend and reenact section 44-06-14 of the North Dakota Century Code, relating to fees charged by notaries public.

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

SECTION 1. AMENDMENT. Section 44-06-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-06-14. FEES TO BE CHARGED BY NOTARIES PUBLIC. A notary public is entitled to charge and receive the following fees:

1. For each protest, fifty cents.
2. For recording the same, twenty-five cents.
3. For each notice of protest completed and served, twenty-five cents and postage for mailing the notice.
4. For taking affidavit and seal, ~~twenty-five~~ one dollar and fifty cents.
5. For administering an oath or affirmation, ten cents.
6. For taking a deposition, each ten words, one and one-half cents.
7. For each certificate and seal, ~~twenty-five~~ one dollar and fifty cents.
8. For taking proof of acknowledgment, ~~twenty-five~~ one dollar and fifty cents.

Approved March 3, 1981

CHAPTER 453

SENATE BILL NO. 2073
(Legislative Council)
(Interim Judiciary "C" Committee)

OFFICE OF COMMISSIONER OF DEEDS

AN ACT to repeal chapter 44-07 of the North Dakota Century Code, relating to the appointment of a commissioner of deeds, stating the powers, duties and terms of office, requiring seal and bond, and providing compensation for services.

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

SECTION 1. REPEAL. Chapter 44-07 of the North Dakota Century Code is hereby repealed.

Approved March 11, 1981

CHAPTER 454

HOUSE BILL NO. 1545
(Nicholas)

FOREIGN TRAVEL REIMBURSEMENT

AN ACT to amend and reenact section 44-08-04 of the North Dakota Century Code, relating to reimbursement to state officers and employees for travel expenses.

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

* SECTION 1. AMENDMENT. Section 44-08-04 of the 1979 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 and shall upon approval of such claim be paid as an allowance for meals and lodging while engaged within this state in the discharge of a public duty away from his normal working and living residence for all or any part of any quarter of a day 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 two dollars and seventy-five cents.

2. Second quarter shall be from twelve noon to six p.m. and the sum shall not exceed three dollars and seventy-five cents.

3. Third quarter shall be from six p.m. to twelve midnight and the sum shall not exceed six 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 twenty dollars.

5. Provided, however, that the preceding four subsections shall not be applicable unless the person concerned has

* NOTE: Section 44-08-04 was also amended by section 1 of House Bill No. 1184, chapter 455.

been out of the headquarters or normal place of employment for six hours or overnight.

Verifications of claims shall not be required for the first three quarters listed above and only a lodging receipt shall be required for the fourth quarter.

Such persons engaged in travel outside state boundaries shall receive eighteen 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 department of accounts and purchases shall disapprove any claim it shall determine to be in error or unlawful or not within the limits of legislative appropriations. The travel expenses of the governor, governor's personal traveling aides, lieutenant governor, judges of the supreme court, district courts, and county courts of increased jurisdiction, and members of the legislative assembly shall not be limited by the expense allowance limitations prescribed by this section.

Approved March 26, 1981

CHAPTER 455

HOUSE BILL NO. 1184
(Committee on State and Federal Government)
(At the request of the Department of Accounts and Purchases)

EXPENSE ACCOUNT AND TRAVEL ALLOWANCE

AN ACT to amend and reenact sections 44-08-04, 44-08-04.2, and 54-06-09 of the North Dakota Century Code, relating to expense accounts and mileage and travel expenses of state officers and employees.

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

* SECTION 1. AMENDMENT. Section 44-08-04 of the 1979 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 ~~and shall upon approval of such claim be paid as an allowance~~ for meals and lodging while engaged within this state in the discharge of a public duty away from his 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. Such claims shall be allowed even if the city at which such meeting is held or meal is provided is the claimant's normal working and living residence. Upon approval of such 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 ~~two dollars and seventy-five cents~~ 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 ~~three~~ five dollars ~~and seventy-five cents~~.

* NOTE: Section 44-08-04 was also amended by section 1 of House Bill No. 1545, chapter 454.

3. Third quarter shall be from six p.m. to twelve midnight and the sum shall not exceed ~~six~~ 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 ~~twenty~~ twenty-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 ~~six~~ four hours or overnight.

Verifications of claims shall not be required for the first three quarters listed above and only a lodging receipt shall be required for the fourth quarter.

Such persons engaged in travel outside state boundaries shall receive ~~eighteen~~ twenty-three 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.

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 department of accounts and purchases shall disapprove any claim it shall determine to be in error or unlawful or not within the limits of legislative appropriations. The travel expenses of the governor, governor's personal traveling aides, lieutenant governor, judges of the supreme court, district courts, and county courts of increased jurisdiction, and members of the legislative assembly shall not be limited by the expense allowance limitations prescribed by this section.

SECTION 2. AMENDMENT. Section 44-08-04.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-04.2. TRAVEL ADVANCES.

1. Any state agency may advance funds to be used by officials or employees of that agency for payment of meal and lodging expenses incurred while the official or employee is traveling on official business outside of this state, provided that such out-of-state travel must be for a period planned to be in excess of five days, and provided that the funds advanced do not exceed twenty-five dollars per day. Travel advance warrant-checks shall be issued on vouchers signed by the chief executive officer of the agency involved. Funds advanced for meals and lodging

under this section shall be accounted for as required under section 44-08-04 for out-of-state travel.

2. Any state agency may advance funds to be used by officials or employees of that agency for payment of meal and lodging expenses incurred while the official or employee is traveling on official business in this state, provided that such in-state travel must be for a period planned to be in excess of five days, and provided that the funds advanced do not exceed eighty percent of estimated expenses for the period. Travel advance warrant-checks shall be issued on vouchers signed by the chief executive officer of the agency involved. Funds advanced for meals and lodging under this section shall be accounted for as required under section 44-08-04 for out-of-state travel.

3. As used in this section, and section 44-08-04.1:

   a. "Official business outside of this state" includes travel to attend training courses, where the training is necessary to satisfy federal program requirements.

   b. "State agency" means agencies, boards, commissions, bureaus, offices, departments, institutions, and any other state governmental entities, and specifically includes the legislative and judicial branches of state government.

SECTION 3. AMENDMENT. Section 54-06-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-06-09. MILEAGE AND TRAVEL EXPENSE OF STATE OFFICERS AND EMPLOYEES. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, shall be allowed and paid for mileage and travel expense the following amounts:

1. The sum of ~~twenty~~ twenty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle. The sum of ~~twenty-six~~ thirty cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by private airplane. Mileage by private aircraft shall be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage shall be based on the road mileage between the geographical points. Reimbursement for private airplane travel shall be calculated as follows:

a. If reimbursement is for one properly authorized and reimbursable passenger, reimbursement shall be paid on a per-mile basis as provided in this subsection.

b. If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular coach fare on a commercial flight, if one is scheduled between the point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.

No reimbursement shall be paid for leased private aircraft. In order to be reimbursed for the chartering of a private aircraft pursuant to subdivision b of this subsection, the charter agreement must receive prior approval from the director of the department of accounts and purchases who shall take comparable travel costs and the savings of time into account in making his decision. If only one person shall engage in such travel in a motor vehicle exceeding at any geographical point one hundred fifty miles [241.40 kilometers] beyond the borders of this state, reimbursement shall be limited to ~~fourteen~~ eighteen cents per mile [1.61 kilometers] for the out-of-state portion of the travel beyond the first one hundred fifty miles [241.40 kilometers]. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision thereof, no allowance shall be made or paid for such mileage.

2. ~~When~~ Except as provided in subsection 1, when travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the amount actually and necessarily expended therefor in the performance of official duties.

3. Notwithstanding the other provisions of this section, state employees permanently located outside the state or on assignments outside the state for an indefinite period of time, exceeding at least thirty consecutive days, shall be allowed and paid ~~twenty~~ twenty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle, and the one hundred fifty mile [241.40 kilometer] restriction imposed by subsection 1 shall not apply.

Before any allowance for any such mileage or travel expenses shall be made, the official, deputy, assistant, clerk, or other employee shall file with the director of the department of accounts and purchases an itemized statement showing the mileage traveled, the hour of departure and return, the days when and how traveled, the purpose thereof, and such other information and documentation as may be prescribed by rule of the office of the budget or specifically

requested by such office, verified by his certification. The statement shall be submitted to the office of the budget for approval and shall be paid only when approved by the office of the budget. The head of any department, institution, or agency of this state may, for any person or persons under his authority, set a rate of no less than ~~fifteen~~ twenty cents per mile [1.61 kilometers] and no more than ~~twenty~~ twenty-five cents per mile [1.61 kilometers].

Approved March 31, 1981

PRINTING LAWS

CHAPTER 456

HOUSE BILL NO. 1568
(Horgan, Koski)

SIXTH-CLASS PRINTING BID REQUIREMENT

AN ACT to amend and reenact section 46-02-09 of the North Dakota Century Code, relating to bidding requirements for certain public printing contracts.

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

SECTION 1. AMENDMENT. Section 46-02-09 of 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 ~~one~~ three hundred ~~fifty~~ dollars or over as determined by the Franklin Printing Catalogue, not done by the central duplicating service of the department of accounts and purchases 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 department of accounts and purchases, or by the departments, institutions, or state offices authorized to bid their own printing needs. Printing items amounting to less than ~~one~~ three hundred ~~fifty~~ dollars ~~and which are not economically feasible to be done by the central duplicating service,~~ may be given by the department head to the printer of his choice. All departments, institutions, or state offices shall submit requisitions for all printing to the department of accounts and purchases. 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 department of accounts and purchases. The department of accounts and purchases 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.

Approved March 31, 1981

CHAPTER 457

HOUSE BILL NO. 1074
(Legislative Council)
(Interim Legislative Procedure and Arrangements Committee)

LEGISLATIVE PRINTING

AN ACT to amend and reenact sections 46-02-10, 46-02-11, 46-03-11, and 46-03-18 of the North Dakota Century Code, relating to legislative printing and the timing thereof, to the publication of session laws, to the furnishing of copy for same by the secretary of state and the legislative council, and providing for contractual penalties.

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

SECTION 1. AMENDMENT. Section 46-02-10 of 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 department of accounts and purchases 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 ~~within--sixty--days--after-the-index-shall-have been--made--out--and--delivered--to--the---contractor~~ 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.

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 department of accounts and purchases, 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 2. AMENDMENT. Section 46-02-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-02-11. CONTRACTOR - FAILURE ON CONTRACT - CANCELLATION OF CONTRACT - PENALTY. If from death or any unforeseen cause there shall be a failure on the part of any successful bidder to execute his contract, the department of accounts and purchases may enter into a contract with the next lowest bidder. If any contractor, after commencing upon his contract, fails to execute the work embraced therein with reasonable expedition and in a suitable manner, the department of accounts and purchases may notify him for reasons it may specify that his contract is canceled and it may contract with some other person to do the work at the lowest practicable rate. The department may give written notice to any contractor who is unreasonably ~~is~~ delaying ~~the~~ execution of the work that ~~the--same~~ the work must be completed within a specified time. For failure to complete the contract within the time specified in the contract or in the notice authorized above, if given, the contractor shall ~~suffer-a-penalty-of-one-quarter-of-one--percent--of the--contract-price-for-every-twenty-four-hours-of-delay,-thereafter to-be-deducted-from-the-net-amount-of-the--printing--so--delayed~~ be subject to a penalty as provided in the contract which penalty may not exceed two hundred fifty dollars for each twenty-four hours of delay.

SECTION 3. AMENDMENT. Section 46-03-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-03-11. PUBLICATION OF SESSION LAWS AND POCKET SUPPLEMENTS. The secretary of state and the legislative council shall correct ministerial or clerical errors and supervise the publication of the session laws and pocket part supplements to this code in a manner and form prescribed by the legislative council, correlating each year's laws with this code. The secretary of state shall secure a copyright of the session laws of each session of the legislative assembly before the same are distributed for the exclusive use and benefit of the state. ~~The~~ Notice of the copyright procurement shall be printed ~~in-each-volume-of~~ at an appropriate place in the session laws.

SECTION 4. AMENDMENT. Section 46-03-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-03-18. COPIES OF LAWS AND JOURNALS TO BE FURNISHED PRINTER - BY WHOM. ~~The secretary of state and the legislative council shall furnish a true and accurate copy of the laws as they may be demanded by the printer thereof.~~ The secretary of the senate and the chief clerk of the house ~~each~~ shall furnish ~~for the printer, who is bound by his contract to print the same, a copy of each journal, bill, report, and other paper and document, without unnecessary delay~~ journal copy for their respective houses and copies of legislative documents to the contract printer of the legislative documents or daily journals. No contractor shall be accountable under section 46-02-10 for any delay occasioned by the ~~want of~~ failure to furnish such copy on a timely basis.

Approved February 20, 1981

CHAPTER 458

HOUSE BILL NO. 1185
(Committee on State and Federal Government)
(At the request of the Department of Accounts and Purchases)

PUBLIC PRINTING BILLING REQUIREMENTS

AN ACT to amend and reenact section 46-02-14 of the North Dakota Century Code, relating to documents accompanying bills for printing.

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

SECTION 1. AMENDMENT. Section 46-02-14 of 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 which he shall deliver to the department of accounts and purchases at the time the completed work is delivered, together with a memorandum bill of the same. ~~In the account submitted for the payment of the work, the contractor at the same time shall submit his order for the work and shall state specifically:~~

~~1. The nature of the work performed.~~

~~2. The number of copies.~~

~~3. The number of ems of composition.~~

~~4. The extra charge, if any, for rule or figure, and rule and figure work.~~

~~5. The number of impressions of press work.~~

~~6. The cost of folding and binding.~~

~~7. Any other charges for which he claims payment.~~

~~8. If there is a charge for any alterations or changes from copy, the proofs of original composition and changes must be presented.~~

Approved March 2, 1981

CHAPTER 459

SENATE BILL NO. 2370
(Iszler, Lodoen, Naaden)

LEGAL NOTICE FEES

AN ACT to amend and reenact section 46-05-03 of the North Dakota Century Code, relating to legal notice fees; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 46-05-03 of the 1979 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:

~~1.--Any--notice-or-publication-required-to-be-published-by-any political-subdivision-of-the--state,--or--by--any--officer thereof;~~

~~2.--Any---summons,---citation,---notice,--or--other--document, proceedings,-or-process-in-an-action-or-proceedings-in-any court--of--the--state,--which--is--required--by--law-to-be published;~~

~~3.--Any--publication--required--to--be--published-by-any-state officer,-elected-or-appointive,-and~~

~~4.--Any~~ 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 department of accounts and purchases 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 department of accounts and purchases 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 department shall utilize the standard six-point type, eleven pica 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 ~~purchasing and~~ printing agent of the department of accounts and purchases. Certifications shall be issued within fifteen days after samples are submitted.

The department of accounts and purchases 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 department of accounts and purchases 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.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 31, 1981

PROPERTY

CHAPTER 460

SENATE BILL NO. 2438
(Nething)
(Approved by the Committee on Delayed Bills)

AGRICULTURAL LAND OWNERSHIP BY ALIENS

AN ACT to amend and reenact section 47-10.1-02 of the North Dakota Century Code, relating to restrictions on the acquisition of agricultural land; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 47-10.1-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-10.1-02. RESTRICTION ON ACQUISITION - EXCEPTIONS. A person who is not a citizen of the United States or a citizen of Canada, except a permanent resident alien of the United States, may not acquire directly or indirectly any interest in agricultural land. A partnership, limited partnership, trustee, or other business entity may not, directly or indirectly, acquire or otherwise obtain any interest, whether legal, beneficial, or otherwise, in any title to agricultural land unless the ultimate beneficial interest of the entity is held directly or indirectly by citizens of the United States or permanent resident aliens of the United States. This section does not apply to agricultural land that may be acquired by devise, inheritance, as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; provided, that all agricultural land acquired in the collection of debts or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this section. This section does not apply to a foreign corporation which acquires agricultural land for use as an industrial site where construction contracts are entered into by the corporation within one hundred fifty days after acquisition of the land, provided that this exception shall only apply to so much agricultural land as is reasonably necessary for industrial purposes. A foreign corporation which owns agricultural land for industrial purposes but which discontinues using the land for industrial purposes shall dispose of the land as provided by

chapter 10-06. A foreign corporation shall dispose of agricultural land acquired for industrial purposes within one year after acquisition if construction contracts are not entered into within one hundred fifty days after acquisition of the land. This section does not apply to citizens or subjects of a foreign country whose rights to hold land are secured by treaty or to common carriers by railroad subject to the jurisdiction of the interstate commerce commission.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 3, 1981

CHAPTER 461

HOUSE BILL NO. 1559
(Heigaard, E. Pomeroy)

PROPERTY INTEREST DISCLAIMER PERIOD

AN ACT to amend and reenact subsection 1 of section 47-11.1-02 of the North Dakota Century Code, relating to the time for disclaiming a present or future interest.

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

SECTION 1. AMENDMENT. Subsection 1 of section 47-11.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An instrument disclaiming a present interest shall be delivered or filed no later than ~~six~~ nine months after the effective date of the nontestamentary instrument or contract. An instrument disclaiming a future interest shall be delivered or filed not later than ~~six~~ nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the person entitled to disclaim does not have actual knowledge of the existence of the interest, the instrument shall be delivered or filed not later than ~~six~~ nine months after that person has actual knowledge of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest.

Approved March 11, 1981

CHAPTER 462

HOUSE BILL NO. 1416
(Boyum)

REAL ESTATE NOTE OR MORTGAGE LATE PAYMENT PENALTY

AN ACT to amend and reenact section 47-14-05 of the North Dakota Century Code, relating to a late payment penalty charge in a real estate note or mortgage.

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

SECTION 1. AMENDMENT. Section 47-14-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-14-05. LEGAL RATE OF INTEREST - INTEREST AFTER MATURITY. Interest for any legal indebtedness shall be at the rate of six percent per annum unless a different rate not to exceed the rate specified in section 47-14-09 is contracted for in writing. All contracts shall bear the same rate of interest after maturity as they bear before maturity, and any contract attempting to make the rate of interest higher after maturity shall be void as to such increase of interest, except for a charge for late payment penalty charged in addition to interest which may not exceed fifteen dollars or fifteen percent of the late payment, whichever is less, unless otherwise agreed to in the real estate note or mortgage.

Approved March 3, 1981

CHAPTER 463

SENATE BILL NO. 2330
(Senators Melland, Lodoen, Grotberg)
(Representative Hedstrom)

USURY PROVISIONS

AN ACT to amend and reenact sections 7-02-04 and 47-14-09 of the North Dakota Century Code, relating to the definitions of usury, and usury rates; and to repeal subsection 1 of section 13-03.1-15 and chapter 13-04 of the North Dakota Century Code, relating to installment payment charges and bank installment loans.

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

SECTION 1. AMENDMENT. Section 7-02-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7-02-04. INTEREST, DUES, ASSESSMENTS LIMITED - USURY. Except as provided by this section, interest collected by such associations may not exceed ~~twelve percent per annum on the amount of the loan. An association may charge interest not to exceed one and one-fourth percent simple interest per month upon the unpaid balance of a loan not secured by real estate~~ the rate which may lawfully be charged by other financial institutions in this state. Interest not exceeding one percent per month also may be charged on delinquent payments or installments from the time such delinquent payments or installments are due. No association shall charge or collect from any shareholder, member, or borrower any fines, premiums, or penalties of any kind whatsoever except as herein provided for delinquent payments or installments. Such dues, interest, or advancements collected from members or others, within the limits of this section, shall not be deemed usury although in excess of the legal rate of interest.

SECTION 2. AMENDMENT. Section 47-14-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-14-09. USURY - DEFINITION - MAXIMUM CONTRACT RATE - PROHIBITION. Except as otherwise provided by the laws of this state, no person, partnership, limited partnership, trust,

association, corporation, or other form of business entity, either directly or indirectly, shall take or receive, or agree to take or receive, in money, goods, or things in action, or in any other way, any greater sum or greater value for the loan or forbearance of money, goods, or things in action than five and one-half percent per annum higher than the ~~maximum rate of interest payable on time deposits maturing in thirty months as defined and authorized by the state banking board under section 6-03-63~~ 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 transaction occurs, as computed and declared on the last day of each month by the state banking commissioner, but that in any event the maximum allowable interest rate ceiling shall not be less than seven percent, and in the computation of interest the same shall not be compounded; provided, however, that a minimum interest charge of fifteen dollars may be made. No contract shall provide for the payment of interest on interest overdue, but this section shall not apply to a contract to pay interest at a lawful rate on interest that is overdue at the time such contract is made. Any violation of this section shall be deemed usury. This section shall not apply to a loan made to a foreign or domestic corporation, cooperative corporation or association, trust, or to a partnership, limited partnership, or association which files a state or federal partnership income tax return, nor to any ~~business~~ loan or forbearance of money, goods, or things in action the principal amount of which amounts to more than thirty-five thousand dollars, nor to any loan made by a lending institution which is regulated or funded by an agency of a state or of the federal government. Further, without regard to the interest rate limit set forth herein, state-chartered banks and the Bank of North Dakota may charge interest at a rate equal to the maximum allowable rate which lawfully may be charged for a particular type of loan by national banking associations or state or federally chartered savings and loan associations operating out of facilities located in this state.

* SECTION 3. REPEAL. Subsection 1 of section 13-03.1-15 of the 1979 Interim Supplement to the North Dakota Century Code and chapter 13-04 of the North Dakota Century Code are hereby repealed.

Approved March 12, 1981

* NOTE: Subsection 1 of section 13-03.1-15 was amended by section 2 of House Bill No. 1430, chapter 162.

CHAPTER 464

SENATE BILL NO. 2325
(Tierney)

DWELLING UNIT INSPECTION AND CONDITION

AN ACT to create and enact two new sections to chapter 47-16 of the North Dakota Century Code, providing for conditions under which a landlord may enter a tenant's apartment and for a statement concerning the condition of the premises to be included with the rental agreement.

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:

WHEN LANDLORD MAY ENTER APARTMENT. A landlord may enter the dwelling unit:

1. At any time in case of emergency or if the landlord reasonably believes the tenant has abandoned the premises, or the landlord reasonably believes the tenant is in substantial violation of the provisions of the lease or rental agreement.

2. Only during reasonable hours, and in a reasonable manner, for the purpose of inspecting the premises; for making necessary or agreed repairs, decorations, alterations, or improvements; for supplying necessary or agreed services; or for exhibiting the residential dwelling unit to actual or potential purchasers, insurers, mortgagees, real estate agents, tenants, workmen, or contractors. Unless it is impractical to do so the landlord shall first notify and receive the consent of the tenant which shall not be unreasonably withheld, which consent shall identify a time certain. A landlord shall not abuse the right of access or use it to harass or intimidate the tenant.

For the purposes of this section, consent shall be presumed from failure to object to access after notice of intent to enter at a time certain has been given. Notice may be given by personal service, by posting the notice in a conspicuous place in or about

the dwelling unit for a reasonable period of time, or by any other method which results in actual notice to the tenant.

SECTION 2. A new section to chapter 47-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

STATEMENT DETAILING CONDITION OF PREMISES TO ACCOMPANY RENTAL AGREEMENT. A landlord shall provide the tenant with a statement describing the condition of the facilities in and about the premises to be rented at the time of entering a rental agreement. The statement shall be agreed to and signed by the landlord and tenant. The statement shall constitute prima facie proof of the condition of the facilities and the premises at the beginning of the rental agreement.

Approved March 19, 1981

CHAPTER 465

SENATE BILL NO. 2226
(Lips)

MINERAL LEASE TERMINATION NOTICE PUBLICATION

AN ACT to amend and reenact section 47-16-36 of the North Dakota Century Code, relating to notice by publication for terminating mineral leases.

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

SECTION 1. AMENDMENT. Section 47-16-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-36. DUTY OF LESSEE TO HAVE TERMINATED OR FORFEITED LEASE RELEASED - PUBLICATION NOTICE - SATISFACTION OF LEASE TO BE RECORDED - NOTICE TO REAL PROPERTY OWNER - REMEDIES. When any oil, gas, or other mineral lease heretofore or hereafter given on real property situated in any county of North Dakota and recorded therein shall terminate or become forfeited it shall be the duty of the lessee, his successors or assigns, within fifteen days after the date of the termination or forfeiture of any such lease, to have such lease surrendered in writing, such surrender to be signed by the party making the same, acknowledged, and placed on record in the county where the leased real property is situated without cost to the owner thereof. If the said lessee, his successors or assigns, shall fail or neglect to execute and record such surrender within the time provided for, then the owner of said real property may serve upon said lessee, his successors or assigns of record, in person or by registered or certified mail, at his last known address, or if the post-office address is not shown of record then by publication <u>once a week</u> for three consecutive weeks in a newspaper of general circulation in the county where the real property is situated, a notice in writing in substantially the following form:

> To ----------: I, the undersigned, owner of the following described land situated in ---------- County, North Dakota, to wit: (description of land) upon which a lease dated ------ day of ------ 19---, was given to ---------- do hereby notify you that such lease has terminated or become forfeited by breach of the terms thereof, that I

hereby elect to declare and do declare the said lease forfeited and void and that, unless you do, within twenty days from this date, notify the register of deeds of said county as provided by law that said lease has not been forfeited, I will file with the said register of deeds a satisfaction of lease as provided by law, and I hereby demand that you execute or have executed a proper surrender of said lease and that you put the same of record in the office of the register of deeds of said county within twenty days from this date.

Dated this ------ day of ------ 19---.

The owner of said real property may after twenty days from the date of service, registration, or first publication of said notice, file with the register of deeds of the county where said real property is situated a satisfaction of lease setting forth that the affiant is the owner of said real property, that the lease has terminated or that the lessee, or his successors or assigns, has failed and neglected to comply with the terms of said lease, reciting the facts constituting such failure and that the same has been forfeited and is void, and setting out in said satisfaction of lease a copy of the notice served, as above provided and the manner and time of the service thereof. If the lessee, his successors or assigns, shall within such twenty days after service, give notice in writing to the register of deeds of the county where said real property is located that said lease has not been forfeited and that said lessee, his successors or assigns, still claim that said lease is in full force and effect, then the said satisfaction of lease shall not be recorded but the register of deeds shall notify the owner of the real property of the action of the lessee, his successors or assigns, and the owner of the real property shall be entitled to the remedies now provided by law for the cancellation of such disputed lease. If the lessee, his successors or assigns, shall not notify the register of deeds, as above provided, then the register of deeds shall record said satisfaction of lease and thereafter the record of the said lease shall not be notice to the public of the existence of said lease or of any interest therein, or rights thereunder, and said record shall not be received in evidence in any court of the state on behalf of the lessee, his successors or assigns, against the lessor, his successors or assigns.

Approved March 16, 1981

CHAPTER 466

HOUSE BILL NO. 1525
(Representatives Hughes, R. Anderson, Murphy)
(Senators Bakewell, R. Christensen)

INTEREST ON UNPAID OIL AND GAS ROYALTIES

AN ACT to amend and reenact section 47-16-39.1 of the North Dakota Century Code, relating to obligations of oil and gas producers to pay interest on unpaid royalties.

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

SECTION 1. AMENDMENT. Section 47-16-39.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-39.1. OBLIGATION TO PAY ROYALTIES - BREACH. The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or his assignee, or to deliver oil or gas to a purchaser to the credit of such mineral owner or his assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of such obligation may constitute grounds for the cancellation of such lease in such cases where it is determined by the court that the equities of the case require cancellation. In the event the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or his assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought, the unpaid royalties shall thereafter bear interest at the rate of eighteen percent per annum until paid. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located shall have jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section shall be entitled to recover any court costs and reasonable attorney's fees. This section shall not apply when mineral owners or their assignees elect to take their proportionate share of production in kind, or in the event of a dispute of title existing which would effect distribution of royalty payments.

Approved April 6, 1981

PUBLIC BUILDINGS

CHAPTER 467

SENATE BILL NO. 2137
(Hanson)

CONTRACTOR CONTRACT PAYMENT INTEREST RATE

AN ACT to amend and reenact sections 40-22-37 and 48-02-08 of the North Dakota Century Code, relating to contractors progress payments, retainage, and rate of interest on failure to pay.

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

SECTION 1. AMENDMENT. Section 40-22-37 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-37. CONTRACTOR SHALL BE PAID DURING PROGRESS OF WORK - RETAINAGE - FAILURE TO PAY - RATE OF INTEREST - INVESTMENT OF RETAINAGE. If the contractor to whom a contract is let properly performs the work therein designated, the governing body, at least once in each calendar month during the continuance of such contract work, shall meet, receive, and consider estimates furnished by the agent, engineer, or architect acting for the municipality or if not so furnished, then by the contractor, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon such contract, and of the material then upon the ground for use in such contract, subject to retentions as follows: ten percent of each estimate presented until such time as the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. The governing body may, however, upon completion of ninety-five percent of the contract according to the estimates, pay to the contractor ninety-five percent of the amount retained from previous estimates. Any amount retained after ninety-five percent completion of the contract shall be paid to the contractor in such amounts and at such times as are approved by the municipality, upon estimates by its agent, engineer, or architect or the contractor, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. The governing body, immediately after considering and allowing any such estimate, shall certify and forward the same to the city auditor or other official having the power to draw warrants, who forthwith shall draw his warrant upon the proper fund and transmit the same promptly to the

contractor entitled thereto. In case the governing body shall fail or neglect to receive and allow such estimate or certify any estimate or final payment upon completion and acceptance or the proper officer required to issue such warrant shall fail or neglect to issue a warrant as provided herein, for a period of more than thirty days from the date of such estimate or completion date, then said estimate or final payment, together with any retainage properly payable, shall draw interest from its date at the rate ~~of six percent~~ per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of such estimate or completion date until the issuance of a proper warrant therefor. Such interest shall be computed and added to the face of said estimate, final payment, or retainage by the officer required to issue such warrant, shall be included in the warrant when drawn, and shall be charged to the fund from which payment for the improvement is to be made. On the amounts of estimates retained, as provided herein, the governing board, authorized committee, or public body in charge of such work may invest or deposit the retained amounts in any financial association or institution in North Dakota earning interest or dividends for the benefit of the contractor. Any amounts so invested or deposited shall remain in the name of the governing board, authorized committee, or public body in charge of such work until final payment of all money due to the contractor is to be made. Further, no contractor shall use such account in any manner whatsoever until released and received by him upon completion of the contract.

SECTION 2. AMENDMENT. Section 48-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-02-08. ESTIMATE - FAILURE TO CERTIFY - RATE OF INTEREST. In case the board or committee mentioned in section 48-02-07 shall fail or neglect to certify any estimate allowed or final payment upon completion and acceptance, or the proper official shall neglect or fail to issue a warrant as provided in section 48-02-07, for a period of more than thirty days from the date of such estimate or completion date, then said estimate or final payment shall draw interest from its date at the rate ~~of six percent~~ per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of such estimate or completion date until the issuance of a proper warrant therefor. Such interest shall be computed and added to the face of said estimate or final payment by the officer required to issue such warrant, shall be included in the warrant when drawn, and shall be charged to the fund upon which payment for the contract is to be made. No payment for, or on account of, any contract made under the provisions of this chapter shall be made except upon estimate of the supervising architect or superintendent of construction or contractor as provided in section 48-02-07.

Approved March 3, 1981

CHAPTER 468

HOUSE BILL NO. 1126
(Committee on State and Federal Government)
(At the request of the Department of Accounts and Purchases)

NATIVE FUEL PURCHASE PROPOSAL PUBLICATION

AN ACT to repeal section 48-05-03 of the North Dakota Century Code, relating to publishing of proposals for state purchase of fuel products.

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

SECTION 1. REPEAL. Section 48-05-03 of the North Dakota Century Code is hereby repealed.

Approved February 20, 1981

CHAPTER 469

SENATE BILL NO. 2409
(Committee on Appropriations)

FAIR ASSOCIATION CONCESSION WITHOUT BIDS

AN ACT to amend and reenact section 48-09-01 of the North Dakota Century Code, relating to permitting the North Dakota fair associations to grant concessions without letting bids; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 48-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-09-01. GRANTING OF CONCESSIONS FOR CAFES, RESTAURANTS, AND CONFECTIONERIES ON PUBLIC BUILDINGS AND GROUNDS. Any state official, board, or commission, any county official, board, or commission, and any municipal officer, board, or commission, having the supervision, control and management of any state, county, or municipal building and the adjacent grounds thereof, when it is deemed to be for the public benefit and good, may grant a concession therein or thereon for any cafe, restaurant, or confectionery, by renting, leasing, and licensing any such concession to the highest bidder or best bidder, or both, at a reasonable rental per month, for a period not exceeding eight years, and may reject any and all bids therefor. Provided, the board of directors of all North Dakota fair associations may grant a concession under this chapter without letting bids.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 16, 1981

CHAPTER 470

HOUSE BILL NO. 1563
(Mushik, Eagles)

CAPITOL ARTS AND HISTORIC PRESERVATION ADVISORY COMMITTEE

AN ACT to establish a capitol arts and historic preservation advisory committee and to provide procedures and duties.

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

SECTION 1. CAPITOL ARTS AND HISTORIC PRESERVATION ADVISORY COMMITTEE - MEMBERSHIP. The capitol arts and historic preservation advisory committee shall consist of nine members appointed by the governor. The members shall consist of one historic preservationist, one representative of the North Dakota council on the arts, one licensed architect, one representative from the historical society, one interior decorator, one member of the senate, one member of the house of representatives, and two public members. The governor shall name one of the members as chairman, and the members of the committee shall choose one of their members as secretary.

SECTION 2. DUTIES AND RESPONSIBILITIES. The capitol arts and historic preservation advisory committee shall advise the director of institutions, the capitol grounds planning commission, and the legislative council on matters relating to the physical and aesthetic features of the interior of all buildings on the capitol grounds. The committee shall meet at the call of the chairman and must be called in whenever major interior changes, including new construction, remodeling, or renovation of any kind are proposed or considered for the buildings or facilities on the capitol grounds. The committee shall also be consulted prior to the purchase or installation of furniture or fixtures in public areas of the capitol and other buildings on the capitol grounds.

Approved April 1, 1981

PUBLIC UTILITIES

CHAPTER 471

HOUSE BILL NO. 1186
(Committee on Natural Resources)
(At the request of the Public Service Commission)

INTRASTATE PIPELINE FACILITY SAFETY STANDARDS

AN ACT to create and enact a new subsection to section 49-02-02 of the North Dakota Century Code, relating to commission cooperation with the federal government on pipeline safety regulation; to amend and reenact sections 49-02-01.2 and 49-07-05.1 of the North Dakota Century Code, relating to commission jurisdiction of pipeline safety and violations of pipeline safety standards; and to provide penalties.

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

SECTION 1. AMENDMENT. Section 49-02-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-01.2. ~~GAS DISTRIBUTION SYSTEMS~~ PIPELINE SAFETY - PUBLIC SERVICE COMMISSION JURISDICTION. ~~The commission shall have jurisdiction over the design, construction, and operation of all gas distribution facilities in the state of North Dakota~~ The commission, by rule, may establish and enforce minimum safety standards for the design, construction, and operation of gas distribution facilities and intrastate pipeline facilities used for the distribution and intrastate transportation of gas, liquified natural gas, or hazardous liquids, regardless of whether they are owned or operated by a public utility, in order to ensure the reasonable safety thereof. Any rule issued under this section affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such rule is adopted. Such rules shall not be more stringent than the corresponding federal regulations applicable to interstate pipelines and related facilities.

SECTION 2. A new subsection to section 49-02-02 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The commission shall have the authority to cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or

officer thereof, and to file such reports and promulgate rules as required by federal law or regulation for any purposes relating to the regulation of safety standards for pipeline facilities and the transportation associated with those pipeline facilities.

SECTION 3. AMENDMENT. Section 49-07-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-07-05.1. VIOLATIONS OF ~~GAS~~ PIPELINE SAFETY STANDARDS - PENALTIES. Any person who violates ~~any law or rule of the public service commission enacted pursuant to the Natural Gas Pipeline Safety Act [Pub. L. 90-481; 82 Stat. 720; 49 U.S.C. 1671 et seq.]~~ any rule or order issued by the commission pursuant to section 49-02-01.2, shall be subject to a civil penalty to be imposed by the commission of not to exceed one thousand dollars for each such violation for each day that such violation persists, except that the maximum penalty shall not exceed two hundred thousand dollars for any related series of violations. ~~However for a reasonable period of time, not to exceed one year after the date of enactment of this section, such civil penalties shall not be applicable to pipeline facilities existing on such date of enactment.~~ Any such civil penalty may be compromised by the commission. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the nature, circumstances, and gravity of the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, the ability to pay the penalty, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, and such other matters as justice may require, shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state of North Dakota to the person charged or may be recovered in a civil action in the district court of Burleigh County.

Approved March 11, 1981

CHAPTER 472

HOUSE BILL NO. 1176
(Committee on State and Federal Government)
(At the request of the Public Service Commission)

PUBLIC UTILITY VALUATION REVOLVING FUND

AN ACT to amend and reenact section 49-06-23 of the North Dakota Century Code, relating to payment of costs by public utilities into public utility valuation fund.

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

SECTION 1. AMENDMENT. Section 49-06-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-06-23. EXPENSES OF VALUATION OR REVALUATION PAID INTO ~~GENERAL~~ PUBLIC UTILITY VALUATION REVOLVING FUND. All costs and expenses of valuation or revaluation collected by the commission under the provisions of section 49-06-18, shall be paid into the ~~general~~ public utility valuation revolving fund of the state treasury. All moneys deposited to the public utility valuation revolving fund are hereby appropriated. The fund shall not be subject to the provisions of section 54-44.1-11.

Approved February 18, 1981

CHAPTER 473

SENATE BILL NO. 2227
(Senator Adams)
(Representative Whalen)

ABANDONED RAILWAY MATERIAL REMOVAL

AN ACT to create and enact a new section to chapter 49-09 of the North Dakota Century Code, relating to abandoned railway lines and the removal of abandoned materials.

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

SECTION 1. A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

ABANDONED RAILWAY LINES - REMOVAL OF ABANDONED MATERIALS. Unless otherwise allowed by the commission, any railroad corporation abandoning the use of any railway line in North Dakota shall remove and clear all rail, ties, materials, supplies, and debris from the railway line right of way within a reasonable time. The commission may take all action necessary and appropriate, including the adoption of rules pursuant to chapter 28-32, to enforce this section.

Approved March 18, 1981

CHAPTER 474

SENATE BILL NO. 2168
(Committee on Industry, Business, and Labor)
(At the request of the Public Service Commission)

INTRASTATE RAIL RATE REGULATION

AN ACT to amend and reenact section 49-10.1-01 of the North Dakota Century Code, relating to public service commission jurisdiction over the intrastate regulation of railroads.

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

SECTION 1. AMENDMENT. Section 49-10.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-10.1-01. AUTHORITY OF PUBLIC SERVICE COMMISSION. The commission to the extent hereinafter provided shall have authority and power to regulate railroads within this state to the extent railroad activities constitute intrastate commerce. The commission shall exercise its jurisdiction over intrastate rail rates consistent with federal law so as to obtain certification of such jurisdiction from the federal government. All provisions of the North Dakota Century Code inconsistent with federal requirements for certification of intrastate rail jurisdiction shall be deemed inapplicable to the regulation of intrastate rail rates. All references to railroads in the North Dakota Century Code are subject to this provision without any requirement that such references specifically mention this limited jurisdiction of the state of North Dakota.

Approved March 18, 1981

CHAPTER 475

SENATE BILL NO. 2173
(Committee on Industry, Business, and Labor)
(At the request of the Public Service Commission)

RAILROAD TRACK CLEARANCE REQUIREMENTS

AN ACT to amend and reenact section 49-10.1-13 of the North Dakota Century Code, relating to clearance requirements from railroad tracks.

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

SECTION 1. AMENDMENT. Section 49-10.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-10.1-13. CLEARANCE REQUIRED FOR TRACKS. No person unless authorized by the commission shall erect or maintain on any railroad track or railroad right of way any:

1. Fixed or permanent structure or obstruction at a distance of less than eight feet [2.44 meters] from a railroad track, measured from the center line of the track.

2. ~~Overhead--wires,--bridges~~ Bridges, viaducts, or any other obstructions passing over and above a railroad track at a height less than twenty-one feet [6.40 meters], measured from the top of the track rail. The commission, upon application and after a thorough investigation ~~and hearing in any particular case,~~ may permit any ~~railroad~~ person to which this section applies to erect or reconstruct and maintain any such ~~railroad~~ facility at a lesser clearance than herein provided for when in the judgment of the commission the compliance with the clearance prescribed herein would be unreasonable or unnecessary and when a lesser clearance than that hereinbefore provided for would not create a condition unduly hazardous to the employees of such railroad or any other person. Station freight house platforms which have a vertical height of not more than four feet [1.22 meters], measured from the top of the track rail, may be erected and maintained at a less distance from the center of the track which they adjoin than herein specified.

Approved March 11, 1981

CHAPTER 476

SENATE BILL NO. 2155
(Committee on Industry, Business, and Labor)
(At the request of the Public Service Commission)

RAILROAD CROSSINGS

AN ACT to create and enact a new section to chapter 49-11 of the North Dakota Century Code, relating to obstructing alternative railroad crossings; to amend and reenact sections 24-09-04, 49-11-01, 49-11-06, and 49-11-19 of the North Dakota Century Code, relating to temporary way and crossing during railroad alterations, construction and maintenance of railroad crossings, obstructing a railroad crossing, and advance warning signs; to repeal sections 49-11-13, 49-11-14, and 49-11-15 of the North Dakota Century Code, relating to safety determination of railroad grade crossings, notice to railroad of investigation of grade crossing, and the penalty for violation of an order; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 24-09-04 of the 1979 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, at ~~each~~ public grade ~~crossing~~ 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 ~~four~~ two years, in which to fully implement this requirement.

SECTION 2. A new section to chapter 49-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

BLOCKING OR OBSTRUCTING ALTERNATIVE CROSSINGS - PENALTY. Any person operating a train who shall block or obstruct a public railroad crossing and who has the alternative of blocking or obstructing a crossing with active grade crossing traffic control devices or a crossing without such device shall, where feasible, and subject to the exception set forth in section 49-11-19, leave open

the crossing with active grade crossing control devices. Any person who violates this section is guilty of an infraction.

SECTION 3. Section 49-11-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-01. ~~CHANGING---HIGHWAY~~ OBSTRUCTION OF CROSSING BY RAILROAD - PROVISION FOR TEMPORARY WAY. Every railroad corporation while engaged in raising or lowering any ~~public highway~~ railroad track or in making any other alterations, by means of which ~~such highway~~ a railroad crossing may be obstructed, shall provide and keep in good order a suitable temporary ~~highways~~ way and crossing with adequate protection to enable travelers to avoid or pass such ~~obstructions~~ obstruction.

SECTION 4. AMENDMENT. Section 49-11-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-06. RAILROAD CROSSINGS - CONSTRUCTION AND MAINTENANCE.

1. A public highway-railroad crossing at grade shall be constructed of a grade of earth on one or both sides of the railroad track, as the location may require, for the entire width of the highway grade but in no case less than twenty feet [6.10 meters] in width, the middle point of which shall be as nearly as practicable at the middle point of the highway and such grade shall be of such slope as shall be necessary for the safety and convenience of the traveling public.

2. Firmly fastened planks, concrete, asphalt, or other suitable material for highway construction shall be used on and for the full length of the ties used in the roadbed of such railway where such crossing occurs. The highway material next inside of the rail shall not be more than two and one-half inches [6.35 centimeters] from the inside surface of such rail. The highway material used in the crossing shall not be less than three inches [7.62 centimeters] in thickness, and shall be laid so that the upper surface of the highway material shall be on a level with the upper surface of the rail. ~~Such highway material shall extend along the railway the entire width of the highway grade and in no case less than twenty feet [6.10 meters].~~

3. At such time as tracks through a railroad crossing are raised or otherwise altered by the railroad, the railroad shall, unless otherwise ordered by the commission, adjust and restore the crossing and the highway approaches, surfaces and grades as shall be necessary for the safety and convenience of the traveling public. At such time as a public highway at a railroad crossing is altered by the road authority, the road authority at its expense shall adjust and restore the crossing and the highway

approaches, surfaces and grades as shall be necessary for the safety and convenience of the traveling public.

4. It shall be the duty of the railroad to maintain all railroad crossings in a safe and convenient condition for the traveling public. Such responsibility for maintenance shall be limited to that portion of the crossing lying between the tracks and for two feet [.61 meters] beyond the ends of the cross ties on each side of the crossing.

SECTION 5. AMENDMENT. Section 49-11-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-19. BLOCKING OR OBSTRUCTING CROSSING WITH TRAIN - PENALTY. ~~Any person in charge or in control of any railroad car, engine, or train of cars, who, for a period of more than fifteen consecutive minutes, shall obstruct or block any railroad crossing, rural highway, or city street, by placing or permitting any car, engine, or train of cars to stand or remain stationary thereon, is guilty of an infraction.~~

No person shall operate any train in such a manner as to prevent vehicular use of any roadway for a period of time in excess of ten consecutive minutes except:

1. When necessary to comply with safety signals affecting the safety of the movement of trains;

2. When necessary to avoid striking any object or person on the track;

3. When the train is disabled, by accident or otherwise;

4. When the train is in motion except when engaged in switching operations;

5. When there is no vehicular traffic waiting to use the crossing; or

6. When necessary to comply with a government statute or regulation.

Any person who violates this section is guilty of an infraction. The provisions of this section do not apply to cities which have ~~or may have~~ on the date of such obstruction ordinances covering the same subject matter.

SECTION 6. REPEAL. Sections 49-11-13, 49-11-14, and 49-11-15 of the North Dakota Century Code are hereby repealed.

Approved March 9, 1981

CHAPTER 477

SENATE BILL NO. 2204
(Erickson, Solberg)

REGIONAL RAILROAD AUTHORITIES

AN ACT to provide for the creation of regional railroad authorities and to empower these authorities to plan, acquire, and operate railroad lines.

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

SECTION 1. DEFINITION OF TERMS. As used in this Act, unless the context plainly otherwise requires:

1. "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by an authority pursuant to this Act.

2. "Governing body" means the official or officials authorized by law to exercise ordinance making or other lawmaking powers of a political subdivision.

3. "Political subdivision" or "subdivision" means any county, municipality, or other body politic of this state.

4. "Project" means any railroad or related facilities operated or owned by an authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of the railroad and useful in connection therewith, including facilities for the convenience of handling passengers and freight or as part of railroad operations.

5. "Railroad authority" or "authority" means an authority created pursuant to this Act.

6. "Real property" means lands, structures, and interests in land, including lands under water and riparian rights, and including any and all lesser interests, legal or equitable, pertaining to real property.

SECTION 2. CREATION OF AUTHORITY BY AGREEMENT OF SUBDIVISIONS. Two or more political subdivisions may form a regional railroad authority by execution of an agreement authorized by resolution of the governing body of each subdivision and approved by a sixty percent majority of the electors of the subdivisions voting on the question of adoption of the resolution.

SECTION 3. CONTENTS OF AGREEMENT CREATING AUTHORITY. The agreement authorized in section 2 shall state all of the following:

1. That the railroad authority is created and incorporated under the provisions of this Act as a political subdivision of this state.

2. The name of the authority which shall include the words "regional railroad authority".

3. The names of the subdivisions which have approved the agreement and are the initial members of the regional railroad authority.

4. The names and addresses of the persons initially appointed by the resolutions approving the agreement to act as the representatives or alternate representatives of the subdivisions.

5. The address of the registered office of the authority and the name of its registered agent at such office.

6. That the subdivisions which are members of the regional railroad authority and its commissioners, officers, and agents are not liable for its obligations.

7. Any other provision for regulating the business of the regional railroad authority which may be agreed upon by the subdivisions.

SECTION 4. FILING OF AGREEMENT AND RESOLUTIONS - CERTIFICATE OF INCORPORATION - BEGINNING OF CORPORATE EXISTENCE. The agreement and a certified copy of the resolution of each subdivision shall be filed with the secretary of state. If the agreement conforms to the requirements of this Act, the secretary of state shall file it and issue a certificate of incorporation, which shall state the name of the authority and the date of incorporation. The existence of the authority as a political subdivision of this state shall begin upon the issuance of the certificate of incorporation. The certificate of incorporation shall be conclusive evidence of the existence of the authority.

SECTION 5. HEARING BEFORE ADOPTION OF RESOLUTION - PUBLICATION OF NOTICE. No resolution authorized by section 2 or section 11 shall be adopted without a public hearing in each subdivision involved. Notice of such hearing shall be given at least ten days prior thereto in the official newspaper of the

subdivision, or if the subdivision has no official newspaper, then in a newspaper having general circulation in the subdivision.

SECTION 6. APPOINTMENT OF COMMISSIONERS OF AUTHORITY - TERMS OF OFFICE - VACANCIES. The governing bodies of the subdivisions participating in a regional railroad authority shall appoint not less than five persons as commissioners of the regional railroad authority. The number to be appointed and their representation shall be provided for in the agreement. All commissioners of a regional railroad authority shall be appointed for a term of one year. Vacancies shall be filled for the unexpired term in the same manner as the original appointments. Each commissioner shall hold office until his successor has been appointed and qualified.

SECTION 7. POWER VESTED IN COMMISSIONERS - RULES FOR OPERATION. The power of each regional authority is vested in the commissioners. Each authority may adopt and amend rules for its own operations subject to the agreement of the subdivisions establishing the authority and subject to the provisions of this Act.

SECTION 8. CHAIRMAN AND SECRETARY-TREASURER OF AUTHORITY. Each regional authority shall elect a chairman and a secretary-treasurer, from among the commissioners.

SECTION 9. EXECUTIVE DIRECTOR AND OTHER AGENTS - DELEGATION OF POWERS AND DUTIES. A regional authority may appoint or elect an executive director, and such other officers, agents, and employees as it may determine. An authority may delegate its powers and duties to one or more of its officers, agents, or employees.

SECTION 10. REIMBURSEMENT OF COMMISSIONERS' EXPENSES. A commissioner shall receive no compensation for his services but shall be reimbursed for the necessary expenses incurred in the discharge of his duties at the rates provided in sections 44-08-04 and 54-06-09.

SECTION 11. ADDITION OF SUBDIVISIONS TO AUTHORITY. A regional authority may be increased to serve one or more additional subdivisions upon the approval by resolution of each such additional subdivision and of each of the subdivisions then parties to the agreement, and upon approval of a sixty percent majority of the electors, of each of the subdivisions to be added, voting on the question of the adoption of the resolution.

SECTION 12. WITHDRAWAL OF SUBDIVISION FROM AUTHORITY - DISPOSITION OF ASSETS AND LIABILITIES. A member subdivision may withdraw from the authority if the commissioners of the authority consent to the withdrawal. In such event, the commissioners shall provide for the retention or disposition of its assets and liabilities. However, if the authority has any bonds outstanding no withdrawal shall be effected unless one hundred percent of the holders of the bonds consent in writing to the withdrawal.

SECTION 13. FILING OF RESOLUTION INCREASING OR DECREASING AUTHORITY - AMENDED CERTIFICATE OF INCORPORATION. If the number of subdivisions participating in a regional authority is increased or decreased pursuant to section 11 or section 12, it shall forward to the secretary of state a certified copy of each resolution adopted pursuant thereto. Upon receipt of the resolution or resolutions, the secretary of state shall issue an amended certificate of incorporation.

SECTION 14. POWERS OF POLITICAL SUBDIVISIONS IN AID OF REGIONAL AUTHORITY. Any subdivision participating in an authority may:

1. Lend or donate money to the authority.

2. Provide that all or a portion of the taxes or funds available to the subdivision for railroad purposes, be transferred or paid directly to the authority.

3. Cause water, sewer, or drainage facilities, or any other facilities which it is authorized to provide, to be furnished adjacent to or in connection with railroads or facilities.

4. Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority.

5. Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan, to the extent allowed by title 24, North Dakota Century Code, streets, roads, roadways, and walks from established streets or roads to such railroad facilities.

6. Aid and cooperate with the authority in the planning, undertaking, construction, or operation of railroad facilities.

7. Enter into agreements with the authority regarding action to be taken by the subdivision pursuant to the provisions of this section.

SECTION 15. CORPORATE POWERS OF AUTHORITY. A regional authority may:

1. Sue and be sued, have a seal, and have perpetual succession.

2. Execute such contracts, other instruments, and take such action as may be necessary to carry out the purposes of this Act.

Every authority may exercise such powers as are necessary or incidental to carry out the purposes of this Act.

SECTION 16. PLANNING, ACQUISITION, AND OPERATION OF RAILROADS AND FACILITIES - ACQUISITION OF PROPERTY. A regional authority may plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect its railroads, and railroad facilities used or useful in the operation of a railroad. For these purposes an authority may acquire by purchase, gift, devise, lease, or condemnation any real or personal property or any interest therein.

SECTION 17. USE OF PUBLIC WATERS BY AUTHORITY - BUILDINGS, ROADWAYS, AND BRIDGES. A regional authority may establish or acquire and maintain railroads over any public waters of this state and any submerged lands under such public waters. It may construct and maintain terminal buildings, causeways, roadways, and bridges for approaches to or connecting with any such railroads.

SECTION 18. POWER OF EMINENT DOMAIN - RESTRICTIONS ON ACQUISITION OF PUBLIC OR RAILROAD PROPERTY. An authority may acquire all real or personal property that it deems necessary for carrying out the purposes of this Act, whether in fee simple absolute or lesser interest, by condemnation and the exercise of the power of eminent domain in accordance with chapter 49-09. An authority shall have no power of eminent domain with respect to property owned by another authority or subdivision or public agency of this or any other state without the consent of such authority, subdivision, or public agency. The authority shall not condemn property owned or used by a railroad corporation unless the interstate commerce commission, or other authority with power to make the finding, has found that the public convenience and necessity permit discontinuance of the rail service on the property.

SECTION 19. PUBLIC PURPOSE AND NECESSITY FOR ACQUISITIONS. All land and other property and privileges acquired and used by or on behalf of any authority are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

SECTION 20. EXEMPTION FROM TAXATION OF PROPERTY AND INCOME OF AUTHORITY. Any property acquired by an authority and any income derived by the authority shall be exempt from taxation.

SECTION 21. ANNUAL CERTIFICATION OF TAX LEVY FOR AUTHORITY - LEVY OF TAX - COLLECTION. An authority may certify annually to the governing bodies the amount of tax to be levied by said governing bodies for railroad purposes. Each subdivision shall levy the amount certified, pursuant to provisions of law authorizing political subdivisions of this state to levy property taxes. The levy may not exceed the maximum levy permitted by section 23. Each subdivision shall collect the taxes certified by a railroad authority in the same manner as other taxes are levied and collected and shall pay the revenues to the railroad authority.

SECTION 22. ZONES OF BENEFIT - TAX LEVY APPLIED TO. The authority may, in connection with the certification of an annual tax

levy pursuant to section 21, designate various zones of benefit or geographical portions of the member subdivisions which, in the judgment of the authority, will be or have been benefited by projects. The authority may then certify that such annual levy be applied only to such benefited area.

SECTION 23. MAXIMUM TAX LEVY - COUNTY LEVY NOT APPLIED IN SUBDIVISION MAKING LEVY. In subdivisions which are parties to an agreement creating a regional railroad authority, a levy, in addition to all other levies authorized by law, not to exceed four mills on the taxable valuation of property in such subdivisions, may be made for such purposes. A county levy pursuant to section 21 shall not apply to any other subdivision within that county making a levy under section 21.

SECTION 24. DEPOSIT OF TAX PROCEEDS - EXPENDITURE. The proceeds of taxes for support of a railroad authority shall be deposited in such account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided in this Act.

SECTION 25. COVENANT TO LEVY TAXES UNTIL BONDS PAID. Prior to the issuance of bonds, the authority may by resolution covenant and agree that the total amount of such taxes authorized or any portion thereof will be certified, levied, and deposited annually as herein provided, until the bonds and interest thereon are fully paid.

SECTION 26. ACCEPTANCE AND EXPENDITURE OF FEDERAL AND OTHER GRANTS AND LOANS. An authority may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this Act.

SECTION 27. DESIGNATION OF HIGHWAY COMMISSIONER AS AGENT OF AUTHORITY - FUNDS HELD IN SEPARATE ACCOUNT - VOUCHERS AND WARRANTS. An authority may designate the highway commissioner as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both, to accomplish in whole or in part, any of the purposes of this Act. It may designate the highway commissioner as its agent to contract for and supervise the planning, acquisition, development, construction, improvement, maintenance, equipping, or operation of any railroad or railroad facility.

All funds received by the highway commissioner pursuant to this section shall be deposited in the state treasury. Unless otherwise prescribed by the agency from which such funds were received, the funds shall be kept in separate accounts according to the purposes for which the funds were made available. Such funds shall be held by the state in trust for such purposes, and paid on warrants drawn by the state auditor on vouchers approved by the highway commissioner.

SECTION 28. ISSUANCE OF BONDS AND NOTES - PURPOSES FOR WHICH PROCEEDS USED. An authority may from time to time issue its bonds or notes in such principal amounts as the authority shall deem necessary to carry out any of its corporate purposes and powers, including, but not limited to the funding or refunding of the principal of or interest or redemption premiums on, any bonds or notes issued by it whether or not the bonds or notes or interest to be funded or refunded have or have not become due, the establishment or increase of reserves to secure or to pay the bonds or notes or interest thereon, and the payment of or establishment of reserves for all other costs or expenses of the authority incident to and necessary to carry out its corporate purposes and powers.

SECTION 29. REVENUES AND FUNDS PLEDGED TO PAYMENT OF BONDS AND NOTES - NEGOTIABILITY. Every issue of bonds or notes of the authority shall be payable out of revenues or funds of the authority, subject only to agreements with the holders of particular bonds or notes pledging any particular revenues or funds. An authority may issue types of bonds or notes as it may determine, including those payable as to principal and interest solely from one or more revenue producing contracts made by the authority or from its revenues generally. Any bonds or notes may additionally be secured by a pledge of any grant, subsidy, or contribution from any public agency, or other person, or a pledge of revenue, income, or funds from any source whatsoever. All such bonds and notes shall be negotiable within the meaning of the Uniform Commercial Code, subject only to any registration requirement.

SECTION 30. RESOLUTIONS FOR BONDS OR NOTES - SECURITY AGREEMENT - TERMS AND CONDITIONS. Bonds or notes of the authority shall be authorized by resolution of the commissioners and may be issued under the resolution or under a trust indenture or other security agreement, in one or more series, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such conversion, exchange, and registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places within or outside the state, be subject to such terms of redemption with or without premium, and contain or be subject to such other terms as the resolution, trust indenture, or security agreement may provide, and shall not be restricted by any other law limiting amounts, maturities, interest rates, or other terms or obligations of public agencies or private persons.

SECTION 31. MORTGAGES AND DEEDS OF TRUST TO SECURE OBLIGATIONS - FILING. For the security of such bonds or notes the authority may execute and make mortgages or deeds of trust of the whole or any part of its property in the same manner and with the same effect as provided for railroads in section 49-09-08 which, together with any assignments or release thereof, shall be filed in the office of the secretary of state with the same force and effect as provided in section 49-09-14.

SECTION 32. BOND RECITAL CONCLUSIVE AS TO AUTHORITY AND PURPOSE. Any bond reciting that it has been issued by the authority pursuant to the provisions and for the purposes of this Act shall be conclusively deemed to have been issued pursuant to such provisions and for such purposes.

SECTION 33. CONTINUING VALIDITY OF SIGNATURES ON BONDS AND NOTES - TEMPORARY BONDS. Any bonds or notes may be issued and delivered notwithstanding that any of the commissioners or officers executing them shall have ceased to hold office at the time of actual delivery. Pending preparation of definitive bonds, an authority may issue temporary bonds which shall be exchanged for definitive bonds.

SECTION 34. SALE OF BONDS. Bonds issued shall be sold at public or private sale for a price and in a manner determined by the authority.

SECTION 35. BONDS EXEMPT FROM TAXATION. Bonds issued by an authority pursuant to the provisions of this Act, together with interest and income therefrom, shall be exempt from all taxes.

SECTION 36. PERSONS EXECUTING BONDS NOT PERSONALLY LIABLE. The commissioners of an authority or any person executing such bonds shall not be liable personally by reason of their issuance.

SECTION 37. ARRANGEMENTS FOR OPERATING AND PROVIDING RAILROAD SERVICE. The authority may enter into contracts, leases, and other arrangements for such term as the authority may determine with any persons:

1. Granting the privilege of using or improving the railroad or any portion or facility or space for commercial purposes.

2. Conferring the privilege of supplying goods, commodities, things, services, or facilities along the railroad.

3. Making available services to be furnished by the authority or its agents.

In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service.

SECTION 38. GRANT OF OPERATING PRIVILEGES AND USE OF RAILROAD AND FACILITIES. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by this Act, an authority may by contract, lease, or otherwise, for such consideration and term as it may determine, grant to any person the privilege of operating or using any railroad or railroad facilities or property, owned or controlled by the authority. No person may be

granted any authority to operate a railroad other than as a common carrier.

SECTION 39. PAYMENTS IN LIEU OF PROPERTY TAXES BY CONTRACTORS USING RAILROAD AND FACILITIES. All contracts, leases, or other arrangements entered into by an authority pursuant to sections 37 and 38 shall provide for payment of a sum equal to the amount of property taxes which would be due if the property were owned by the person contracting with the authority, to be prorated by the authority among the taxing districts involved, which payment shall be limited, however, so as not to exceed the net income earned by such person from the use of such property.

SECTION 40. DISPOSITION OF PROPERTY OF AUTHORITY. Except as may be limited by the terms and conditions of any grant, loan, or agreement, made or received by the authority, an authority may, by sale, lease, or otherwise, dispose of any of its property, or portion thereof or interest therein.

SECTION 41. CITATION OF ACT. This Act may be cited as the "Regional Railroad Authorities Act".

Approved April 8, 1981

CHAPTER 478

SENATE BILL NO. 2266
(Senator Erickson)
(Representative B. Larson)

INTERCORPORATE HAULING REGULATION

AN ACT to create and enact a new subsection to section 49-18-01 of the North Dakota Century Code, relating to the definition of corporate family and a new subsection to section 49-18-02 of the North Dakota Century Code, relating to inapplicability of provisions of law to intercorporate hauling.

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

SECTION 1. A new subsection to section 49-18-01 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Corporate family" means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly a one hundred percent interest.

SECTION 2. A new subsection to section 49-18-02 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To the transportation of property provided by a person who is a member of a corporate family for other members of such corporate family if:

a. The parent corporation notifies the commission of its intent or one of its subsidiaries' intent to provide the transportation;

b. The notice contains a list of participating subsidiaries and an affidavit that the parent corporation owns directly or indirectly a one hundred percent interest in each of the subsidiaries;

c. The commission has issued an order stating that it has received and approved such notice; and

d. A copy of the order is carried in the cab of all vehicles conducting the transportation.

Approved March 11, 1981

CHAPTER 479

HOUSE BILL NO. 1138
(Committee on Transportation)
(At the request of the Public Service Commission)

MOTOR CARRIER REGULATION

AN ACT to amend and reenact sections 49-18-02, 49-18-06, 49-18-07, 49-18-08, 49-18-09, 49-18-11, 49-18-13, 49-18-14, 49-18-15, 49-18-20, 49-18-21, 49-18-32, 49-18-33, 49-18-41, and 49-18-47 of the North Dakota Century Code, relating to exempt transportation, motor carrier public policy, commission supervision of common motor carriers, notice of opportunity for hearing, regulation of contract motor carriers by the commission, temporary authority for contract motor carriers, fees, and insurance; and to repeal sections 49-18-03, 49-18-04, and 49-18-10 of the North Dakota Century Code, relating to exempt transportation and commission supervision of common motor carriers.

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

SECTION 1. AMENDMENT. Section 49-18-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-02. INAPPLICABILITY OF PROVISIONS OF CHAPTER. The provisions of this chapter shall not apply:

1. To any person transporting his own property with his own vehicle when such person is the bona fide owner of the property so transported.

2. To an association of farmers owning or controlling a motor vehicle transporting for its farmer members agricultural commodities and farm supplies of all kinds~~, livestock and farm supplies~~ from the farms where such commodities and supplies are produced, grown or processed to the market or place where such commodities and supplies are sold, stored, or otherwise disposed of, and the transportation of such commodities and supplies from the market or place where the same are purchased or acquired to the farms where the same are to be used, consumed, or processed.

3. ~~To the transportation of property, except that compensated for in money, between the farms and the usual local trading places of the farmer for whom the transportation is performed, or between farms locally.~~ To the transportation of property as part of a continuous movement which, prior or subsequent to such part of the continuous movement, has been or will be transported by an air carrier.

4. To the transportation of property for hire to or from any city not being served at least two times a week by certified common carriers.

5. ~~To the transportation, for hire, of samples of agricultural crops moving to inspection laboratories for the purpose of establishing the official grade or other laboratory tests.~~ To the transportation of livestock and poultry feeds if transported to a site of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production.

6. To the transportation, for hire, of nonliquid fertilizers or unmanufactured agricultural commodities, including dairy commodities, poultry, and livestock.

7. To the transportation of school children, supervisory personnel, and teachers to or from school or school related activities which are sponsored or supervised by school authorities.

8. To the transportation of newspapers, newspaper supplements, periodicals, or magazines.

9. To the towing of abandoned, wrecked, or disabled motor vehicles or replacement vehicles for such abandoned, wrecked, or disabled motor vehicles.

10. To the transportation of water for domestic purposes.

11. To the transportation provided by ambulances.

12. To the transportation of pit run or processed sand and gravel, concrete mix, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, and material transported solely for the purpose of excavation or fill.

13. To the transportation of rubbish or garbage.

14. To the transportation of passengers in a motor vehicle which is used principally to provide prearranged transportation of persons to or from their place of employment, which vehicle is operated by a person who does

not drive the vehicle for his principal occupation but is driving it only to or from his principal place of employment or for personal use at other times.

15. To the transportation of the United States mails.

16. To the transportation of coal and lignite.

17. To the transportation of persons provided by a nonprofit organization if the transportation:

    a. Is used exclusively for the transportation of elderly, handicapped or economically disadvantaged persons; or

    b. Is not in competition with the scheduled regular route service of a carrier of persons that is subject to the provisions of this chapter.

18. To the transportation of commodities of unusual value including but not limited to the transportation of gold, silver, currency, valuable securities, and jewels, when such transportation is:

    a. Provided in specially constructed armored trucks; or

    b. Accompanied by guards or police protection to safeguard the commodity while it is being transported and delivered.

19. To transportation provided:

    a. Wholly within a city in this state; or

    b. Such distance beyond the corporate limits of a city as the public service commission may determine.

SECTION 2. AMENDMENT. Section 49-18-06 of 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~~,--and-agricultural-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. ~~Carefully to preserve, foster, and regulate transportation and to permit coordination of transportation facilities, and to enforce the provisions of this chapter.~~ To encourage sound economic conditions of efficient and well-managed carriers.

4. To promote safe, adequate, economical and efficient transportation.

5. To encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices.

6. To encourage the most productive use of equipment and energy resources.

7. To encourage the establishment and maintenance of a sound, safe, and competitive privately-owned motor carrier transportation system.

SECTION 3. AMENDMENT. Section 49-18-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-07. CARRIERS MUST OPERATE IN ACCORDANCE WITH LAW AND RULES. It shall be unlawful for any common ~~motor carrier,~~ or contract motor carrier, ~~or agricultural carrier~~ to transport persons or property for hire unless:

1. ~~He~~ The carrier shall have obtained the certificate or permit required by this chapter; and

2. ~~He~~ The carrier shall comply with the provisions of this chapter and with any applicable rules, regulations, or restrictions adopted by the commission.

SECTION 4. AMENDMENT. Section 49-18-08 of 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 by such carrier;

4. Prevent unfair competition ~~between common motor carriers and between them and the lines of competing railroads~~ and unjust discrimination or preferences between common motor carriers;

5. ~~Prevent unjust discrimination or preferences between common motor carriers and between them and competing railroads, and may require the coordination of motor service and schedules of such carriers with rail service;~~

~~6.~~ Require the filing of annual and other reports, tariffs, schedules, and other data by such common motor carriers;

~~7.~~ 6. Supervise and regulate such common motor carriers in all matters affecting the relation between such carriers and the public to the end that the provisions of this chapter may be fully and completely carried out; and

~~8.~~ 7. Have power and authority, by general order or otherwise, to prescribe 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 5. AMENDMENT. Section 49-18-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-09. ~~CLASS A~~ COMMON MOTOR CARRIERS - TRANSPORTATION OF COMMODITIES. ~~Class A common motor carriers shall transport, within their authority, commodities in any quantity or quantities offered them for shipment.~~ Common motor carriers may, by tariff publication subject to commission approval, specify the quantity or quantities of commodities they shall be obliged to transport.

SECTION 6. AMENDMENT. Section 49-18-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-11. ~~RATES MUST BE UNIFORM FOR ALL CLASSES OF CARRIERS. The rates and tariffs prescribed by the commission shall be uniform for similar service for all classes of carriers affected by this chapter. The use of a tariff bureau to promulgate and file a proposed tariff will create no presumption that the carrier using the bureau is violating section 146 of the Constitution of North Dakota.~~ UNIFORM RATES PERMISSIBLE FOR SIMILAR SERVICE. The commission may approve or prescribe uniform rates and tariffs for similar service provided in a similar manner under similar conditions.

SECTION 7. AMENDMENT. Section 49-18-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-13. ~~HEARING ON APPLICATION~~-- NOTICE OF OPPORTUNITY FOR HEARING ON APPLICATION. Upon the filing of an application for a certificate of public convenience and necessity, the commission ~~shall fix a time for hearing thereon which shall be not less than twenty days after such filing. The commission~~ shall cause notice of ~~such~~ opportunity for hearing to be served by registered or certified mail, ~~at least ten days before the day of hearing,~~ upon every railroad corporation or other 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.

SECTION 8. AMENDMENT. Section 49-18-14 of the 1979 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. ~~Existing travel upon the route of the carrier~~ The need for service proposed by the applicant;

2. The increased cost of maintaining the highway concerned; ~~and~~

3. The effect on other existing transportation facilities ~~adequately serving the territory for which a certificate is sought.~~;

4. The fitness and ability of applicant to provide service;

5. Adequacy of proposed service; and

6. Such other information as the commission may deem appropriate.

~~In case it appears from the evidence that the service furnished or that could be furnished by existing transportation facilities is reasonably adequate, the commission shall not grant such certificate.~~ 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 9. AMENDMENT. Section 49-18-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-15. TESTIMONY - ISSUANCE OF CERTIFICATE - CONDITIONS. Any common carrier or other party upon whom notice of opportunity for hearing shall be served ~~shall be deemed an interested party to the proceedings and~~ 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 ~~at the hearing~~

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.

SECTION 10. AMENDMENT. Section 49-18-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-20. CONTRACT MOTOR CARRIERS - PERMIT - APPLICATION. The commission shall prescribe a form of application for a permit to operate as a contract motor carrier for the use of prospective applicants and shall make regulations for the filing thereof. Application for such permit shall be made in writing, stating the ownership, financial condition, equipment to be used, and physical property of the applicant, and shall contain a copy of the contract agreement and such other information as the commission may require. However, upon receipt of such an application and when there is an immediate and urgent need the commission shall have authority to grant a temporary permit for service by a contract carrier. Such temporary permit shall be granted without a hearing and, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify but for not more than an aggregate of one hundred and eighty days.

SECTION 11. AMENDMENT. Section 49-18-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-21. CONTRACT MOTOR CARRIERS - NOTICE OF OPPORTUNITY FOR HEARING FOR PERMIT. ~~The commission, upon~~ Upon the filing of an application for a permit, ~~as provided by section 49-18-20, may fix a time for hearing thereon, which shall be not less than ten days after such filing. The~~ the commission shall cause notice of ~~such~~ opportunity for hearing to be served by registered or certified mail ~~at least five days before the hearing~~ upon every railroad corporation or other common carrier which is operating or which has applied for a certificate ~~or permit~~ to operate in the territory proposed to be served by the applicant and on other interested parties as determined by the commission. Any such common carrier, and any other interested person, may request an oral evidentiary hearing and may offer testimony for or against the granting of such permit, ~~provided, however, that no testimony against the granting of such application shall be considered unless such party files a protest with the commission and the applicant within twenty days of~~

~~receipt--of--notice--of--the-scope-of-the-application-indicating-the grounds-for-the-protest~~. 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 permit at such hearing.

SECTION 12. AMENDMENT. Section 49-18-32 of 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 dollars nor more than one 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 ---	~~$10.00~~	$50.00
2. Application for the mortgaging of a certificate of public convenience and necessity ----------	~~5.00~~	10.00
3. Application for the issuance of a duplicate certificate of public convenience and necessity ----------	~~3.00~~	5.00
4. Copy of all records of the commission pertaining to auto transportation companies, per one hundred words or portion thereof ----------	~~.15~~	.50

SECTION 13. AMENDMENT. Section 49-18-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-33. INSURANCE OR BOND REQUIRED OF COMMON~~,~~ ~~AGRICULTURAL~~ OR CONTRACT CARRIER - LIABILITY OF INSURER AND SURETY - TRIAL. The commission in granting a certificate or permit to any common motor carrier ~~and in granting a permit to any agricultural~~ or contract carrier shall require the owner or operator first to procure either liability and property damage insurance or a surety bond to be approved by the commission as to the form, sufficiency, and surety thereof and written by a company authorized to write such insurance in this state in an amount to be designated by the commission. The conditions of such liability insurance or surety bond shall be such as to guaranty the payment of any loss or damage to property, or on account of the death of or injury to persons, resulting from the

negligence of such carrier. In any action for damages resulting from the negligence of such carrier, the insurer or surety shall not be joined as a party defendant nor shall the fact of the ultimate liability of such insurer or surety be disclosed or commented on to the jury. Upon final judgment the insurer or surety shall become liable directly to the owner of such judgment for the full amount thereof but not exceeding the amount of the policy of insurance or surety bond applicable to such loss. Each insurance policy or bond so required shall be filed with the commission and shall be kept in full force and effect, and upon the failure to do so the certificate or permit shall be revoked and canceled; provided that, a certificate of any company authorized to write liability or property damage insurance in the state, in a form approved by the commission and certifying that there is in effect a liability insurance policy required by this section, may be filed in lieu of the policy itself. The commission also shall require the owner or operator first to procure a surety bond, written by a company authorized to write such bond in this state, in an amount to be designated by the commission, to guaranty the payment by the carrier to the shipper or its agent, of all cash or collect on delivery charges collected by said carrier in connection with the operation or conduct of his business as such common motor carrier or contract carrier.

SECTION 14. AMENDMENT. Section 49-18-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-41. IDENTIFICATION TAG TO BE SECURED BY MOTOR CARRIER. Every motor carrier who under the statutes of this state must register with or secure a permit or certificate of public convenience and necessity from the commission, except a common carrier of passengers ~~who pays the motorbus seat tax provided for under the provisions of chapter 39-04~~, at the time of securing such certificate or permit, and annually thereafter on or before April fifteenth of each calendar year, shall secure from the commission an identification tag for each motor vehicle operated within this state, which shall be in the form, color combination, lettering, and numbering prescribed by the commission. The identification tag for each type of carrier licensed by the commission shall be identified in a manner different from that of each other type of carrier. The commission shall collect a fee of ~~fifteen~~ twenty dollars for each identification tag. No motor carrier shall operate in this state without having an identification tag attached to each vehicle owned and operated by such carrier. The identification plate shall be secured from the registrar of motor vehicles upon request from the commission.

SECTION 15. AMENDMENT. Section 49-18-47 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-47. SPECIAL COMMON MOTOR CARRIERS OF BUILDINGS SHALL BE EXEMPT FROM CERTAIN REQUIREMENTS. Special common motor carriers of buildings shall be exempt from the requirements of common motor carriers to file tariffs, and annual reports, ~~and proof of cargo insurance,~~ but for all other purposes shall be treated as common motor carriers.

SECTION 16. REPEAL. Sections 49-18-03, 49-18-04, and 49-18-10 of the North Dakota Century Code are hereby repealed.

Approved March 11, 1981

CHAPTER 480

HOUSE BILL NO. 1154
(Committee on Transportation)
(At the request of the Public Service Commission)

CONTRACT MOTOR CARRIERS

AN ACT to amend and reenact sections 49-18-19 and 49-18-25 of the North Dakota Century Code, relating to regulation of contract motor carriers; and to provide an expiration date.

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

SECTION 1. AMENDMENT. Section 49-18-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-19. REGULATION OF CONTRACT MOTOR CARRIERS BY COMMISSION ~~--MINIMUM-RATES~~. The commission shall:

1. Supervise and regulate every contract motor carrier of property or passengers for the purpose of promoting safety upon the highways and the conservation of their use.

2. Supervise and regulate the accounts and methods of operation of the same.

3. Prescribe such rules and regulations as it may deem necessary in carrying out the provisions of this chapter.

4. Supervise and regulate all contract motor carriers of property or passengers in all matters affecting the relationship between such motor carriers and the traveling and shipping public.

5. ~~Prescribe-rules-and-regulations-covering-the-operations-of contract--motor--carriers--in--competition---with---common carriers--of--this--state.~~ Supervise and regulate any contract, including but not limited to supervision and regulation of provisions related to rates and service, entered into by a contract motor carrier of property or passengers so as to prevent unfair or unjust competition, discrimination, or preference between any contract motor carrier and any common motor carrier and between the

patrons of any contract motor carrier and the patrons of any common motor carrier.

~~6.--Prescribe---minimum---rates,--fares,--and--charges--to--be collected-by-such-contract-motor-carriers,-which-shall-not be--less-than-the-rates-prescribed-for-common-carriers-for substantially-the-same-service.~~

SECTION 2. AMENDMENT. Section 49-18-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-25. ~~UNREASONABLE--PREFERENCE-BY-CONTRACT-MOTOR-CARRIER PROHIBITED.--No-contract-motor-carrier-shall:~~

~~1.--Give--or--cause--any--undue--or--unreasonable-advantage-or preference-to-those-whom-he-serves-as--compared--with--the patrons--of-any-common-motor-carrier,-as-that-term-is-used in-this-chapter,--or--the--patrons--of--any--other--common carrier.~~

~~2.--Subject--the--patrons--of--any-such-common-carriers-to-any undue-or-unreasonable-discrimination-or-disadvantage.~~

~~3.--By--unfair--competition,--destroy-or-impair-the-service-or business-of-any-common--motor--carrier--or--of--any--other common-carrier,-or-the-integrity-of-the-state's-regulation of-any-such-service-or-business.~~

~~The-commission-may-enforce-these-requirements.~~ CONTRACT CARRIERS TO FILE WITH THE COMMISSION. Each ~~such~~ contract ~~motor~~ carrier shall maintain on file with the commission a statement of his charges and of such other matters as the commission may require.

SECTION 3. EXPIRATION DATE. The provisions of this Act shall be effective from July 1, 1981, through June 30, 1983, and shall thereafter be ineffective.

Approved April 6, 1981

CHAPTER 481

HOUSE BILL NO. 1634
(Thompson, R. Anderson, Jacobson, Mattson, Murphy)

SITE OR CORRIDOR DESIGNATION

AN ACT to amend and reenact subsection 5 of section 49-22-08 and subsection 1 of section 49-22-13 of the North Dakota Century Code, relating to public service commission designation of a site or corridor for an energy conversion or transmission facility and to public hearings on site, route, or corridor proposals.

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

SECTION 1. AMENDMENT. Subsection 5 of section 49-22-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The commission ~~shall~~ may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. ~~This~~ Any designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application for a certificate of site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility. The time for designation of a site or corridor may be extended by the commission for just cause. The failure of the commission to act within the time limits provided in this section shall not operate to divest the commission of jurisdiction in any certification proceeding. The commission shall indicate the reasons for any refusal of designation. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with such terms, conditions, or modifications deemed necessary.

SECTION 2. AMENDMENT. Subsection 1 of section 49-22-13 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The commission shall hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit. At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the criteria developed pursuant to section 49-22-05.1, and the factors to be considered pursuant to section 49-22-09. Where more than one county is involved the commission may hold a consolidated hearing in one or more of the affected counties. A hearing for any county shall not be consolidated if five or more affected landowners in such county file a petition with the commission within ten days of the publication of the notice of hearing.

Approved March 20, 1981

CHAPTER 482

HOUSE BILL NO. 1612
(E. Pomeroy, Horgan)

ENERGY FACILITY PUBLIC HEARING NOTICE

AN ACT to amend and reenact subsection 4 of section 49-22-13 of the North Dakota Century Code, relating to notice of public hearings on construction of energy conversion facilities and transmission facilities.

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

SECTION 1. AMENDMENT. Subsection 4 of section 49-22-13 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Notice of a public hearing shall be given by the commission by service on such persons and agencies that the commission may deem appropriate and twice by publication, once at least twenty days prior to such hearing and a second time within twenty days prior to such hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer, or a waiver shall be given at the expense of the applicant. In an emergency the commission, in its discretion, may notice a hearing upon less than twenty days.

Approved March 11, 1981

PUBLIC WELFARE

CHAPTER 483

HOUSE BILL NO. 1298
(Representatives A. Olson, Haugland, Olafson)
(Senator Vosper)

COUNTY SOCIAL SERVICE BOARD MEMBERSHIP

AN ACT to amend and reenact section 50-01-07 of the North Dakota Century Code, relating to the appointment of county social service board members.

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

SECTION 1. AMENDMENT. Section 50-01-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-01-07. COUNTY SOCIAL SERVICE BOARD - MEMBERS - QUALIFICATIONS. The board of county commissioners of each county in this state shall ~~provide for the establishment of~~ establish a county social service board. ~~Such county social service board shall consist~~ consisting of five, seven, or nine members of which ~~not less than one nor more than two~~ one or more shall be county commissioners ~~designated by the board of county commissioners. The board of county commissioners shall designate two or more qualified individuals to fill each vacancy in the remaining membership of the county social service board and shall submit the name and qualifications of such individuals to the social service board of North Dakota. One of the individuals so designated to fill each vacancy in the remaining membership shall be appointed by the board of county commissioners with the advice and consent of the social service board of North Dakota~~. The members of the county social service board shall be appointed by the board of county commissioners and shall be chosen without regard to political affiliation and upon the basis of their fitness to serve ~~in said capacity~~ as members by reason of character, experience, and training. Each of the sexes shall be represented on the board.

Approved March 3, 1981

CHAPTER 484

SENATE BILL NO. 2152
(Committee on Social Services and Veterans Affairs)
(At the request of the Social Service Board)

ENERGY ASSISTANCE PROGRAM ADMINISTRATION

AN ACT to create and enact a new subsection to section 50-01-09 and a new subsection to section 50-06-05.1 of the North Dakota Century Code, relating to the powers and duties of county social service boards and the social service board of North Dakota.

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

SECTION 1. A new subsection to section 50-01-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

Subject to subsection 20 of section 50-06-05.1, to administer the energy assistance program in the county under the direction and supervision of the social service board of North Dakota and to enter into an agreement for such purpose with the social service board of North Dakota.

SECTION 2. A new subsection to section 50-06-05.1 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

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 promulgate such rules and regulations, subject to review in the courts of this state, as may be necessary or desirable to carry out the provisions of this subsection. Provided, however, that the board with the consent of the legislative committee on budget 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.

Approved April 8, 1981

CHAPTER 485

HOUSE BILL NO. 1158
(Freborg)

COMMUNITY WORK EXPERIENCE PROGRAMS

AN ACT to create and enact five new sections to chapter 50-01 of the North Dakota Century Code, relating to work requirements for poor relief recipients, establishment of community work experience programs, and termination of benefits; and to repeal section 50-01-18 of the North Dakota Century Code, relating to work requirements for poor relief recipients.

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

SECTION 1. A new section to chapter 50-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

If a person applying for poor relief is in good health, the county social service board may, at its option, require the applicant to comply with any or all of the following provisions as a condition to receiving public assistance:

1. To register with job service North Dakota.

2. To participate in work incentive programs in accordance with the guidelines established for aid to families with dependent children.

3. To accept work which is available through community work experience programs.

SECTION 2. A new section to chapter 50-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

The county social service board may develop community work experience programs through agreements with any public entity, nonprofit agency or organization, or in conjunction with, or through utilization of, applicable federal programs. The number of hours to be worked may be determined by dividing the amount of the assistance payment by the prevailing minimum wage.

SECTION 3. A new section to chapter 50-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any community work experience program established pursuant to this chapter shall provide:

1. That appropriate health, safety, and work conditions exist.

2. That the program does not result in displacement of persons currently employed.

3. That the program does not apply to jobs covered by a collective bargaining agreement.

4. That recipients will not be required to travel an unreasonable distance from their homes or to remain away from their homes overnight.

5. That the county social service board shall provide for transportation and all other costs reasonably necessary for and directly related to a recipient's participation in the program.

SECTION 4. A new section to chapter 50-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

No recipient shall be required to participate in a work experience program if:

1. The position offered is vacant because of a strike, lockout, or other labor dispute.

2. The recipient would be required to join a company union or to resign from or refrain from joining any legitimate labor organization.

3. Participation would impose a hardship on the recipient or the recipient's family because of illness, physical or mental disability, or remoteness of the recipient's residence from the place of employment.

SECTION 5. A new section to chapter 50-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Refusal of any applicant or recipient, without good cause, to comply with any work requirements established pursuant to this chapter may be grounds for denial or termination of poor relief.

SECTION 6. REPEAL. Section 50-01-18 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 11, 1981

CHAPTER 486

HOUSE BILL NO. 1418
(Representative Strinden)
(Senator Nething)

DEPARTMENT OF HUMAN SERVICES

AN ACT to create a department of human services; to amend and reenact sections 25-01-01.1, 25-02-04, 25-02-09, 25-10-01, 25-10-04, 25-12-02, 27-21-01, subsection 5 of section 39-08-01, section 50-01.1-01, subsection 1 of section 50-01.1-04, sections 50-06-01, 50-06-01.1, 50-06-05.1, 50-06-06.2, 50-06.1-01, subsection 1 of section 50-09-01, sections 50-10-01, 50-24.1-03, 50-26-01, 50-26-04, subsection 1 of section 54-07-01.2, sections 54-38-01, 54-38-05, 54-40-09, 54-42-06, and 54-44.3-19 of the North Dakota Century Code, relating to the developmental disabilities council, the superintendent of the state hospital, care of patients at the state hospital, the mental health and retardation division of the state health department, local mill levy for support of mental health and retardation service units, the state youth authority, penalty for driving under the influence of intoxicating liquors or controlled substances, definitions of state and county social service boards, the creation of multicounty welfare districts, powers and duties of the social service board, use of federal funds for clinic services, the division of vocational rehabilitation, definition of state agency for administration of aid to dependent children, definition of state agency for aid to crippled children, county share of medical assistance, the governor's council on human resources, governor's power to appoint majority of certain board members, the division on alcoholism and drug abuse, human service centers, agencies subject to the merit system, and authority of merit system board to provide service to cities and political subdivisions; to repeal sections 1-01-48, 25-10-05, 25-12-01, 25-12-02, 25-12-03, 25-12-04, 25-12-05, 50-06-02, 50-06-03, 50-06-03.1, 50-06-04, 50-06-07, 50-06-08, 50-06-09, 50-06-10, 50-06-13, 54-40-10, and 54-40-11 of the North Dakota Century Code, relating to the division of child welfare, mental health and retardation service units, members of the social service board, the executive director of the social service board, report of the social service board to the governor, certification for human service centers, and collocation of human service centers with county social service boards;

authorizing the legislative council to make some statutory revisions; to provide an appropriation; to provide effective dates; and to provide for the appointment of initial human service council members.

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

SECTION 1. DEPARTMENT OF HUMAN SERVICES - CREATION. The North Dakota department of human services is hereby created to assume the functions, powers, and duties of the following governmental agencies:

1. The social service board of North Dakota, including all of the statutory authority and responsibilities set out in chapters 27-21, 50-06, 50-06.1, 50-09, 50-10, 50-11, 50-11.1, 50-12, 50-18, 50-19, 50-20, 50-21, 50-24.1, and 50-25.1.

2. The governor's council on human resources as established by chapter 50-26.

3. The mental health and retardation division of the department of health as established by chapter 25-10, including the state hospital and any other institutions under the jurisdiction of the mental health and retardation division.

4. The division of alcoholism and drug abuse of the department of health as established by chapter 54-38.

5. The state council on developmental disabilities as established by section 25-01-01.1.

SECTION 2. EXECUTIVE DIRECTOR - APPOINTMENT - COMPENSATION. The executive director of the department of human services shall be appointed by, and 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 3. STRUCTURE OF THE DEPARTMENT. The department of human services shall include the state hospital, an office of human services, an office of economic assistance and county administration, administrative and fiscal support services as the executive director deems 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. Social services division, including an aging services unit and a children and family services unit.

d. Vocational rehabilitation division, including regional vocational rehabilitation offices collocated with regional human service centers.

e. Alcoholism and drug abuse division.

2. The office of economic assistance and county administration shall include the following divisions:

a. Public assistance division, including a food stamp unit, a housing assistance unit, an assistance payments unit, an energy assistance unit, and a child support unit.

b. Medical assistance 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 of human services 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 4. 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 dated September 18, 1969. 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 state department of human services. 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 5. DIRECTOR OF REGIONAL CENTER - MEDICAL DIRECTOR. Each regional human service center shall be headed by a regional director appointed by the executive director of the department of human services in consultation with the regional human service council. The regional director shall be accountable to the executive director. Each regional director shall have the authority to employ the staff necessary to discharge the center's responsibilities. The regional director shall also have authority, subject to the approval of the executive director of the department and within the limit of legislative appropriations, to make contractual arrangements with public or private agencies or with individuals and organizations to discharge the regional human service center's service delivery responsibilities. The staff of each regional human service center shall include a qualified medical professional who shall be designated as the medical director of the center. The medical director shall be primarily responsible for coordinating mental health and medically related services. The medical director's position may be part time or full time as determined appropriate by the regional director, with the concurrence of the executive director. At the discretion of the executive director, the regional director of a center, if qualified therefor, could also be appointed medical director of that center. As used in this section, "qualified medical professional" means an individual possessing a degree of doctor of psychiatry, when such an individual can be employed, and when this is not possible, an individual possessing at least a medical degree.

SECTION 6. OFFICE AND OFFICE EQUIPMENT. The department of human services shall be provided with suitable offices in the state capitol. The department may purchase through the department of accounts and purchases, out of the funds appropriated, any furniture, office and filing equipment, office supplies, stationery, and postage necessary for the efficient conduct of department business.

SECTION 7. BIENNIAL REPORT TO GOVERNOR AND DEPARTMENT OF ACCOUNTS AND PURCHASES. The department of human services shall submit to the governor and the department of accounts and purchases a biennial report as prescribed by section 54-06-04.

SECTION 8. AUTHORITY TO ADOPT RULES. The department of human services may adopt rules necessary to carry out its responsibilities under this Act. All rules adopted shall be published in the North Dakota Administrative Code. Rules adopted by agencies prior to the effective date of this Act which relate to functions or agencies covered by this Act shall remain in effect until such time as they are specifically amended or repealed by the department.

SECTION 9. AMENDMENT. Section 25-01-01.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01-01.1. STATE COUNCIL ON DEVELOPMENTAL DISABILITIES. There is hereby created and shall be maintained in the state department of ~~health~~ human services a state council on developmental disabilities consisting of one representative of each of the following departments, divisions, institutions, and organizations designated by the head of such agency or organization:

1. Office of superintendent of public instruction.
2. ~~Social--service--board--of~~ North Dakota department of human services.
3. State department of health.
4. Grafton state school.
5. Job service North Dakota.
6. Director of institutions.
7. ~~Community--mental-health-and-retardation-and-human-service center.~~

The council shall have consumer representation in conformity with federal regulations regarding developmental disabilities. All members of the council shall be appointed by the governor from the list of designees provided by agency heads pursuant to this section. The council shall select its own officers who shall serve for a term of two years commencing on October first of each year. Meetings shall be held at least twice a year or at the call of the chairman or upon notice in writing signed by not less than three members of the council. A simple majority of the council shall constitute a quorum and shall have authority to act upon any matter coming before the council. Members of the council shall be reimbursed in the same manner and at the same rate provided by law for other state officials.

The council shall assist in the development of the state plan for developmental disabilities, monitor and evaluate the implementation of such state plan, review and comment on all state plans in the state which relate to programs affecting persons with developmental disabilities, provide protection and advocacy to developmentally disabled individuals when requested by a state department, division, institution, or organization, and establish a committee on professional standards and certification that will develop rules and regulations for the certification of developmental disability professionals. The council shall also perform studies and surveys of the needs of ~~the~~ developmentally disabled persons in North Dakota, and shall facilitate coordination of the activities of all state departments, divisions, agencies, and institutions having responsibilities in the field of developmental disabilities.

SECTION 10. AMENDMENT. Section 25-02-04 of 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 certified psychiatrist. ~~He~~ The superintendent shall appoint with the approval of the ~~state mental health and retardation division~~ executive director of the department of human services an assistant superintendent of administration who shall be under his 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. The assistant superintendent shall employ such other personnel as may be necessary and shall define their qualifications and duties.

SECTION 11. AMENDMENT. Section 25-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-02-09. CARE OF PATIENTS TO BE IMPARTIAL ~~--EXCEPTIONS~~. All patients at the state hospital shall be provided with equal care and treatment in accordance with the different degrees or conditions of mental and physical health. ~~However, if relatives or friends of any patient shall request it and pay the expenses thereof, such patient may receive special care and be provided with a special attendant in such manner as may be agreed upon by the superintendent. In all such cases, the charges for special care and attendants shall be paid quarterly in advance. The relatives or friends of any patient in the hospital shall have the privilege of paying any portion or all of the expenses of such patient and the superintendent shall cause the account of such patient to be credited with any sums so paid. The superintendent shall account to the state mental health and retardation division for all money or property which shall come into his hands for the purpose of furnishing extra care or treatment to any patient at the state hospital.~~

SECTION 12. AMENDMENT. Section 25-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-10-01. ~~STATE~~ MENTAL HEALTH ~~AND--RETARDATION~~ DIVISION. There is hereby established within the ~~state~~ department of ~~health~~ human services a division to be known as the ~~state~~ mental health ~~and retardation~~ division, ~~such division to be under the direction and supervision of a certified psychiatrist who shall be appointed by the state health officer with the approval of the state health council,~~ to 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 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~~,--mental retardation,~~ and other psychiatric conditions, particularly those who have received prior treatment in an inpatient facility.

The above services shall be undertaken by the ~~state~~ department of ~~health~~ human services to the extent funds are available to the department for the performance of these functions.

SECTION 13. AMENDMENT. Section 25-10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-10-04. TRANSFER OF INSTITUTIONS UNDER THE DIRECTOR OF INSTITUTIONS. The administration and control of the state hospital at Jamestown is hereby transferred from the director of institutions to ~~the--mental--health--and--retardation--division--of~~ the ~~state~~ department of ~~health~~ human services.

SECTION 14. AMENDMENT. Section 25-12-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-12-02. LOCAL SUPPORT - LICENSING.

1. A ~~mental--health--and-retardation-service-unit-comprising only-one-political-subdivision-may-receive-aid--from--such political--subdivision--to--the--extent-that-its-governing body--agrees--to--participate.---If--a--mental--health--or retardation--service-unit-comprises~~ regional human service center comprising more than one political subdivision~~,-the unit-shall~~ may receive aid from the political subdivisions in proportion to the assessed valuation of each political subdivision or in such other manner as their governing bodies shall agree.

2. The governing body of any such political subdivisions for the purpose of ~~operating,-maintaining,-or~~ participating in the operation and maintenance of ~~mental--health--and retardation-service-units-or-providing--such--services--by contract--in-accordance-with-this-chapter~~ a regional human service center, may by resolution of the governing body thereof submit the question of the authorization of a tax upon all taxable property in the political subdivision of not to exceed three-quarters of one mill to the electorate of the political subdivision at any special or regular election. If such levy shall be approved by the majority

of the electors voting thereon, a tax not in excess of that authorized may be levied by the governing body of the political subdivision for the purpose of providing ~~services~~ financial assistance as authorized in this ~~chapter~~ section. Such levy, when authorized, shall be over and above any mill levy limitation provided by law, provided, however, there shall not be more than one election per year on the mill levy.

~~3.--The--mental--health--and-retardation-division-of-the-state department-of--health--is--hereby--authorized--to--license mental--health--and--retardation-service-units-established pursuant-to-this-chapter.--The-division--shall--promulgate standards,-rules,-and-regulations-for-the-operation-of-the mental--health---and---retardation---facilities---licensed hereunder--in--accordance--with--chapter-28-32-and-may,-in accordance-with-chapter-28-32,-suspend-the-license-of--any facility--which--does--not--remain--in-compliance-with-the standards,-rules,--and--regulations--so--promulgated.---No mental--health--and--retardation--service-unit-may-operate after-July-1,-1975,-without-a-license-issued-hereunder.~~

SECTION 15. AMENDMENT. Section 27-21-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-01. CREATION OF STATE YOUTH AUTHORITY - DIRECTOR. A state youth authority is hereby created and established with ~~such~~ the powers and duties ~~as are~~ prescribed by this chapter. The state youth authority shall be created within the ~~social--service--board~~ department of human services, and its chief administrative officer shall be the executive director of the ~~social--service--board~~ department of human services, or his designee.

SECTION 16. AMENDMENT. Subsection 5 of section 39-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The court may, upon a conviction of a person under this section, but prior to sentencing, refer ~~him~~ the person to an addiction facility licensed by the North Dakota state department of health for diagnosis. Upon receipt of the results of this diagnosis, the court may impose a sentence as prescribed in this section or it may sentence the person to treatment in a facility approved by the North Dakota ~~state~~ department of ~~health,-division-of--alcoholism and-drug-abuse~~ human services.

SECTION 17. AMENDMENT. Section 50-01.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-01.1-01. DEFINITIONS. As used in this chapter, unless the context or subject matter otherwise requires:

1. "State board" ~~shall mean the social service board of North Dakota~~ means the department of human services.

2. "County board" ~~shall mean~~ means the county ~~welfare~~ social service boards.

SECTION 18. AMENDMENT. Subsection 1 of section 50-01.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A plan for the creation of a multicounty welfare district prepared by a county board shall provide for the method of operation of the consolidated office, its administration, its location, the disbursements from public funds, and the accountability of funds and manner of reporting receipts and disbursements. The plan shall provide that all services provided by county officials to county boards under the provisions of this code shall be provided by those county officials residing within the same county wherein the office of the multicounty welfare district is located. The plan shall also provide for the distribution of property owned by each of the county boards affected by the consolidation. ~~Such~~ The plan may also provide that the ~~program supervisor~~ regional director of a ~~state board area social~~ regional human service center shall serve as the director of the multicounty welfare district.

SECTION 19. AMENDMENT. Section 50-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01. DEFINITION. Whenever the word "board" is used in this chapter, it shall mean the ~~social service board of North Dakota~~ department of human services.

SECTION 20. 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. ~~SOCIAL SERVICE BOARD OF NORTH DAKOTA~~ 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", ~~or~~ "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 ~~"social service board of North Dakota"~~ "department of human services", or the term "executive director of the ~~social service board~~ department of human services", as the case may be, shall be substituted therefor. It is the intent of the legislative assembly that the ~~social service board of North Dakota~~ 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 21. AMENDMENT. Section 50-06-05.1 of the 1979 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 ~~BOARD~~ DEPARTMENT. The ~~social service board of~~ North Dakota department of human services shall have the following powers and duties to be administered by ~~such board~~ the department through its state office or through regional ~~offices~~ human service centers or otherwise as directed by it:

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 ~~social~~ 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.

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 ~~board~~ 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~~ 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 ~~board~~ 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 ~~such~~ reports and information as the board may determine necessary.

12. To permit the making of any surveys of ~~social welfare~~ human service needs and activities if deemed by the ~~board~~ department to be necessary and expedient.

13. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever the ~~board~~ department deems it necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena shall 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 ~~such~~ 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 ~~social~~ 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 ~~social~~ 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 ~~in--conformity with-the-Food-Stamp-Act-of-1964,-as-amended,~~ and to direct and supervise county administration of ~~such~~ that program. Provided, however, that the ~~board~~ department with the consent of the legislative council committee on budget 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.

SECTION 22. AMENDMENT. Section 50-06-06.2 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-06.2. CLINIC SERVICES - PROVIDER QUALIFICATION - UTILIZATION OF FEDERAL FUNDS. Within the limits of legislative appropriation therefor and in accordance with rules ~~and-regulations~~ established by the ~~social--service--board~~ department of human services, the ~~board~~ department may defray the costs of preventive diagnostic, therapeutic, rehabilitative, or palliative items or services furnished medical assistance eligible individuals by:

~~1.--Human--service--centers-established-under-section-54-40-09 which-fulfill-mental-health--and--social--service--quality assurance--standards--jointly-prescribed,-promulgated,-and adopted--by--the--social--service--board--and--the---state department-of-health.~~

~~2.--Mental--health--and--retardation-service-units-established and-licensed-under-chapter-25-12~~ regional human service centers.

Within the limits of legislative appropriations and to the extent permitted by state and federal law and regulations established thereunder, it is the intent of the legislative assembly that federal funds available under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] be utilized to defray the costs of identifiable mental health clinic services furnished eligible individuals in ~~qualifying~~ regional human service ~~and-mental-health~~ centers and that federal funds available under title XX of the Social Security Act [42 U.S.C. 1397 et seq.] be utilized to defray the costs of identifiable social services furnished eligible individuals by county social service boards~~,-area-social-service centers,~~ and regional human service centers.

SECTION 23. AMENDMENT. Section 50-06.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.1-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

1. "State board" ~~shall-mean-the-social-service-board-of~~ means the North Dakota department of human services.

2. "Division" ~~shall--mean~~ means the division of vocational rehabilitation.

3. "Division executive director" ~~shall--mean~~ means the director of the division of vocational rehabilitation.

4. ~~"Regulations"--shall--mean--regulations-made~~ "Rules" means rules adopted by the division executive director with the approval of the ~~state--board~~ executive director of the department of human services.

SECTION 24. AMENDMENT. Subsection 1 of section 50-09-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "State agency" ~~shall--mean--the--social-service-board-of~~ means the North Dakota department of human services.

SECTION 25. AMENDMENT. Section 50-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10-01. DEFINITIONS. In this chapter unless the context or subject matter otherwise requires:

1. "State agency" ~~shall--mean--the--social-service-board-of~~ means the North Dakota department of human services.

2. "County agency" ~~shall mean~~ means the county ~~welfare board~~ social service boards in this state.

* SECTION 26. AMENDMENT. Section 50-24.1-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-03. COUNTY SHARE OF MEDICAL ASSISTANCE - REIMBURSEMENT FOR CLINIC SERVICES NOT REQUIRED. Each county in this state shall reimburse the state department for amounts expended for medical assistance in ~~such~~ that county in excess of the amount provided by the federal government, in the amount of fifteen percent. This section shall not be construed to require a county to reimburse the state department for clinic services furnished by ~~mental health and retardation service units or~~ regional human service centers~~, but it shall also not be construed as preventing payments under chapter 25-12~~.

SECTION 27. AMENDMENT. Section 50-26-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-26-01. ESTABLISHMENT OF GOVERNOR'S COUNCIL ON HUMAN RESOURCES - CERTAIN COMMITTEES TO CONSTITUTE - APPOINTMENT. There is hereby established a governor's council on human resources, to be maintained within the department of human services, which shall consist of a committee on aging, a committee on children and youth, a committee on employment of the handicapped, and ~~such~~ other committees ~~who have~~ having a related interest in human resources as may be appointed. ~~These~~ Each of these committees shall ~~each~~ consist of an executive committee of no more than nine members, each of whom shall be appointed by the governor for a term of three years, staggered so that the terms of one-third of the members of each committee expire July first of each year, except that initial appointments to the committees shall be made on the basis of a one-year term for one-third of the members of each committee; a two-year term for one-third of the members of each committee; and a full three-year term for the remaining members of each committee. Each of the executive committees of the governor's council on human resources may appoint to their committee the chairman of the mayor's committee or his designated representative. A vacancy occurring other than by reason of the expiration of a term shall be filled in the same manner as original appointments, except that such appointment shall be made for the remainder of the unexpired term only.

SECTION 28. 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

* NOTE: Section 50-24.1-03 was also amended by section 1 of House Bill No. 1048, chapter 495.

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 ~~governor~~ 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 ~~committee of the council~~ 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 ~~chairman of the~~ executive ~~committee~~ director of the department of human services. Upon approval of such vouchers by the ~~state auditing board~~ office of the budget, warrant-checks shall be prepared by the department of accounts and purchases. All moneys received as gifts, donations, or bequests and all federal moneys received shall be deposited in ~~such~~ the special operating fund. The state treasurer shall make periodic transfers upon order of the director of the department of accounts and purchases 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.

* SECTION 29. AMENDMENT. Subsection 1 of section 54-07-01.2 of the 1979 Supplement to 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, ~~50-06-02,---50-06-03.1,~~ 50-26-01, 51-10-13, ~~54-03-20.2,~~ 54-34-03, ~~54-42-01,~~ 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:

* NOTE: Subsection 1 of section 54-07-01.2 was also amended by section 10 of House Bill No. 1443, chapter 528, and section 54-07-01.2 was also amended by section 45 of House Bill No. 1069, chapter 91.

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 social service board of North Dakota.~~

~~s.~~ The governor's council on human resources.

~~t.~~ s. The North Dakota trade commission.

~~u. The legislative compensation commission.~~

~~v.~~ t. The business and industrial development commission.

~~w. The merit system council.~~

~~x.~~ u. The North Dakota council on the arts.

~~y.~~ v. The state historical board.

~~z.~~ w. The Yellowstone-Missouri-Fort Union commission.

~~aa.~~ x. The state water conservation commission.

~~bb.~~ y. The state water pollution control board.

~~ee.~~ z. The workmen's compensation bureau.

SECTION 30. 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" ~~shall--mean~~ 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. "Department" ~~shall--mean~~ means the ~~state~~ department of ~~health;~~ human services.

3. "Patients" ~~shall--mean~~ means persons who are under the supervision or care of the department~~;~~.

4. "Alcoholism" ~~shall--mean~~ means the pathological condition attendant upon the excessive and habitual use of alcoholic beverages~~;~~.

5. "Division" ~~shall mean~~ means the division of alcoholism and drug abuse within the ~~state~~ department of ~~health;~~ human services.

6. "Drug abuse" ~~shall mean~~ 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~~;~~ ~~and~~.

7. "Drug dependent persons" ~~shall mean~~ 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.

SECTION 31. 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 acceptance, care, and treatment of alcoholics and drug dependent persons~~;-and~~

~~6.--Employ--such--assistants-as-may-be-necessary.--The-present staff-of-chapter-54-38-may-be--transferred--to--the--newly created--division--of-alcoholism-and-drug-abuse-within-the state-department-of-health~~.

SECTION 32. AMENDMENT. Section 54-40-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-40-09. REGIONAL HUMAN SERVICE CENTERS - POWERS - DUTIES. ~~Human~~ Regional human service centers organized under this chapter are those centers established to provide human services ~~otherwise~~ as authorized by law ~~by-the-state-or-any-of-its-political-subdivisions~~. 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. ~~Human~~ Regional human service centers shall function as ~~single-colocated~~ regional administrative units established, within the multicounty areas designated by the governor's executive order 49 dated September 18, 1969, to provide for the planning and delivery of human services. ~~Human~~ Regional human service centers shall provide human services to all eligible individuals and families to help them achieve or maintain social,

emotional and economic self-sufficiency; prevent, reduce, or eliminate dependency; prevent or remedy the neglect, abuse, or exploitation of children and of adults unable to protect their own interests; aid in the preservation, rehabilitation, and reuniting of families; prevent or reduce inappropriate institutional care by providing for care while institutionalized or providing for community-based or other forms of less restrictive care; and secure referral or admission for institutional care. ~~--Human service center boards shall plan and develop health and social resources to assure the effective and efficient delivery of high quality human services fully accessible to all citizens. --Human service center boards shall maximize the coordination and integration of services and functions to the fullest extent practicable to avoid unnecessary duplication and overlapping of functions and services. --A human service center shall be established upon a majority vote of those commissioners within a multicounty area present at a joint meeting of the boards of county commissioners called by the chairman of the board of county commissioners of the county with the largest population. Following that majority vote, the state department of health, the state social service board, the mental health and retardation service units shall, and other state departments and governmental units performing human service functions within the multicounty area may, pursuant to written agreement entered into by their respective boards or agencies with the center board, identify and delegate the planning and delivery of specified human services within their jurisdiction to the human service center. --Human~~; provide outpatient diagnostic and treatment services; and provide rehabilitation services for patients suffering from mental or emotional disorders, mental retardation, and other psychiatric conditions, particularly for those patients who have received prior treatment in an inpatient facility. Regional human service centers shall deliver ~~such human~~ services in the manner prescribed by the state ~~departments and governmental units accountable for such services~~ department of human services. The ~~governing body~~ human service council of a human service center shall be a ~~board of directors~~ council of not more than thirteen members. The council shall be appointed by the boards of county commissioners of the respective counties within the ~~multicounty area~~ region meeting jointly with the director of the regional human service center, except for the appointment of the initial human service council which shall be as provided in section 41 of this Act. County commissioners may serve as members of the human service council, provided that the commission members do not comprise more than one-third of the total council members. The terms of office shall be ~~three~~ two years ~~or less~~ and arranged so that the term of ~~one third calculated as nearly as practicable~~ six members shall expire ~~in one year, the term of one half, calculated as nearly as practicable, of the remaining members in the next year~~ at the end of the first year and the term of ~~the remaining~~ seven members shall expire at the end of the ~~third~~ second year. ~~New appointments to the board shall be made in accordance with the procedure adopted by a majority of the commissioners attending a joint meeting of the boards of county commissioners of the multicounty area.~~ Members of each human service council are to be selected on the basis of population from residents of the counties

in the region served by the human service center. Each county in the region must have at least one member on the human service council. To the extent possible, membership on the council shall reflect regional interests in the fields of developmental disabilities, social services, vocational rehabilitation, mental health, and alcoholism and drug abuse. Members shall elect from the council membership a chairman and other officers as the council deems necessary. All members of each council shall be residents of the area served by the regional human service center. Vacancies occuring on the board for other than the expiration of a term shall be filled in the same manner as original appointments, except that appointments shall be made only for the unexpired term. Members of the ~~board~~ human service council shall be compensated at the rate of forty-five dollars per day, not to exceed twenty-five days in any one year. The members shall also be paid for mileage and actual expenses incurred in attending meetings and in the performance of their official duties in the amounts provided by law for other state officers. ~~Human-service-center-boards-shall-have--such--powers--and duties--as--authorized-in-this-chapter-for-political-subdivisions-of the-state,-unless-otherwise-provided-in-this-section.---Such--powers shall--include--the--power-to-employ-staff-to-discharge-the-center's responsibilities.--Persons-employed-will-be-state-employees-and--all employment-practices-shall-be-subject-to-the-state-central-personnel system.--Human-service-centers-shall-expend-funds-in-accordance-with law--and--within-the-limits-of-legislative-appropriations,-and-shall have-access-to--the--services--of--the--state's--combined--automatic telecommunications--system,--and--the--department--of--accounts--and purchases-computer,-duplicating,-accounting,-purchasing,--and--other services---rendered---by--such--department--to--state--agencies--and institutions.--The-state-social-service-board,-the-state--department of--health,--and--such--other--agencies--of--the--state--as-may-have responsibilities-in-the--field--of--service--as--provided--by--human service--centers-shall-provide-such-centers-assistance-to-the-extent that-the-requests-for-such-services-are-reasonable--and--related--to the-programs-of-such-departments.~~

SECTION 33. DUTIES OF HUMAN SERVICE COUNCIL. The human service councils of the regional human service centers shall perform the following duties:

1. Assist in needs assessment and the planning and development of health and social resources to assure the effective and efficient delivery of high quality human services fully accessible to all citizens.

2. Review and evaluate services and programs provided by the centers and make periodic reports to the state department of human services together with any recommendations the councils may have for improvement in services, programs, or facilities.

3. Promote cooperation and working agreements with private human service agencies.

4. Review the budgets for submission to the executive director for consideration and submission within the budget request for the state department of human services.

5. Promote local and regional financing from public and private sources.

SECTION 34. AMENDMENT. Section 54-42-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-42-06. AGENCIES SUBJECT TO MERIT SYSTEM. All personnel employed by the ~~social-service-board-of-North-Dakota~~ department of human services, the ~~area-and-county~~ regional offices of ~~such-board~~ that department, the job service North Dakota, the North Dakota merit system council, the North Dakota state department of health, and other agencies or political subdivisions as may by federal laws or regulations be required to be subject to the merit system in order to obtain federal grants-in-aid, shall be covered by the complete merit system provided in this chapter. ~~The-merit-system council-shall-provide-merit-system-coverage--to--mental--health--and retardation--service--units,--human-service-centers,-and-other-units resulting-from-combinations-of-mental-health-and-retardation-service units,--area-social-service-centers,-and-other-functions-or-services of-state-agencies-or-political-subdivisions-upon-the-request-of-such centers--or--units.~~ Merit system coverage shall also be provided to personnel employed as purchasing agents or buyers in the purchasing division of the department of accounts and purchases. Such other agencies, departments or divisions, or positions, shall be placed under the complete or limited merit system in the manner and to the extent the legislative assembly shall by law direct.

* SECTION 35. AMENDMENT. Section 54-44.3-19 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.3-19. BOARD AUTHORITY TO PROVIDE SERVICE TO CITIES AND POLITICAL SUBDIVISIONS. The board may enter into agreement with any city or political subdivision of this state to furnish any of its services and facilities, other than factfinding or conciliation services, and such agreement shall provide for reimbursement to the state of the cost of the services and facilities furnished. All cities and political subdivisions of this state may enter into such agreements. The board and division shall provide coverage to other agencies or political subdivisions as may by federal laws or regulations be required to be subject to a personnel system in order to obtain federal grants-in-aid. The board and division shall provide coverage to ~~mental-health--and--retardation--service--units, human--service--centers,-and-other-units-resulting-from-combinations of-mental-health-and-retardation-service-units,-area-social--service centers,--and~~ other functions or services of state agencies or political subdivisions upon the request of such centers or units. Such other agencies, departments, or divisions, or positions, shall be placed under the complete or limited board and division personnel

* NOTE: Section 54-44.3-19 was also amended by section 1 of House Bill No. 1046, chapter 543.

plan in the manner and to the extent the legislative assembly shall by law direct.

SECTION 36. LEGISLATIVE COUNCIL - AUTHORITY TO CHANGE REFERENCES TO NEW DEPARTMENT AND TO REDESIGNATE SECTION 54-40-09. The North Dakota legislative council is hereby authorized to delete, where appropriate, references to the social service board of North Dakota or to the executive director of the social service board wherever they appear in the North Dakota Century Code or in the supplements thereto and to replace each deleted reference with a reference to the North Dakota department of human services or to the executive director of the department of human services, as appropriate. The legislative council is also authorized to redesignate and renumber section 54-40-09 of the 1979 Supplement to the North Dakota Century Code to a place in the North Dakota Century Code consistent with the placement of the department of human services. These changes are to be made when any volume or supplement of the North Dakota Century Code is being reprinted.

SECTION 37. REPEAL. Sections 1-01-48, 50-06-02, 50-06-03, 50-06-03.1, 50-06-07, 50-06-08, 50-06-09, and 50-06-10 of the North Dakota Century Code, and sections 25-10-05, 25-12-01, 25-12-03, 25-12-04, 25-12-05, 50-06-04, 50-06-13, 54-40-10, and 54-40-11 of the 1979 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 38. DELAYED REPEAL. Section 25-12-02 of the North Dakota Century Code is repealed effective January 1, 1983, and the mill levy authorized thereunder shall not be levied for property tax years beginning on and after January 1, 1983.

SECTION 39. APPROPRIATION. Any moneys appropriated by the forty-seventh legislative assembly to the governmental agencies and functions listed in section 1 of this Act shall be considered appropriated to the department of human services for the period beginning January 1, 1982, and ending June 30, 1983. The director of the department of accounts and purchases shall see to the appropriate transfer of accounts.

SECTION 40. EFFECTIVE DATES. This Act shall become effective on January 1, 1982, except for section 41, which shall be effective on July 1, 1981.

*SECTION 41. APPOINTMENT OF INITIAL HUMAN SERVICE COUNCIL - STATUS OF PRESENT BOARD. The chairman of the board of county commissioners of the county with the largest population within each region shall, not later than October 1, 1981, call a joint meeting of the county commissioners within the region to appoint the initial human service council for the regional human service center, according to the selection process and terms of office specified in section 31 of this Act. This meeting shall include an individual designated by the governor. The chairmen shall consult with the governor in setting the time and location of each meeting.

Approved April 6, 1981

* NOTE: The reference to section 31 should be to section 32.

CHAPTER 487

SENATE BILL NO. 2216
(Senators Wenstrom, Stenehjem, Tennefos)
(Representatives Hoffner, Meiers, Swiontek)

SENIOR CITIZEN PROGRAMS MATCHING GRANTS

AN ACT to provide for a state matching program to counties and cities senior citizen programs and activities.

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

*SECTION 1. SENIOR CITIZEN PROGRAMS. The social service board is authorized to match with state general fund moneys on a seventy-five percent basis moneys made available to counties and cities for senior citizen programs and activities as provided in section 57-15-56, for the biennium beginning July 1, 1981, and ending June 30, 1983. The social service board is authorized to expend an amount not to exceed $1,200,000, during the biennium beginning July 1, 1981, and ending June 30, 1983, for this purpose. If that amount is not sufficient to match on a seventy-five percent basis all of the funds made available pursuant to section 57-15-16, the amount which is available shall be prorated, with each governmental unit receiving the same percent reduction.

Approved March 26, 1981

* NOTE: In the last sentence of this section the reference to section 57-15-16 apparently should be to section 57-15-56.

CHAPTER 488

HOUSE BILL NO. 1656
(Strinden)
(Approved by the Committee on Delayed Bills)

RENT SUBSIDY PROGRAM

AN ACT relating to the temporary authority of the social service board to administer the rent subsidy program; and to declare an emergency.

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

SECTION 1. RENT SUBSIDY PROGRAM - AUTHORITY TO ADMINISTER. Notwithstanding the provisions of House Bill No. 1196 as enacted by the forty-seventh legislative assembly, the social service board of North Dakota is authorized, through June 30, 1981, to administer, allocate, and distribute any funds made available for the making of housing assistance payments and rental subsidies under any rental assistance programs authorized by federal law.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval through June 30, 1981.

Approved March 31, 1981

CHAPTER 489

HOUSE BILL NO. 1084
(Legislative Council)
(Interim Social Services Committee)

COMPREHENSIVE SOCIAL SERVICE PLANS

AN ACT prescribing the powers and duties of the social service board of North Dakota and the county social service boards of this state, and relating to the responsibility for the provision and the financing of comprehensive social service programs on behalf of eligible families and individuals in North Dakota.

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

SECTION 1. PURPOSE - INTERPRETATION. It is the purpose of this Act to establish a system for planning, coordinating, and providing comprehensive social services administered by county social service boards, area social service centers, and human service centers. This Act shall be construed to effectuate the following public purposes:

1. To help individuals or their families to achieve, maintain, or support the highest attainable level of personal independence and economic self-sufficiency.

2. To prevent, remedy, or alleviate neglect, abuse, or exploitation of children and adults unable to protect their own interests.

3. To 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.

4. To preserve, rehabilitate, and reunite families.

5. To assist in securing referral or admission of individuals to institutional care when other forms of care are not appropriate.

SECTION 2. DEFINITIONS. As used in this Act:

1. "Area social service center" means a regional social service center established by the state agency pursuant to section 50-06-05.1.

2. "Comprehensive social services" means services included in the comprehensive social services plan published by the state agency and social services required by state law or state agency regulation or federal law or regulation as a condition for the receipt of federal financial participation in programs administered under the provisions of title 50.

3. "County agency" means the county social service board in each of the counties of the state established under section 50-01-07.

4. "County plan" means the county social services plan required by section 4 of this Act.

5. "Human service center" means a regional center established under section 54-40-09.

6. "State agency" means the social service board of North Dakota established under section 50-06-02.

SECTION 3. POWERS AND DUTIES OF THE STATE AGENCY. The state agency shall have the following powers or duties under this Act:

1. To act as the official agency of the state in the administration of the social services programs for individuals and families in conformity with state and federal requirements including titles IV-B and XX of the Social Security Act, as amended.

2. To prepare, at least biennially, a comprehensive social services plan which shall:

   a. Include social services determined essential in effectuating the purposes of this Act.

   b. Detail the social services identified by the state agency for provision by human service centers and area social service centers and the services which the county agencies have agreed to make available in approved county plans as a condition for the receipt of any funds allocated or distributed by the state agency.

3. To make available, through area centers, county agencies, or human service centers, any or all of the services set out in the comprehensive social services plan on behalf of those individuals and families determined to be eligible for those services under criteria established by the state agency.

4. To supervise and direct the comprehensive social services administered by county agencies and human service centers through standard-setting, technical assistance, approval of county and regional plans, preparation of the comprehensive social services plan, evaluation of comprehensive social service programs, and distribution of public money for services.

5. To take actions, give directions, and adopt rules as necessary to carry out the provisions of this Act.

SECTION 4. POWERS AND DUTIES OF COUNTY AGENCIES. Each county agency shall have the following powers and duties under this Act:

1. To administer comprehensive social services programs for individuals and families at the county level in conformity with state and federal requirements, including titles IV-B and XX of the Social Security Act, as amended, under the direction and supervision of the state agency.

2. To publish and provide to the state agency a county social services plan which shall include the following:

   a. A statement of the goals of county social service programs in the county.

   b. Methods used to identify persons in need of services and the social problems to be addressed by the county social service programs.

   c. A description of each county social service proposed and identification of the agency or person proposed to provide the service.

   d. The amount of money proposed to be allocated to each service.

   e. An agreement to make available those social services required by state law and by federal law or regulation as a condition for the receipt of federal financial participation in programs administered by county agencies under the provisions of title 50.

   The date of submission of the county social service plan to the state agency shall be determined so that the plan is coordinated with the proposed and final comprehensive social services plan required by applicable titles of the Social Security Act.

3. To make available the social services detailed in the comprehensive social service plan which the county agency has included in the approved county plan and to provide such other social services the county agency determines

essential in effectuating the purposes of this Act within the county.

4. To submit annually to the board of county commissioners a budget containing an estimate and supporting data, setting forth the county funds needed to carry out the provisions of this Act.

SECTION 5. APPROPRIATION OF COUNTY FUNDS. The board of county commissioners of each county shall annually appropriate and make available to the poor relief fund an amount sufficient to pay the local expenses of administration and provision of the social services required by state law and by federal law or regulation as a condition for the receipt of federal financial participation in programs administered by county agencies under the provisions of title 50.

Approved March 26, 1981

CHAPTER 490

HOUSE BILL NO. 1477
(Eagles)

CHILDREN IN FOSTER CARE

AN ACT to create and enact a new section to chapter 50-11 of the North Dakota Century Code, relating to foster care for children.

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

SECTION 1. A new section to chapter 50-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

REDUCTION OF NUMBER OF CHILDREN IN FOSTER CARE - GOALS. On or before October 1, 1982, and annually thereafter, the social service board of North Dakota shall attempt to reduce the number of children receiving assistance under Title IV-E of the Social Security Act, who have been in foster care for more than twenty-four months, by the following amounts:

1. For the year beginning October 1, 1982, one percent of the number of children, in foster care for more than twenty-four months, and receiving benefits under Title IV-A of the Social Security Act from July 1, 1979, through June 30, 1980;

2. For the years beginning October 1, 1983, and ending September 30, 1990, one percent of the maximum number permitted in the previous year; and

3. For all subsequent years, one-half percent of the maximum number permitted in the previous year.

Approved March 3, 1981

CHAPTER 491

HOUSE BILL NO. 1132
(Committee on Social Services and Veterans Affairs)
(At the request of the Social Service Board)

SUPPLEMENTAL PARENTAL CARE

AN ACT to create and enact nine new sections to chapter 50-11.1 of the North Dakota Century Code, relating to supplemental parental care; to amend and reenact sections 50-11.1-02, 50-11.1-03, 50-11.1-04, 50-11.1-06, 50-11.1-06.1, 50-11.1-07, 50-11.1-08, 50-11.1-09, and 50-11.1-12, relating to supplemental parental care; and to repeal subdivision j of subsection 1 of section 50-11.1-02 and section 50-11.1-05, relating to supplemental parental care.

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

SECTION 1. AMENDMENT. Section 50-11.1-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-02. DEFINITIONS. As used in this chapter:

1. "Supplemental parental care" ~~shall mean the provision of food, shelter, safety, comfort, supervision, and a learning experience commensurate with a child's age and capabilities, so as to safeguard the child's health, safety, and development on a supplemental basis, either inside or outside of the child's home by persons other than a parent, guardian, person in loco parentis, or relative,~~ means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is, or is anticipated to be, ongoing for periods of four or more hours per day or for three or more days per week. Supplemental parental care shall not include ~~substitute~~:

   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;

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; or

h. Child care provided in a preschool educational facility which offers and follows a curriculum and course of study designed primarily to enhance the educational development of the children in care, employs a supervising instructor who possesses at least a bachelor's degree or a teaching certificate, complies with fire safety standards applicable to educational or school facilities for elementary or younger students, which serves no child for more than four hours per day, and which has a governing body or advisory committee, consisting of at least five members, which meets at least quarterly and which includes a majority of parents who have children in care.

i. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.

j. Child care provided in a program of youth service operated by an organization chartered by the national council of young men's christian associations electing not to be licensed under this chapter, but which complies with fire safety standards applicable to educational or school facilities for elementary or younger students.

2. "Family ~~day~~ child care home" ~~shall mean~~ means an occupied private residence in which supplemental parental care is regularly provided for no more than ~~twelve~~ seven children

from more than one family or no more than four children ages two and under.

3. "Group child care home" or "group child care facility" means a child care facility where supplemental care is regularly provided for eight to eighteen children.

4. "Child care center" means a child care facility where supplemental parental care is regularly provided to nineteen or more children.

~~3.~~ 5. "~~Day~~ Child care ~~center"--shall--mean:~~ facility" means

~~a.--Any~~ any facility~~,--other--than--an--occupied-private residence,--which--regularly--receives--one--or---more children-for-supplemental-parental-care,-or~~

~~b.--Any-facility,-including-an-occupied-private-residence, which-regularly-provides~~ where supplemental parental care ~~for--thirteen--or--more--children~~ is regularly provided, whether the facility is known as a day care home, day care center, day nursery, nursery school, kindergarten, child play school, progressive school, child development center, preschool or known by any other name.

~~4.~~ 6. ~~"Child-care-attendant"-shall-mean~~ "In-home provider" means any person who provides~~,-for-purchase--by--any--agency--of state--or--local-government,~~ supplemental parental care to children ~~from-one-family~~ in the children's home.

~~5.~~ 7. "Registration" ~~shall--mean~~ means the process whereby the board maintains a record of all ~~family-day-care-homes--and child-care-attendants~~ in-home providers who have certified that they have complied or will comply with the prescribed standards and promulgated regulations.

8. "License" means the right, authority, or permission granted by the board to operate a group child care facility or child care center; or the right, authority, or permission, granted by the board, to hold out a family child care home as inspected and approved by the board.

~~6.~~ 9. "Registrant" ~~shall-mean~~ means the holder of a registration certificate issued by the board in accordance with the provisions of this chapter.

~~7.~~ 10. "Registration certificate" is a written instrument issued by the board to publicly document that the certificate holder has certified compliance with this chapter and the applicable regulations and standards as prescribed by the board.

~~8.~~ 11. "Board" ~~shall mean~~ means the social service board of North Dakota.

12. "County agency" means the county social service board in each of the counties of the state.

~~9.--"Relative"--shall--mean--any--person--having-the-following relationship-to-the-child-by-marriage,-blood,-or-adoption: grandparent,---brother,--sister,--stepparent,--stepsister, stepbrother,-uncle,-or-aunt.~~

SECTION 2. AMENDMENT. Section 50-11.1-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-03. OPERATION OF ~~DAY~~ GROUP CHILD CARE FACILITIES AND CHILD CARE CENTERS - LICENSE REQUIRED. No person, partnership, firm, corporation, association, or nongovernmental organization shall establish or operate a ~~day~~ group child care facility or child care center unless licensed to do so by the board. No governmental organization shall establish or operate a group child care facility or child care center without first certifying, to the board, that it has complied with all rules and regulations applicable to group child care facilities or child care centers.

SECTION 3. AMENDMENT. Section 50-11.1-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-04. APPLICATION FOR LICENSE - PREREQUISITES FOR ISSUANCE - LICENSE GRANTED - TERM. Applications for ~~day~~ child care licenses shall be made on forms provided, in the manner prescribed, by the board. The ~~board~~ county agency shall investigate the applicant's activities and proposed standards of care and shall make an inspection of the ~~proposed center~~ facility. A license for the operation of a child care facility or child care center shall be granted by the board upon a showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide for the health and safety for all children who may be received;

2. The persons in charge of ~~such center~~ the facility and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and ~~the--rules,---regulations,---and~~ standards prescribed for their qualifications by the rules and regulations of the board; ~~and~~

3. The ~~center~~ facility will be maintained according to the standards prescribed for its conduct by the rules and regulations of the board~~.~~; and

4. The facility has not had a previous license revoked within the one hundred eighty days prior to the date of the current application.

The license shall be in force and effect for a period of not more than ~~two years~~ one year. Previously licensed facilities must make the same showing as initially licensed facilities.

SECTION 4. AMENDMENT. Section 50-11.1-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-06. ~~CHILD---CARE---ATTENDANTS~~ IN-HOME PROVIDER - REGISTRATION ~~REQUIRED~~ VOLUNTARY - ISSUANCE OF REGISTRATION CERTIFICATE - TERM. ~~Child-care-attendants,-prior-to-providing-in-home-supplemental-parental-care,-shall-procure~~ In-home providers may apply for a registration certificate from the board. The ~~board~~ county agency shall determine whether the standards have been met and shall issue or deny a registration certificate based upon that determination. Registration certificates for ~~child-care--attendants~~ in-home providers shall be in force and effect for not more than ~~two years~~ one year.

SECTION 5. AMENDMENT. Section 50-11.1-06.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-06.1. CONVICTION NOT BAR TO LICENSURE - EXCEPTIONS. Conviction of an offense shall not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or proprietor of a ~~day-care-center,-family-day-care-home,-or-as-a-child-care-attendant~~ child care facility or as an in-home provider, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 6. AMENDMENT. Section 50-11.1-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-07. INVESTIGATION OF APPLICANTS, LICENSEES, AND REGISTRANTS - MAINTENANCE OF RECORDS - CONFIDENTIALITY OF RECORDS.

1. The board and ~~its-authorized-agents~~ the county agency at any time may investigate and inspect the conditions of the facility, the qualifications of the providers of supplemental parental care in any ~~day--care--center--or family---day--care--home~~ child care facility, and the qualifications of any ~~child--care---attendant~~ in-home provider seeking or holding a license or registration certificate under the provisions of this chapter. Upon request of the board or the county agency, the state department of health or the state fire marshal, or his designee, shall inspect any ~~home-or~~ facility for which a

license ~~or registration--certificate~~ is applied for or issued and shall report its findings to the ~~board~~ county agency.

2. Licensees and registrants shall:

   a. Maintain such records as the board may prescribe regarding each child in their care and control, and shall report to the board, when requested, such facts as the board may require with reference to the children upon forms furnished by the board; and

   b. Admit for inspection authorized agents of the board or the county agency and open for examination all records, books, and reports of the home or facility.

3. All records and information maintained with respect to children receiving supplemental parental care shall be deemed confidential and be properly safeguarded and shall not be disclosed except:

   a. In a judicial proceeding;

   b. To officers of the law or other legally constituted boards or agencies; or

   c. To persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the board, are in a position to serve their interests should that be necessary.

SECTION 7. AMENDMENT. Section 50-11.1-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-08. MINIMUM STANDARDS - RULES AND REGULATIONS - INSPECTION BY A GOVERNMENTAL UNIT. The board may:

1. Establish reasonable minimum standards for the operation of ~~day-care-centers,-the-registration-of-family--day--care homes~~ child care facilities, and the registration of ~~child care--attendants~~ in-home providers. In appropriate circumstances and upon good cause shown, specific minimum standards may be substituted by alternate, equivalent standards, approved by the board.

2. Take such action and make such reasonable rules and regulations for the regulation of supplemental parental care as may be necessary to carry out the purposes of this chapter and entitle the state to receive aid from the federal government.

3. Authorize a governmental unit to:

a. Inspect any home or facility for which a ~~registration certificate or~~ license is applied for or issued under this chapter; and

b. Certify to the board that the home or facility meets the requirements of this chapter and the minimum standards prescribed by the board.

SECTION 8. AMENDMENT. Section 50-11.1-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-09. REVOCATION OF LICENSE OR REGISTRATION CERTIFICATE. The board may revoke the license ~~or registration certificate~~ of any ~~day care center, family day care home~~ child care facility, or ~~child care attendant~~ the registration certificate of any in-home provider upon proper showing of any of the following:

1. Any of the applicable conditions set forth in section 50-11.1-04 as prerequisites for the issuance of the license no longer exist.

2. The licensee or registrant is no longer in compliance with the minimum standards prescribed by the board.

3. The license or registration certificate was issued upon fraudulent or untrue representation.

4. The licensee or registrant has violated any rules and regulations of the board.

5. The licensee or registrant has been guilty of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a licensee or registrant.

6. The licensee has been convicted of any offense and the board, acting pursuant to section 12.1-33-02.1, has determined that he has not been sufficiently rehabilitated.

SECTION 9. AMENDMENT. Section 50-11.1-12 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-12. VIOLATION OF CHAPTER OR REGULATIONS - INJUNCTION. ~~When there is a violation of this chapter or a regulation promulgated thereunder, and the unlawful activity or condition of the day care center or family day care home is likely to result in serious harm to the children under care, the~~ The board may seek injunctive action against ~~the day care center or family day care home~~ a child care facility in the district court through proceedings instituted by the attorney general on behalf of the board ~~, if:~~

1. There is a violation of this chapter or a regulation promulgated thereunder;

2. A child care facility, after notice and opportunity for hearing on the notice of noncompliance, or on the resumption of the fiscal sanction, or after administrative hearing confirming and upholding the fiscal sanction, does not pay a properly assessed fiscal sanction in accordance with section 17 of this bill.

SECTION 10. A new section to chapter 50-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

NUMBER OF CHILDREN IN CARE - HOW DETERMINED. For the purpose of determining the number of children in a child care facility, all children of the operator or employees, present in the facility and under the age of fourteen years, shall be counted.

SECTION 11. A new section to chapter 50-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

OPERATIONS OF CHILD CARE HOME - LICENSE. Any person who operates a child care home may make application for a child care license.

SECTION 12. A new section to chapter 50-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

NOTICE. After each inspection or reinspection, the county agency shall, by certified mail, send copies of any correction order or notice of noncompliance, to the child care facility.

SECTION 13. A new section to chapter 50-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

CORRECTION ORDERS. Whenever the county agency finds, upon inspection of a child care facility, that the facility is not in compliance with the provisions of this chapter, or the rules and regulations promulgated thereunder, a correction order shall be issued to the facility. The correction order shall cite the specific statute or regulation violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order shall also specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. The board shall, by rule promulgated pursuant to subsection 2 of section 50-11.1-08, establish a schedule of allowable time periods for correction of deficiencies.

SECTION 14. A new section to chapter 50-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

REINSPECTIONS. A child care facility issued a correction order under section 13 of this bill shall be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the facility has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order shall be mailed by certified mail to the facility. The notice shall specify the violations not corrected and the penalties assessed in accordance with section 16 of this bill.

SECTION 15. A new section to chapter 50-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

FISCAL SANCTIONS. A child care facility, if issued a notice of noncompliance with a correction order, shall be assessed fiscal sanctions in accordance with a schedule of fiscal sanctions established by rules promulgated pursuant to subsection 2 of section 50-11.1-08. The fiscal sanction shall be assessed for each day the facility remains in noncompliance after the allowable time period for the correction of deficiencies ends and shall continue until a notice of correction is received by the county agency in accordance with section 17 of this bill. No fiscal sanction for a specific violation may exceed twenty-five dollars per day of noncompliance.

SECTION 16. A new section to chapter 50-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

ACCUMULATION OF FISCAL SANCTIONS. A child care facility shall promptly notify the county agency in writing when a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the county agency, the daily fiscal sanction assessed for the deficiency shall stop accruing. The facility shall be reinspected within three working days after receipt of the notification. If, upon reinspection, it is determined that a deficiency has not been corrected, the daily assessment of fiscal sanction shall resume and the amount of fiscal sanction which otherwise would have accrued during the period prior to resumption shall be added to the total assessment due from the facility. The county agency shall notify the facility of the resumption by certified mail. Recovery of the resumed fiscal sanction shall be stayed if the operator of the facility makes a written request for an administrative hearing in the manner provided in chapter 28-32, provided that written request for the hearing is made to the board within ten days of the notice of resumption.

SECTION 17. A new section to chapter 50-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

RECOVERY OF FISCAL SANCTIONS - HEARING. Fiscal sanctions assessed pursuant to this chapter shall be payable fifteen days after receipt of the notice of noncompliance and at fifteen-day intervals thereafter, as the fiscal sanctions accrue. Recovery of an assessed fiscal sanction shall be stayed if the operator makes written request to the board for an administrative hearing within ten days after the facility's receipt of the notice.

SECTION 18. A new section to chapter 50-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

DISPOSITION OF FISCAL SANCTIONS. Any fiscal sanction which shall be collected for any violation of this chapter or of regulations promulgated thereunder, shall be paid into the state treasury for the general fund, after the costs of recovering the fiscal sanction are deducted therefrom.

SECTION 19. REPEAL. Section 50-11.1-05 of the North Dakota Century Code is hereby repealed.

SECTION 20. DELAYED REPEAL. Subdivision j of subsection 1 of section 50-11.1-02 is repealed effective July 1, 1983, and the programs therein described shall thereafter be subject to licensure under the provisions of chapter 50-11.1 unless otherwise exempted by law.

Approved April 6, 1981

CHAPTER 492

SENATE BILL NO. 2159
(Committee on Social Services and Veterans Affairs)
(At the request of the Social Service Board)

MEDICAL ASSISTANCE

AN ACT to create and enact two new sections to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance for needy persons; and to amend and reenact sections 50-24.1-02.1 and 50-24.1-07 of the North Dakota Century Code, relating to medical assistance for needy persons.

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

SECTION 1. AMENDMENT. Section 50-24.1-02.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-02.1. ~~SUBROGATION OF SOCIAL SERVICE BOARD TO RIGHT OF RECOVERY--~~ ASSIGNMENT OF CLAIM. ~~The social service board is subrogated to~~ Each applicant or recipient of benefits under this chapter shall be deemed to have assigned, to the social service board, any right of recovery ~~an~~ the applicant or recipient ~~under this chapter~~ may have for medical costs incurred under this chapter not exceeding the amount of funds expended by the social service board for the care and treatment of the applicant or recipient. The applicant or recipient, or other person ~~acting~~ empowered by law to act in his behalf, shall execute and deliver an assignment of claim, assignment of rights, or other authorizations as necessary to secure fully the right of recovery of the social service board. The assignment:

1. Is effective as to both current and accrued medical support recovery obligations.

2. Takes effect upon a determination that an applicant is eligible for assistance under this chapter.

* SECTION 2. AMENDMENT. Section 50-24.1-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 50-24.1-07 was also amended by section 1 of Senate Bill No. 2345, chapter 496.

50-24.1-07. RECOVERY FROM ESTATE OF MEDICAL ASSISTANCE RECIPIENT. On the death of any recipient of medical assistance who was sixty-five years of age or older when he received such assistance, the total amount of medical assistance paid on behalf of the decedent following his sixty-fifth birthday shall be allowed as a preferred claim against the decedent's estate after funeral expenses not in excess of twelve hundred dollars, expenses of last illness, and expenses of administering the estate, including attorney's fees approved by the court, and claims on behalf of the state hospital have been paid. No claim ~~shall be allowed~~ must be paid during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim shall be disallowed because of the provisions of this section. Every personal representative, upon the granting of letters of administration or testamentary shall, at the time that publication of notice to creditors is required, forward to the social service board a copy of the petition or application commencing probate, heirship proceedings or joint tenancy tax clearance proceedings in the respective county court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of such estate. If no notice is required by the proceedings, the personal representative shall forward to the social service board a copy of the petition or application commencing the proceedings, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the social service board is paid in full, the personal representative shall provide to the board a statement of assets and disbursements in the estate.

SECTION 3. A new section to chapter 50-24.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

INVESTIGATIONS - POWER OF COUNTY AGENCIES, STATE AGENCY, AND EMPLOYEES. In the investigation of applications under the provisions of this chapter, the county agencies, the state agency, and the officials and employees of such agencies charged with the administration and enforcement of this chapter may:

1. Conduct examinations.

2. Require the attendance of witnesses and the production of books, records, and papers.

3. Make application to the district court of the county to compel the attendance of witnesses and the production of books, records, and papers.

4. Request from state, county, and local agencies information deemed necessary to carry out the medical support enforcement program. All officers and employees of state, county, and local agencies shall cooperate with the state and county agency in locating absent spouses or parents of

children to whom an obligation of support is owed or on whose behalf assistance is being provided and, on request, shall supply the state or county agency with available information relative to the location, income, social security number, and property holdings of the absent spouse or parent, notwithstanding any provision of law making that information confidential. Any person acting under the authority of the social service board who pursuant to this subsection obtains information from the office of the state tax commissioner the confidentiality of which is protected by law shall not divulge such information except to the extent necessary for the administration of the medical support enforcement program or when otherwise directed by judicial order or when otherwise provided by law.

The officers and employees designated by the county agencies or the state agency may administer oaths and affirmations.

SECTION 4. A new section to chapter 50-24.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

DUTIES OF COUNTY AGENCY. In the administration of the medical assistance program, a county agency shall:

1. Administer the medical support enforcement program under the direction and supervision of the social service board of North Dakota. In administering the program the county agency shall have the authority to contract with any public or private agency or person to discharge their medical support enforcement duties.

2. Make an investigation and record the circumstances of each applicant or recipient of assistance, in order to ascertain the facts supporting the application, or the granting of assistance, and shall obtain such other information as may be required by the rules and regulations of the state agency.

Approved March 12, 1981

CHAPTER 493

SENATE BILL NO. 2307
(Erickson, Peterson)

MEDICAL ASSISTANCE ELIGIBILITY

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to consideration of separated spouse's resources in determining eligibility for medical assistance.

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

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

RESOURCES OF SEPARATED SPOUSE NOT TO BE CONSIDERED. In determining eligibility for medical assistance, the social service board may not consider the resources of a noninstitutionalized spouse of any applicant for or recipient of medical assistance when the applicant or recipient has lived separately and apart from the noninstitutionalized spouse for at least six months and the value of all resources, not otherwise disregarded, and separately owned by the noninstitutionalized spouse do not exceed the resource limitations in the property provisions of the rules adopted by the social service board by more than twenty-five thousand dollars.

Not approved or disapproved by the Governor

Filed March 19, 1981

CHAPTER 494

HOUSE BILL NO. 1571
(Hoffner)

MEDICAL ASSISTANCE ELIGIBILITY

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the exclusion of prepaid funeral plans in medical assistance eligibility determinations.

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

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

WHEN PRE-NEED FUNERAL PLAN NOT TO BE CONSIDERED IN ELIGIBILITY DETERMINATION. In determining eligibility for medical assistance, the social service board may not consider as an available resource any prepayments or deposits which total three thousand dollars or less made under a pre-need funeral service contract by an applicant for or recipient of medical assistance.

Not approved or disapproved by the Governor

Filed March 27, 1981

CHAPTER 495

HOUSE BILL NO. 1048
(Legislative Council)
(Interim Budget "B" Committee)

INTERMEDIATE CARE FACILITY SERVICE REIMBURSEMENT

AN ACT to amend and reenact section 50-24.1-03 of the North Dakota Century Code, relating to the exemption of counties from reimbursing the state social service board for funds spent for medical services by intermediate care facilities for developmentally disabled persons.

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

* SECTION 1. AMENDMENT. Section 50-24.1-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-03. COUNTY SHARE OF MEDICAL ASSISTANCE - REIMBURSEMENT FOR CLINIC SERVICES NOT REQUIRED. Each county in this state shall reimburse the state department for amounts expended for medical assistance in such county in excess of the amount provided by the federal government, in the amount of fifteen percent. ~~This section shall not be construed to require a~~ A county is not required to reimburse the state department for ~~clinic~~ services furnished by mental health and retardation service units ~~or~~, human service centers, ~~but it shall also~~ or intermediate care facilities for developmentally disabled persons. This section shall not be construed as preventing payments under chapter 25-12.

Approved March 3, 1981

* NOTE: Section 50-24.1-03 was also amended by section 26 of House Bill No. 1418, chapter 486.

CHAPTER 496

SENATE BILL NO. 2345
(R. Christensen, Melland)

RECOVERY FROM RECIPIENT'S ESTATE

AN ACT to amend and reenact section 50-24.1-07 of the North Dakota Century Code, relating to the recovery from the estates of medical assistance recipients.

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

* SECTION 1. AMENDMENT. Section 50-24.1-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-07. RECOVERY FROM ESTATE OF MEDICAL ASSISTANCE RECIPIENT. On the death of any recipient of medical assistance who was sixty-five years of age or older when he received such assistance, the total amount of medical assistance paid on behalf of the decedent following his sixty-fifth birthday shall be allowed as a preferred claim against the decedent's estate after funeral expenses not in excess of ~~twelve~~ fourteen hundred dollars, expenses of last illness, and expenses of administering the estate, including attorney's fees approved by the court, and claims on behalf of the state hospital have been paid. No claim shall be allowed during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled.

Approved March 18, 1981

* NOTE: Section 50-24.1-07 was also amended by section 2 of Senate Bill No. 2159, chapter 492.

SALES AND EXCHANGE

CHAPTER 497

HOUSE BILL NO. 1330
(Koski, Martinson, Vig)

AUCTIONEER'S BONDING REQUIREMENT

AN ACT to amend and reenact section 51-05.1-01 of the North Dakota Century Code, relating to exemption of financial institutions from bonding requirements.

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

SECTION 1. AMENDMENT. Section 51-05.1-01 of the 1979 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 ten dollars which shall accompany the applications. The names 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 one thousand dollars for an auctioneer and five 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 ~~state or national bank~~ 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.

Approved March 5, 1981

CHAPTER 498

SENATE BILL NO. 2308
(Senators Melland, Lodoen, Quail)
(Representative Hedstrom)

RETAIL INSTALLMENT CONTRACT FINANCE CHARGE

AN ACT to amend and reenact section 51-13-03 of the North Dakota Century Code, relating to charges on retail installment contracts; and to repeal section 51-13-06 of the North Dakota Century Code, relating to refinancing retail installment contracts.

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

* SECTION 1. AMENDMENT. Section 51-13-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-03. FINANCE CHARGE LIMITATION.

1. A retail seller may contract for in a retail installment contract and charge, receive, and collect the credit service charge computed on the principal balance of the contract or obligation from the date thereof until paid, ~~at not exceeding eighteen percent simple interest per annum upon the unpaid balance of the contract~~. A retail seller who complies with the disclosure provisions of this chapter is deemed a regulated lender under section 47-14-09.

2. The finance charge shall be computed on the amount financed as determined under subsection 4 of section 51-13-02. This finance charge may be precomputed on the amount financed calculated on the assumption that all scheduled payments will be paid when due and the effect of prepayment is governed by the provisions on rebate upon prepayment.

3. When a retail installment contract provides for unequal or irregular installments, the finance charge shall be at the effective rate provided in subsection 1, having due regard for the schedule of installments.

* NOTE: Subsection 1 of section 51-13-03 was also amended by section 42 of House Bill No. 1069, chapter 91.

4. The finance charge shall be inclusive of all charges incident to investigating and making the contract, and for the extension of the credit provided for in the contract and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as provided in this section and in subsection 6 of section 51-13-02 ~~and--in--section--51-13-06~~ and for those items expressly provided for in the retail installment contract as set forth in subsection 4 of section 51-13-02.

SECTION 2. REPEAL. Section 51-13-06 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 31, 1981

CHAPTER 499

HOUSE BILL NO. 1375
(Representatives Peltier, D. Olson)
(Senator Nelson)

HEAVY CONSTRUCTION EQUIPMENT FRANCHISE TERMINATION

AN ACT to provide for the discontinuation and termination of written contracts between wholesalers and retail dealers dealing in heavy construction equipment, to define heavy construction equipment, and to set out retail dealer redress procedures.

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. "Distributor" means any person involved in manufacturing, wholesaling, or distributing heavy construction equipment or repair parts for heavy construction equipment, or both equipment and parts, who is authorized to, and does, enter into a written contract with a retail dealer.

2. "Heavy construction equipment" means self-propelled or pull-type construction machinery, and accessories therefor, primarily used in projects requiring paving, earthmoving, or bridge, road, highway, and commercial building construction.

3. "Person" includes any individual, firm, partnership, joint venture, association, corporation, or other business entity.

4. "Retail dealer" means every person engaged in the business of selling heavy construction equipment at retail.

SECTION 2. RETAIL DEALERS MAY RECOVER COST OF EQUIPMENT AND PARTS UPON DISCONTINUANCE OF CONTRACT WITH DISTRIBUTOR. If a retail dealer has entered into a written contract with a distributor wherein the retail dealer agrees to maintain a stock of heavy construction equipment, repair parts, or both heavy construction equipment and repair parts, and either the distributor or the retail dealer desires to cancel or discontinue the contract, the distributor shall pay to the retail dealer, unless the retail dealer

desires to keep the equipment or repair parts, the following amounts:

1. A sum equal to one hundred percent of the net cost of all unused, complete heavy construction equipment.

2. Eighty-five percent of the current net prices on repair parts, including the superseded parts listed in current price lists or catalogs, if the superseded parts have previously been purchased from the distributor, and were in the retail dealer's inventory on the date of cancellation or discontinuance of the contract, or were thereafter received by the retail dealer from the distributor.

3. A sum equal to five percent of the current net price of all parts returned as reimbursement for handling, packing, and loading of those parts.

4. Any freight charges on the equipment or repair parts paid by the retail dealer.

When a distributor has made payment in accordance with this section, title to the heavy construction equipment and repair parts shall pass to the distributor, and the distributor shall be entitled to possession of the heavy construction equipment and repair parts. This section is supplemental to any provisions contained in any contract between the retail dealer and the distributor relating to the return of heavy construction equipment and repair parts. Thus, the retail dealer can elect to pursue his remedy under this section, or under the contract relating to return of heavy construction equipment and repair parts. An election by a retail dealer to pursue a contractual remedy shall not bar his right to the remedy provided by this section with respect to those pieces of heavy construction equipment and repair parts not affected by the contract remedy.

The provisions of this section apply to every contract now in effect which has no stated expiration date, and to all other contracts entered into after June 30, 1981. Contracts in force and effect on June 30, 1981, which by their terms will terminate on a date subsequent to June 30, 1981, shall be governed by the law existing prior to July 1, 1981.

SECTION 3. TERMINATION OF CONTRACTUAL ARRANGEMENTS TO BE DONE WITH GOOD CAUSE - DEFINITION OF GOOD CAUSE.

1. Any distributor of heavy construction equipment, repair parts, or both who enters into a written contract with any retail dealer in heavy construction equipment, repair parts, or both, in which the retail dealer agrees to maintain a stock of heavy contruction equipment, repair parts, or both, may not terminate, cancel, or fail to renew the contract without good cause.

2. As used in this section, "good cause" means that the retail dealer has failed to comply with the requirements imposed upon him by the terms of the written contract between the retail dealer and the distributor. The determination by the distributor that the distributor has good cause for termination, cancellation, or nonrenewal must be made in good faith.

3. In any civil action against a distributor for violating this section, the distributor must establish that the contract termination, cancellation, or nonrenewal was made in good faith for good cause. If the distributor fails to establish good cause for its termination, cancellation, or nonrenewal action, the distributor shall be liable for all special and general damages sustained by the retail dealer, including, but not limited to, the costs of the litigation and reasonable attorney's fees for prosecuting the civil action. In addition, the retail dealer, where appropriate, shall be entitled to injunctive relief. The provisions of this section apply to contracts in effect on July 1, 1981, which have no expiration date and are continuing contracts, and to all other contracts entered into, amended, or renewed after June 30, 1981. This section does not apply to contracts in force and effect on June 30, 1981, which by their terms will terminate on a date subsequent to June 30, 1981. Those contracts shall be governed by the law as it existed prior to July 1, 1981.

SECTION 4. DETERMINATION OF RETAIL DEALERS REIMBURSEMENT. The extent of reimbursement of the retail dealer for heavy construction equipment and repair parts pursuant to section 2 of this Act, shall be determined by taking one hundred percent of the net cost on unused, complete heavy construction equipment, and eighty-five percent of the current net price of repair parts, as shown in the distributor's price lists or catalogs in effect at the time the contract was canceled, terminated, or not renewed.

SECTION 5. FAILURE TO MAKE REIMBURSEMENT ON CANCELLATION OF CONTRACT - LIABILITY. If any heavy construction equipment distributor fails or refuses, upon cancellation, termination, or nonrenewal of a contract by either a retail dealer or the distributor, to make payment to the retail dealer as required by section 2 of this Act, the distributor shall be liable in a civil action brought by the retail dealer for one hundred percent of the net cost of the unused, complete heavy construction equipment, plus transportation charges paid by the retail dealer; and eighty-five percent of the current net price of repair parts, plus five percent of that current net price for handling and loading plus freight charges on the repair parts which have been paid by the retail dealer. A distributor shall be liable for equivalent amounts in a civil action if he refuses to supply heavy construction equipment, repair parts, or both, to a retail dealer who has a contract dated after June 30, 1981, or a contract with no expiration date which is continuing in force on July 1, 1981.

Approved March 5, 1981

CHAPTER 500

SENATE BILL NO. 2051
(Legislative Council)
(Interim Data Processing Committee)

DATA PROCESSING INFORMATION CONFIDENTIALITY

AN ACT to prohibit disclosure by any business entity offering data processing services except upon written consent and to provide a civil penalty for violation of this chapter.

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

SECTION 1. DEFINITIONS. As used in this chapter:

1. "Business entity" means a sole proprietorship, partnership, corporation, association or other group, however organized and whether or not organized to operate at a profit, doing business in this state.

2. "Data processing services" means any systematic sequence of operations, including but not limited to bookkeeping functions, inventory control, storage, or manipulation and retrieval of management or personnel information, performed upon data by electronic devices which perform logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. The term does not include operations performed by telecommunication devices.

3. "Individual" means a natural person.

4. "Person" means any natural person, corporation, partnership, firm, association, or governmental entity.

5. "Record" means any item, collection, or grouping of information about an individual or business entity.

SECTION 2. PROHIBITION AGAINST DISCLOSURE EXCEPT UPON WRITTEN CONSENT - APPLICATION OF SECTION.

1. No business entity which charges a fee for data processing services performed shall disclose in whole or in part the contents of any record, including the disclosure of

information contained in the record through inclusion in any composite of information, which is prepared or maintained by such business entity to any person, other than the individual or business entity which is the subject of the record, without the express written consent of such individual or business entity.

2. This section shall not apply to the following:

   a. A disclosure to any person pursuant to a subpoena or court order.

   b. A disclosure which is discoverable pursuant to the North Dakota Rules of Civil Procedure.

   c. A disclosure to any person pursuant to a lawful search warrant.

SECTION 3. INITIATION OF CIVIL ACTION - LIABILITY FOR DAMAGES - LIMITATION.

1. A person may initiate a civil action against a business entity in accordance with state law whenever a business entity violates the provisions of section 2.

2. In any suit brought pursuant to the provisions of subsection 1 a business entity which has violated section 2 shall be liable to the person in an amount equal to the actual damages sustained by the person as result of such violation, but in no case less than five hundred dollars.

3. An action to enforce any liability created under this Act may be brought in any court of competent jurisdiction within two years from the date on which the cause of action arose.

Approved March 19, 1981

SOCIAL SECURITY

CHAPTER 501

SENATE BILL NO. 2141
(Committee on Industry, Business, and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION PAYROLL COMPUTATION

AN ACT to create and enact subsection 8.1 to section 52-01-01 of the North Dakota Century Code, relating to unemployment compensation definitions; to amend and reenact subsections 1 and 2 of section 52-01-01, section 52-04-05, subsections 1, 2, and 4 of section 52-04-06, sections 52-04-09 and 52-04-10, and subsections 1 and 2 of section 52-04-19.1 of the North Dakota Century Code, relating to unemployment compensation definitions, contributions, and notification; 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. Subsections 1 and 2 of section 52-01-01 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Annual payroll" means the total amount of taxable wages for employment paid by an employer during a twelve-month period ending on ~~December thirty-first~~ September thirtieth of any calendar year.

2. "Average annual payroll" means ~~the average of the annual payrolls of an employer for the last three completed calendar years except that, for an employer who had no taxable payroll in the first of the last three completed calendar years, the average annual payroll shall be the average of the annual payrolls of such employer for the last two completed calendar years and, for an employer who had no taxable payroll in the first two of the last three completed calendar years, the average annual payroll shall be the aggregate of the annual payroll of such employer for the last completed calendar year.~~:

   a. The annual payroll for the twelve-month period immediately preceding the computation date for an employer whose account has been chargeable with benefits for twelve but less than twenty-four months.

b. The average of the annual payrolls for the last two 12-month periods immediately preceding the computation date for an employer whose account has been chargeable with benefits for twenty-four but less than thirty-six months.

c. The average of the annual payrolls for the last three 12-month periods immediately preceding the computation date for an employer whose account has been chargeable with benefits for thirty-six or more months.

SECTION 2. Subsection 8.1 to section 52-01-01 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

8.1. "Computation date" means September thirtieth of each calendar year with respect to rates of contribution applicable to the calendar year beginning with the following January 1.

SECTION 3. AMENDMENT. Section 52-04-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-05. STANDARD RATE OF CONTRIBUTIONS - REDUCTION 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. 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 ~~December thirty-first~~ 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 ending on ~~December thirty-first~~ 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 of this section.

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 of this section 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. 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.

SECTION 4. AMENDMENT. Subsections 1, 2, and 4 of section 52-04-06 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. For the calendar ~~year 1979~~ years 1981 and 1982 the rate of contributions will not be higher than the rates at column ~~III~~ II of the schedule of rates.

2. For the calendar year ~~1980~~ 1983 and each calendar year thereafter the bureau shall determine the ratio of reserves for the payment of benefits as of ~~December thirty-first~~ September thirtieth of the preceding calendar year to the highest amount of benefits paid, less reimbursables, in any one of the preceding five ~~years~~ 12-month periods ending on September thirtieth. If such ratio is:

   a. Less than .5, the schedule of rates at column I will be in effect;

   b. .5 but less than .7, the schedule of rates at column II will be in effect;

   c. .7 but less than .9, the schedule of rates at column III will be in effect;

   d. .9 but less than 1.1, the schedule of rates at column IV will be in effect;

e. 1.1 but less than 1.3, the schedule of rates at column V will be in effect;

f. 1.3 but less than 1.5, the schedule of rates at column VI will be in effect;

g. 1.5 but less than 1.7, the schedule of rates at column VII will be in effect;

h. 1.7 or more, the schedule of rates at column VIII will be in effect.

The percent of the average annual payroll by which the cumulative contributions paid by an employer on or before ~~January~~ October thirty-first of any year, with respect to wages paid by him prior to the first day of ~~January~~ October of that calendar year, exceeds the cumulative benefits which were chargeable to his account and paid on or before ~~December thirty-first~~ September thirtieth of ~~the preceding calendar~~ that year, shall be such employer's reserve ratio. The contribution rate for the ensuing calendar year of an employer eligible under section 52-04-05 will be the rate of contribution on the line in the schedule of rates opposite his reserve ratio as established for that year.

SCHEDULE OF RATES - FUND RESERVE RATIO
(Reserve for payment of benefits to benefits paid)

EMPLOYER'S RESERVE RATIO Minus Balance or Standard Rate	Col. I- Less Than .5	Col. II- .5 But Less Than .7	Col. III- .7 But Less Than .9	Col. IV- .9 But Less Than 1.1	Col. V- 1.1 But Less Than 1.3	Col. VI- 1.3 But Less Than 1.5	Col. VII- 1.5 But Less Than 1.7	Col. VIII- 1.7 and Over
0% but less than 1%	6.0%	5.0%	4.8%	4.6%	4.4%	4.2%	4.2%	4.2%
1% but less than 2%	4.5%	4.3%	4.1%	3.9%	3.7%	3.5%	3.3%	3.1%
2% but less than 3%	4.3%	4.1%	3.9%	3.7%	3.5%	3.3%	3.1%	2.9%
3% but less than 4%	4.1%	3.9%	3.7%	3.5%	3.3%	3.1%	2.9%	2.7%
4% but less than 5%	3.9%	3.7%	3.5%	3.3%	3.1%	2.9%	2.7%	2.5%
5% but less than 6%	3.7%	3.5%	3.3%	3.1%	2.9%	2.7%	2.5%	2.3%
6% but less than 7%	3.5%	3.3%	3.1%	2.9%	2.7%	2.5%	2.3%	2.1%
7% but less than 8%	3.3%	3.1%	2.9%	2.7%	2.5%	2.3%	2.1%	1.9%
8% but less than 9%	3.1%	2.9%	2.7%	2.5%	2.3%	2.1%	1.9%	1.7%

	2.9%	2.7%	2.5%	2.3%	2.1%	1.9%	1.7%	1.5%
9% but less than 10%								
	2.7%	2.5%	2.3%	2.1%	1.9%	1.7%	1.5%	1.3%
10% but less than 11%								
	2.7%	2.3%	2.1%	1.9%	1.7%	1.5%	1.3%	1.1%
11% but less than 12%								
	2.7%	2.1%	1.9%	1.7%	1.5%	1.3%	1.1%	0.9%
12% but less than 13%								
	2.7%	1.9%	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%
13% but less than 14%								
	2.7%	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%
14% but less than 15%								
	2.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%
15% but less than 16%								
	2.7%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.3%
16% but less than 17%								
	2.7%	1.1%	0.9%	0.7%	0.5%	0.3%	0.3%	0.3%
17% but less than 18%								
	2.7%	0.9%	0.7%	0.5%	0.3%	0.3%	0.3%	0.3%
18% but less than 19%								
	2.7%	0.7%	0.5%	0.3%	0.3%	0.3%	0.3%	0.3%
19% and over								
	2.7%	0.5%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%

4. If the total benefits chargeable against an employer's account for all periods prior to ~~January~~ October first of such ~~calendar~~ year, including benefits paid on or before ~~January~~ October first, with respect to weeks of unemployment compensated prior to ~~January~~ October first, exceed the total contributions paid by such employer for the same period, including contributions paid on or before ~~January~~ October thirty-first with respect to wages paid prior to ~~January~~ October first of the same year, his contribution rate for the ensuing calendar year shall be the standard rate.

SECTION 5. AMENDMENT. Section 52-04-09 of 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. For the year 1942 and for each calendar year thereafter, the bureau shall classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such benefit experience. Each employer's rate for any calendar year shall be determined on the basis of his record as of January first of that calendar year except after the year 1981, when each employer's rate for the next calendar year shall be determined on the basis of his record as of October first of the preceding year. If as of the date such classification of employers is made, the bureau finds that any employing unit has failed to file any report required in connection therewith, or has filed a report which the bureau finds incorrect or insufficient, the bureau shall make an

estimate of the information required from such employing unit on the basis of the best evidence reasonably available to the bureau at the time, and shall notify the employing unit thereof by registered or certified mail addressed to its last known address. Unless such employing unit shall file the report, or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of such notice, his rate may not be less than the standard rate for the ensuing calendar year.

SECTION 6. AMENDMENT. Section 52-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-10. CONTRIBUTIONS FOR ENSUING YEAR - NOTIFICATION - REVIEW. The bureau shall notify promptly each employer of his rate of contributions as determined for each ensuing year not later than ~~March thirty-first~~ December first of ~~such--ensuing~~ the preceding year. Such contributions shall be computed pursuant to the provisions of this chapter. Such determination shall become conclusive and binding upon the employer unless, within fifteen days after the mailing of the notice thereof to his last known address, or in the absence of the mailing, within fifteen days after the delivery of such notice, the employer files an application for review and redetermination, setting forth his reasons therefor. If the bureau grants such review, the employer shall be notified promptly thereof and shall be granted an opportunity for a hearing, but no employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to the provisions of chapter 52-06 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute the services performed in employment for him and only in the event that he was not a party to such determination, redetermination, or decision or to any other proceeding under this chapter in which the character of these services was determined. The employer shall be notified promptly of the bureau's denial of his application, or of the bureau's redetermination, both of which shall become final unless within thirty days after the mailing of notice thereof to his last known address or in the absence of mailing, within thirty days after delivery of such notice, a petition for judicial review is filed in the district court of Burleigh County. Any proceeding before the court under the terms of this section shall be had in accordance with the provisions in chapter 52-06 with respect to court review.

SECTION 7. AMENDMENT. Subsections 1 and 2 of section 52-04-19.1 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Benefits paid to employees of the state of North Dakota, its departments and instrumentalities, or any instrumentality of more than one of the foregoing, or an instrumentality of the foregoing and one or more other states, which are attributable to employment by an

employing unit which, after December 31, 1977, is defined as an employer, shall be financed by one of the following methods:

a. By payment of contributions as provided under section 52-04-06, plus one-half the cost of the extended benefits paid that are attributable to wages paid by an employer.

b. By payment in lieu of contributions each quarter for the calendar years 1978 and 1979 in an amount equal to one percent of their total quarterly payroll, and the rate of contributions to be paid for each two-year period after 1979 shall be as determined by the bureau each January by computing the cost of benefits paid under chapters 52-06 and 52-07.1 which are attributable to wages paid by employers, and the bureau may modify such rate in order to minimize excess or insufficient payments in any prior periods.

c. In lieu of contributions an employer may elect to pay to the bureau for the unemployment fund an amount equal to the amount of benefits paid under chapters 52-06 and 52-07.1 which are attributable to wages paid in the employ of such governmental employer, to individuals for weeks of unemployment.

2. Benefits paid to employees of political subdivisions, other than state government, its departments and instrumentalities, or any instrumentality of more than one of the foregoing which are attributable to employment by an employing unit which, after December 31, 1977, is defined as an employer, shall be financed by one of the following methods:

a. By payment of contributions as provided under section 52-04-06 plus one-half the cost of the extended benefits paid that are attributable to wages paid by an employer.

b. By payment in lieu of contributions each quarter for the calendar year 1978 in an amount equal to one percent of their total quarterly payroll, and the rate of contribution to be paid quarterly each year after 1978 shall be determined by the bureau each January by computing the cost of benefits paid under chapters 52-06 and 52-07.1 which are attributable to wages paid by employers, and the bureau may modify such rate in order to minimize excess or insufficient payments in any prior periods.

c. In lieu of contributions an employer may elect to pay to the bureau for the unemployment fund an amount equal to the amount of benefits paid under chapters

52-06 and 52-07.1 which are attributable to wages paid in the employ of such governmental employer, to individuals for weeks of unemployment.

SECTION 8. EFFECTIVE DATE. The provisions of this Act shall become effective on January 1, 1981.

SECTION 9. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 1, 1981

CHAPTER 502

SENATE BILL NO. 2117
(Committee on Industry, Business, and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION BENEFITS ELIGIBILITY

AN ACT to amend and reenact subsection 4 of section 52-06-01 and subsection 1 of section 52-06-02 of the North Dakota Century Code, relating to eligibility and disqualification for unemployment compensation benefits.

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

SECTION 1. AMENDMENT. Subsection 4 of section 52-06-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. He has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purposes of this subsection:

   a. Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits~~, provided, that this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment~~;

   b. If benefits have been paid with respect thereto;

   c. Unless the individual was eligible for benefits, with respect thereto as provided in this section and section 52-06-02.

SECTION 2. AMENDMENT. Subsection 1 of section 52-06-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For the week in which he has filed an otherwise valid claim for benefits after he has left his last 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 ~~five~~ eight times his weekly benefit amount as determined under section 52-06-04; and

b. Has not left his last work under disqualifying circumstances.

This subsection shall 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.

Approved April 8, 1981

CHAPTER 503

SENATE BILL NO. 2354
(Parker)

BENEFITS DISQUALIFICATION

AN ACT to amend and reenact subsection 4 of section 52-06-02 of the North Dakota Century Code, relating to disqualification for unemployment compensation benefits.

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

SECTION 1. AMENDMENT. Subsection 4 of section 52-06-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. For any week with respect to which it is found that his unemployment is due to a ~~stoppage of work~~ strike, sympathy strike, or a claimant's work stoppage dispute of any kind which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed; provided that this subsection shall not apply if it is shown that:

   a. He is not participating in or directly interested in the labor dispute which caused the ~~stoppage of work~~ strike, sympathy strike, or a claimant's work stoppage dispute of any kind; and

   b. He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the ~~stoppage~~ strike, sympathy strike, or a claimant's work stoppage dispute of any kind occurs, any of whom are participating in or directly interested in the dispute; provided, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises~~, and provided further, that there shall not be deemed to be a stoppage of work in any factory, establishment, or other premises unless there shall be a substantial stoppage of work in each of said factory, establishment, or other premises~~.

Approved March 25, 1981

CHAPTER 504

SENATE BILL NO. 2114
(Committee on Industry, Business, and Labor)
(At the request of Job Service North Dakota)

BENEFITS DISQUALIFICATION

AN ACT to amend and reenact subsection 16 of section 52-06-02 of the North Dakota Century Code, relating to disqualification for unemployment compensation benefits.

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

SECTION 1. AMENDMENT. Subsection 16 of section 52-06-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16. ~~For any week which begins after March 31, 1980, and which begins in a period with respect to which the individual is receiving a governmental or other pension, unless the weekly benefit amount payable to the individual for the week is reduced, but not below zero:~~

~~a. By one-half the prorated weekly amount of the pension if at least one-half the cost of the pension plan was contributed by an employer who employed the individual during the base period, or whose account would be chargeable with any unemployment compensation paid to the individual for the week;~~

~~b. By the entire prorated weekly amount of the pension if the entire cost of the pension plan was contributed by such an employer; or~~

~~c. By the entire prorated weekly amount of any governmental or other pension except service disability pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on any previous work of the individual if the reduction is required as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act.~~

For any week with respect to which an individual is receiving a pension (which shall include a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment) under a plan maintained or contributed to by a base period or chargeable employer (as determined under applicable law), unless the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero):

a. By the prorated weekly amount of the pension after deduction of one-half of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual; or

b. By the entire prorated weekly amount of the pension if subdivision a or subdivision c does not apply; or

c. By one-half of the pension if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any other person or organization) who is not a base period or chargeable employer (as determined under applicable law).

Approved March 26, 1981

CHAPTER 505

SENATE BILL NO. 2120
(Committee on Industry, Business, and Labor)
(At the request of Job Service North Dakota)

MINIMUM WEEKLY BENEFIT AMOUNT DETERMINATION

AN ACT to amend and reenact subsection 1 of section 52-06-04 of the North Dakota Century Code, relating to unemployment compensation weekly benefit amount.

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

SECTION 1. AMENDMENT. Subsection 1 of section 52-06-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The procedures, provisions and conditions of this section shall determine the "weekly benefit amount" of those individuals who establish a benefit year on and after the first day of July of 1973:

   a. For the purpose of this section the bureau shall each year, on or before the first day of June, determine the average annual wage paid to insured workers and, from that determination, an "average weekly wage", by the following computation:

      the total wages reported on contribution reports for the preceding calendar year shall be divided by the average monthly number of covered workers, whose number shall be determined by dividing by twelve the total covered employment reported on contribution reports for the preceding calendar year, and the quotient obtained by dividing the total wages by the average monthly number of covered workers shall be the average annual wage; and such quotient shall be divided by fifty-two and the amount thus obtained, rounded to the nearest cent, shall be the "average weekly wage";

   b. An individual's "weekly benefit amount" shall be an amount equal to one twenty-sixth (if not a multiple of one dollar, to be computed to the next higher multiple

of one dollar) of the individual's total wages for insured work paid during the quarter of the individual's base period in which the individual's wages were the highest, ~~but in no case to be less than a "minimum weekly benefit amount" of eighteen percent of the average weekly wage rounded to the next higher multiple of one dollar if not a multiple of one dollar nor more than a "maximum weekly benefit amount" as hereinafter provided~~ however, if such amount is less than the "minimum weekly benefit amount" the individual shall be monetarily ineligible for benefits. The "minimum weekly benefit amount" shall be eighteen percent of the average weekly wage rounded to the next higher multiple of one dollar if not a multiple of one dollar. The "maximum weekly benefit amount" shall be as hereinafter provided:

(1) Fifty-five percent of the "average weekly wage", rounded to the next higher 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 the first day of July of 1973.

(2) Sixty percent of the "average weekly wage", rounded to the next higher 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 the first day of July of 1975.

(3) Sixty-seven percent of the "average weekly wage", rounded to the next higher 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 the first day of July of 1976.

Approved March 19, 1981

CHAPTER 506

SENATE BILL NO. 2113
(Committee on Industry, Business, and Labor)
(At the request of Job Service North Dakota)

SUITABILITY OF WORK

AN ACT to amend and reenact section 52-06-36 of the North Dakota Century Code, relating to the factors considered in determining suitability of work and good cause for voluntary leaving with respect to unemployment compensation benefits.

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

SECTION 1. AMENDMENT. Section 52-06-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-36. FACTORS CONSIDERED IN DETERMINING SUITABILITY OF WORK AND GOOD CAUSE FOR VOLUNTARY LEAVING. In determining whether or not any work is suitable for an individual and in determining the existence of good cause for voluntarily leaving his work under section 52-06-02, subsections 1 and 3, there shall be considered among other factors, and in addition to those enumerated in this section, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, the length of his unemployment, his prospects for obtaining work in his customary occupation, the distance of available work from his residence, and the prospects for obtaining local work. However, any work paying wages equal to the maximum weekly benefit amount shall be determined suitable for an individual who has filed for and received benefit payments for eighteen consecutive weeks; provided that consideration shall be given to the degree of risk involved to the individual's health, safety, morals, his physical fitness and the distance of the work from his residence. No work shall be deemed suitable and benefits shall not be denied under the North Dakota Unemployment Compensation Law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

2. If the wages, hours, or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

3. If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Approved March 25, 1981

CHAPTER 507

SENATE BILL NO. 2112
(Committee on Industry, Business, and Labor)
(At the request of Job Service North Dakota)

EXTENDED BENEFITS ELIGIBILITY

AN ACT to create and enact section 52-07.1-08.1 and 52-07.1-08.2 of the North Dakota Century Code, relating to unemployment compensation extended benefits paid under interstate claims and to eligibility for extended benefits; 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. Section 52-07.1-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

52-07.1-08.1. CESSATION OF EXTENDED BENEFITS WHEN PAID UNDER AN INTERSTATE CLAIM IN A STATE WHERE EXTENDED BENEFIT PERIOD IS NOT IN EFFECT.

1. Except as provided in subsection 2, an individual shall not be eligible for extended benefits for any week if:

   a. Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

   b. No extended benefit period is in effect for such week in such state.

2. Subsection 1 shall not apply with respect to the first two weeks for which extended benefits are payable (determined without regard to this section) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

SECTION 2. Section 52-07.1-08.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

52-07.1-08.2. ELIGIBILITY FOR EXTENDED BENEFITS.

1. Notwithstanding the provisions of section 52-07.1-04, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the bureau finds that during such period:

   a. He failed to accept any offer of "suitable work" (as defined under subsection 3 of this section) or failed to apply for any suitable work to which he was referred by the bureau; or

   b. He failed to actively engage in seeking work as prescribed under subsection 5 of this section.

2. Any individual who has been found ineligible for extended benefits by reason of the provisions in subsection 1 of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times the extended weekly benefit amount.

3. For purposes of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities, provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

   a. The individual's extended weekly benefit amount as determined under section 52-07.1-06 plus

   b. The amount, if any, of supplemental unemployment benefits (as defined in section 501 (c) (17) (D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further,

   c. Pays wages not less than the higher of:

      (1) The minimum wage provided by section 6 (a) (1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

      (2) The applicable state or local minimum wage;

   d. Provided, however, that no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:

(1) The position was not offered to such individual in writing and was not listed with the employment service.

(2) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 52-06-36 to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subsection.

(3) The individual furnishes satisfactory evidence to the bureau that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in section 52-06-36 without regard to the definition specified by this subsection.

4. Notwithstanding the provisions of section 52-07.1-04 to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304 (a) (5) of the Internal Revenue Code of 1954 and set forth under section 52-06-36.

5. For the purposes of subdivision b of subsection 1 of this section, an individual shall be treated as actively engaged in seeking work during any week if:

   a. The individual has engaged in a systematic and sustained effort to obtain work during such week, and

   b. The individual furnishes tangible evidence that he has engaged in such effort during such week.

6. The employment service shall refer any claimant entitled to extended benefits under this chapter to any suitable work which meets the criteria prescribed in subsection 3 of this section.

7. An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct or failed to accept an offer of or apply for suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this chapter

requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

SECTION 3. EFFECTIVE DATE. The provisions of section 52-07.1-08.1 shall become effective on June 1, 1981. The provisions of section 52-07.1-08.2 shall become effective on March 31, 1981.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 19, 1981

CHAPTER 508

SENATE BILL NO. 2413
(Reiten)

PRIMARY O.A.S.I.S. BENEFIT

AN ACT to amend and reenact subsection D of section 52-09-20 of the North Dakota Century Code, relating to the determination of the primary insurance benefit 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 D of section 52-09-20 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

D. The term "primary insurance benefit" means an amount equal to the sum of the following:

(1) (a) Fifty percentum of the amount of an individual's average monthly wage if such average monthly wage does not exceed seventy-five dollars, or (b) if such average monthly wage exceeds seventy-five dollars, fifty percentum of seventy-five dollars, plus fifteen percentum of the amount by which such average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars, and

(2) An amount equal to one percentum of the amount computed under subdivision (1) multiplied by the number of years in which two hundred dollars or more of wages were paid to such individual.

(3) Effective July 1, ~~1979~~ 1981, the term "primary insurance benefit" shall be the total of the sums determined in subdivisions (1) and (2) of this subsection plus one hundred ~~ten~~ thirty dollars. Where the primary insurance benefit thus computed is less than one hundred ~~ten~~ thirty dollars, such benefit shall be one hundred ~~ten~~ thirty dollars. Effective July 1, ~~1980~~ 1982, the term "primary insurance benefit" shall be the total of the sums determined in

subdivisions (1) and (2) of this subsection plus one hundred ~~twenty~~ forty dollars. Where the primary insurance benefit thus computed is less than one hundred ~~twenty~~ forty dollars, such benefit shall be one hundred ~~twenty~~ forty dollars. The provisions herein shall apply to valid claims filed before and after the specified date.

Approved March 25, 1981

CHAPTER 509

SENATE BILL NO. 2118
(Committee on Industry, Business, and Labor)
(At the request of Job Service North Dakota)

DELINQUENT SOCIAL SECURITY PAYMENT PENALTY

AN ACT to amend and reenact subsection d of section 52-10-05 of the North Dakota Century Code, relating to delinquent social security payments by political subdivisions.

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

SECTION 1. AMENDMENT. Subsection d of section 52-10-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

d. Delinquent payments due under subdivision c1 of this section shall bear interest at the rate ~~of--six--percentum per--annum~~ specified in the Social Security Act at 42 U.S.C.S. § 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.S. § 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.

Approved March 31, 1981

SPORTS AND AMUSEMENTS

CHAPTER 510

HOUSE BILL NO. 1499
(Richie)

PUBLIC CONCERT PERMIT REQUIREMENTS

AN ACT to amend and reenact sections 53-02-01, 53-02-02, 53-02-03, 53-02-05, 53-02-06, and 53-02-08 of the North Dakota Century Code, relating to definitions; permits required for a public dance or music festival; issuance of permits; application for permits; inquiry by the governing body as to granting a permit; and an officer of the law to be in attendance at a public dance or music festival; and adding public concerts to the provisions of the chapter.

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

SECTION 1. AMENDMENT. Section 53-02-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-02-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

1. A "music festival" ~~shall mean~~ means a musical performance by one or more groups held out-of-doors, whether or not an admission fee is charged.

2. A "public dancing place" ~~shall mean~~ means a room, place, or space open to public patronage where dancing in which the public may participate is carried on and to which an admission may or may not be charged.

3. A "public dance" ~~shall mean~~ means any dance where the public may participate, whether an admission fee is charged or not.

4. A "person" ~~shall mean~~ means a natural person, firm, association, or corporation.

5. A "public concert" means a musical performance by one or more groups held indoors where the audience is seated by

reserve or general admission, free of charge, or otherwise.

SECTION 2. AMENDMENT. Section 53-02-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-02-02. PERMIT FOR PUBLIC DANCE ~~OR~~, MUSIC FESTIVAL, OR PUBLIC CONCERT REQUIRED - EXCEPTION. No person shall give, hold, or conduct a public dance ~~or~~, music festival, or public concert unless the owner of the place where the dance ~~or~~, music festival, or public concert is given, or the person giving the same or in charge thereof, first shall have procured a permit to give, hold, and conduct such dance ~~or~~, music festival, or public concert as provided in section 53-02-05. This provision shall not apply to a dance held or conducted in a place of public lodging having more than fifty guestrooms, if held or conducted under the immediate control of the owner or operator of such place of public lodging.

SECTION 3. AMENDMENT. Section 53-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-02-03. WHO SHALL ISSUE PERMITS - PERMIT NOT TRANSFERABLE. In each city ~~and organized township~~ in this state, a permit must be procured from the governing body of the ~~municipality or organized township. In an unorganized township~~ city to hold an event regulated by this chapter. For events outside the limits of a city, a permit must be obtained from the board of county commissioners of the county in which ~~such~~ a public dance ~~or~~, music festival, or public concert is to be held or in which the public dancing place or music festival site is located. ~~Such~~ A permit may be issued ~~at any one time~~ for one or more public dances ~~or~~, music festivals, or public concerts, or for a public dancing place or music festival site ~~for a period of not more than one year~~. If a permit is issued to any person to conduct a public dancing place or music festival site, public dances ~~or~~, music festivals, or public concerts may be conducted in such place only by the person to whom the permit is issued. Such permit shall not be transferable.

SECTION 4. AMENDMENT. Section 53-02-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-02-05. APPLICATION FOR PERMIT - SPECIAL PERMITS.

1. Any person desiring to conduct a public dance, music festival, public concert, or special event at a public building, public dancing place, or music festival site shall make application for a permit to do so to the governing body of the ~~municipality or organized township~~ city in which it is to be conducted, if it is to be conducted within the limits of any city ~~or organized township~~. In all other cases, the application shall be made to the board of county commissioners of the county in

which such dance ~~or~~, music festival, or public concert is to be conducted. The application shall set forth:

a. The name of the applicant.

b. The time or period for which the permit is desired.

c. The place where such public dance ~~or~~, music festival, or public concert is to be conducted or held.

2. An on sale, off sale, or on or off sale alcoholic beverage licensee desiring to conduct a special event, public dance, ~~or~~ music festival, or public concert wherein alcoholic beverages will be sold shall make an application for a special permit to do so to the governing body of the ~~municipality or organized township~~ city in which it is to be conducted, if it is to be conducted within the limits of any city ~~or organized township~~. In all other cases, the application shall be made to the board of county commissioners of the county in which the special event, dance, ~~or~~ music festival, or public concert is to be conducted. The application shall set forth the information required in subsection 1.

SECTION 5. AMENDMENT. Section 53-02-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-02-06. INQUIRY BY GOVERNING BODY AS TO GRANTING A PERMIT. The governing body to which ~~such~~ a permit application is made shall make such inquiry and investigation as to the propriety of granting or refusing such permit as shall be deemed necessary. The governing body may hold a hearing upon published notice where citizens can be heard relative to the merits of granting or refusing a permit.

SECTION 6. AMENDMENT. Section 53-02-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-02-08. OFFICER OF LAW TO BE IN ATTENDANCE AT PUBLIC DANCE ~~OR~~, MUSIC FESTIVAL, OR PUBLIC CONCERT. It shall be the duty of the sheriff in any county in which any public dance ~~or~~, music festival, or public concert is held outside of an incorporated city, and of the chief peace officer of the city where the dance ~~or~~, music festival, or public concert is held within the limits of a city, to police such dance ~~or~~, music festival, or public concert so that law and order are there maintained. The sheriff or the chief peace officer shall determine the number of deputy sheriffs or special officers needed to police the dance ~~or~~, music festival, or public concert properly. The person conducting any such dance ~~or~~, music festival, or public concert, before the dance ~~or~~, music festival, or public concert shall be held, shall pay to such sheriff or peace officer the expense of any deputy sheriff or special officer required for the proper policing of such dance ~~or~~, music festival, or public concert, and no such dance ~~or~~, music festival, or public

concert shall be permitted to proceed unless such officer or officers are present and fees therefor are paid. The holding of such dance ~~or~~, music festival, or public concert without giving notice thereof to the sheriff of the county or the peace officer of the city, and without making provision for the policing thereof, is unlawful. No person, directly or indirectly interested or concerned in the giving, holding, or conducting of such public dance ~~or~~, music festival, or public concert, or connected with the person conducting the same, shall be eligible to appointment under this section as a special officer.

Approved March 16, 1981

CHAPTER 511

HOUSE BILL NO. 1217
(Conmy)

AMUSEMENT GAME OR DEVICE LICENSE

AN ACT to amend and reenact sections 53-04-03, 53-04-04, and 53-04-06 of the North Dakota Century Code, relating to the license requirements for amusement games or devices.

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

SECTION 1. AMENDMENT. Section 53-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-04-03. ANNUAL LICENSE REQUIRED - FEE. Any person ~~owning~~ who owns any amusement game or device and who displays such amusement game or device~~,--as-defined-in-this-chapter,~~ to the public, to be played or operated by the public, shall ~~secure-for--each--game or--device-an-annual-license,-the-fee-therefor-being-due-and-payable on-July-first-of--each--year~~ obtain and display as many annual licenses as that person has amusement games or devices displayed. Different amusement games or devices may be displayed throughout the year without obtaining additional licenses as long as there are never more amusement games or devices than licenses on display. No license shall be issued for any fractional portion of a year, except that ~~if~~ the license fee for any additional game or device ~~is~~ put on display at any time after January first and before July first of any year~~,-the-license-fee-for-such-period-until-July-first-shall--be~~ is one-half of the amount of the annual license fee ~~provided-for-in this-chapter~~.

SECTION 2. AMENDMENT. Section 53-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-04-04. ANNUAL LICENSE FEE. ~~Before--any--such--game-or amusement-device-is-put-on-display-to-the-public,-to-be--played--and operated--by--the--public,-the-owner-thereof-shall-pay-an~~ The annual license fee ~~of~~ shall be fifteen dollars ~~per-year-for-each-machine-or device~~. The fee for each license is due and payable on July first of each year.

SECTION 3. AMENDMENT. Section 53-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-04-06. ~~IDENTIFICATION TAG ATTACHED TO MACHINE--LICENSE TO BE DISPLAYED. Concurrent with the issuance of each license for each machine, the attorney general shall issue an identification tag or other device prescribed by him upon which shall appear the serial number of the license and the manufacturer's serial number or other means of identifying such machine. Such identification tag or other device at all times must be attached firmly to the machine and displayed prominently thereon. The license issued for such machine must at all times be prominently displayed in the premises where such machine is located.~~ All licenses issued under this chapter shall be prominently displayed on the premises where the amusement games or devices are displayed to the public so as to allow public inspection.

Approved March 26, 1981

CHAPTER 512

HOUSE BILL NO. 1541
(Mattson, Heigaard)

AMUSEMENT CONCESSIONS

AN ACT to allow fair boards to conduct amusement games, amusement devices, or bingo; to provide for definitions, eligible organizations, licensing, fees, applications, suspension, revocation, amusement concessions, permitted locations, administrative rules, statements of receipts and expenses, examination of books and records, and unlawful gambling; and to provide a penalty.

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

SECTION 1. DEFINITIONS.

1. "Amusement concession" means any place where a single amusement game or device, or bingo, is conducted by a person for profit, and includes the area within which are confined the equipment, playing area, and other personal property necessary for the conduct of the game.

2. "Amusement games or devices" means such games and devices as electric ray guns, music boxes, picture boxes, bumper-ball, or pinball, and other similar miniature games or devices, whether or not they show a score, where a charge for playing or operating is collected, but do not include any machine which may constitute a lottery under the laws of this state. Amusement games or devices also mean a game, contest, scheme, or device in which a person stakes or risks something of value for an opportunity to win something of value and in which the outcome depends in a material degree upon an element of chance, notwithstanding a person's skill may also be a factor.

3. "Bingo" means that game in which each participant receives one or more cards, each of which is marked off into twenty-five squares and five horizontal rows of five squares each and five vertical rows of five squares each. Each square is designated by number, letter or combination of numbers and letters, no two cards being identical. The players cover squares as the operator of such game

announces the number, letter, or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically, from a receptacle in which have been placed objects bearing numbers, letters, or combination of numbers and letters corresponding to the system used for designating the squares. The winner of each game is the player or players first properly covering a predetermined and announced pattern of squares on a card being used by the player or players.

4. "Carnival" means an aggregation of attractions including any show, circus, act, game, vending device, or amusement device, whether conducted under one management or more, or independently, temporarily set up or conducted in a public place or upon any private premises accessible to the public with or without admission fee, which, from the nature of the aggregation, attracts attendance and causes promiscuous commingling of persons in the spirit of merrymaking and revelry.

5. "Conducts" means a specified activity which occurs when a person owns, promotes, sponsors, or operates a game or activity. A natural person does not "conduct" a game or activity if the person is a participant in a game or activity which complies with this Act.

6. "Fair" means an annual fair or exposition held by the North Dakota state fair board or any county fair board.

7. "Fair board" means the officers of any state or county fair association, or the agents of any such board, duly authorized to make any contract or issue any permit as provided in this Act.

8. "Gross proceeds" means the total revenue received as rent for the privilege of conducting amusement games or devices, or bingo.

9. "Licensee" means an eligible organization licensed under the provisions of this Act.

10. "Licensing authority" means the attorney general of the state of North Dakota.

11. "Net proceeds" means gross proceeds less cash prizes or the price of merchandise prizes.

12. "Person" means any natural person, firm, partnership, or corporation.

13. "Posted" means that the person conducting a game has caused to be placed near the front or playing area of the game a sign at least thirty inches by thirty inches, with permanent material and lettering stating, at the top in

letters at least three inches high, "Rules of the Game". Thereunder, in large, easily readable print, the name of the game, the price to play the game, the complete rules for the game, and the name and permanent mailing address of the owner of the game shall be stated.

14. "Raffle" means a lottery in which each participant buys a ticket for a chance at a prize with the winner determined by a random method. "Raffle" does not include a slot machine.

15. "Rent" means the amount paid by a person or organization for the use of space to conduct amusement games or devices or bingo.

SECTION 2. ORGANIZATIONS ELIGIBLE. Fair boards may conduct or authorize a person to conduct amusement games or devices or bingo under the conditions of this Act. Notwithstanding any other provisions of this Act, fair boards may use the net proceeds of such amusement games or devices or bingo or may use the rent as defined in this Act to directly benefit the fair board. It is the finding of the legislative assembly that it is in the public interest to preserve agricultural fairs and expositions.

SECTION 3. LICENSE - FEES - APPLICATION - SUSPENSION - REVOCATION. A fair board shall apply for a license to conduct amusement games or devices, or bingo, from the attorney general at least thirty days before the operation of such games. Application shall be made upon forms prescribed by the attorney general along with the submission of a fifty dollar license fee.

The license application shall be signed and sworn to by the applicant and shall contain the following:

1. The name and post-office address of the applicant.

2. The location at which the organization will conduct the amusement games or devices, or bingo, whether the organization owns or leases the premises, and a copy of the rental agreement if it leases the premises.

3. A statement of the applicant's previous history and association sufficient to establish the applicant is an eligible organization.

4. A statement of the educational, charitable, patriotic, fraternal, religious, or other public-spirited uses to which the net proceeds of an amusement game or device, or bingo, will be devoted.

5. Such other reasonable and necessary information as the attorney general may require.

The attorney general shall license applicant organizations which conform to the requirements of this Act to conduct amusement games or devices, or bingo. In addition, the attorney general may, on his own motion based on reasonable grounds or on written complaint, suspend or revoke a license in accordance with chapter 28-32 for violation, by the licensee or other officer, director, agent, member, or employee of such licensee, of this Act or any rule adopted pursuant to this Act. Each amusement game or device shall be licensed by the attorney general's office in accordance with chapter 53-04.

SECTION 4. AMUSEMENT CONCESSIONS. An amusement game or device, or bingo, is lawful when conducted by a person at an amusement concession, but only if all of the following are complied with:

1. The location where the game is conducted by the person has been authorized as provided in section 5 of this Act.

2. The person conducting the game has been issued a license pursuant to this Act and prominently displays the license at the playing area of the game.

3. Games of chance other than the licensed game are not conducted or engaged in at the amusement concession.

4. The game is posted and the cost to play the game does not exceed one dollar.

5. A prize is not displayed which cannot be won.

6. Cash prizes are not awarded and merchandise prizes are not repurchased.

7. The game is not operated on a build-up or pyramid basis except a trade up of a prize shall be allowed.

8. The actual retail value of any prize does not exceed twenty-five dollars. If a prize consists of more than one item, unit, or part, the aggregate retail value of all items, units, or parts shall not exceed twenty-five dollars.

9. Concealed numbers or conversion charts are not used to play the game and the game is not designated or adapted with any control device to permit manipulation of the game by the operator to prevent a player from winning or to predetermine who the winner will be. The object target, block, or object of the game must be attainable and possible to perform under the rules stated from the playing position of the player.

10. The game is conducted in a fair and honest manner.

SECTION 5. PERMITTED LOCATIONS. An amusement game or device or bingo may be lawfully conducted by a person at an amusement concession provided the person has written authorization from the sponsor of the fair to conduct the amusement game or device or bingo.

SECTION 6. EXAMINATON OF BOOKS AND RECORDS. The licensing authority and its agents, and representatives of the governing body of a city or county with respect to a fair board authorized by that governing body, shall have the power to examine or cause to be examined the books and records of any fair board licensed or authorized to conduct amusement games or devices, or bingo, under this Act to the extent that such books and records relate to any transaction connected with holding, operating, or conducting of any amusement game or device, or bingo.

SECTION 7. RULES. The licensing authority may adopt rules in accordance with chapter 28-32 relating to, but not limited to, methods of play, conduct, and promotion of amusement games or devices, or bingo; methods, procedures, and minimum standards for accounting and recordkeeping; requiring reports by licensees and authorized organizations; ensuring that the entire net proceeds of amusement games or devices, or bingo, are devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses as defined by this Act; protecting and promoting the public interest; ensuring fair and honest amusement games or devices, or bingo; ensuring that fees and taxes are paid; and seeking to prevent or detect unlawful gambling activity.

SECTION 8. VIOLATION OF ACT - MISDEMEANOR - FORFEITURE OF LICENSURE - INELIGIBILITY FOR YEAR. Any person who knowingly makes a false statement in any application for a license or authorizing resolution or in any statement annexed thereto, or who fails to keep sufficient books and records to substantiate the receipts, expenses, or uses resulting from amusement games or devices, or bingo, conducted under this Act or who falsifies any books or records so far as they relate to any transaction connected with the holding, operating, and conducting of any amusement game or device, or bingo, or who violates any of the provisions of this Act, any rule adopted hereunder, or of any term of a license shall be guilty of a class A misdemeanor. If convicted, such organization or person shall forfeit any license or authorizing resolution issued to it pursuant to this Act and shall be ineligible to reapply for a license or authorization for two years thereafter.

Approved March 31, 1981

CHAPTER 513

HOUSE BILL NO. 1088
(Koski)

PHYSICAL ENDURANCE CONTESTS

AN ACT to amend and reenact section 53-05-06 of the North Dakota Century Code, relating to penalty for violation of restrictions on certain amusements; to repeal section 53-05-05 of the North Dakota Century Code, relating to the prohibition of physical endurance contests; and declaring an emergency.

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

SECTION 1. AMENDMENT. Section 53-05-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-05-06. PENALTY. Any person who violates any provision of sections 53-05-02~~,~~ or 53-05-03~~, or 53-05-05~~ is guilty of a class B misdemeanor.

SECTION 2. REPEAL. Section 53-05-05 of the North Dakota Century Code is hereby repealed.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 10, 1981

CHAPTER 514

HOUSE BILL NO. 1277
(Representatives Gerl, Conmy, Wald)
(Senators Cussons, Tallackson)

GAMES OF CHANCE

AN ACT to allow nonprofit veterans, charitable, educational, religious, and fraternal organizations, civic and service clubs, and public-spirited organizations to conduct bingo, raffles, pull tabs, jars, punchboards, sports pools and twenty-one; and to provide for definitions, licensure by the attorney general, city and county approval in certain instances, restrictions on the conduct of games, bookkeeping requirements, expense requirements, a tax based on adjusted gross proceeds, examination of books and records, licensure of distributors, form and display of licensure, and rules; to provide a penalty.

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

SECTION 1. DEFINITIONS.

1. "Adjusted gross proceeds" means gross proceeds less cash prizes or the price of merchandise prizes.

2. "Bona fide guest" means a person who is not a member of an eligible organization, but who is allowed to use the facilities of the organization when invited by a member or the organization in accordance with the eligible organization's bylaws, articles of incorporation, charter, rules, or other written statement.

3. "Charitable organization" means any nonprofit organization operated for the relief of poverty, distress, or other condition of public concern within this state, which has been so engaged within this state for two years.

4. "Civic and service club" means any branch, lodge, or chapter of a nonprofit national or state organization which is authorized by its written constitution, charter, articles of incorporation, or bylaws to engage in a civic or service purpose within this state, which shall have existed in this state for two years. "Civic and service

club" also means a similar local nonprofit organization, not affiliated with a state or national organization, which is recognized by resolution adopted by the governing body of the city in which the organization conducts its principal activities, or by the governing body of a county if such organization conducts its principal activities outside the limits of a city but within a county. Such club shall have existed in this state for two years.

5. "Distributor" means a person, firm, corporation, association, or organization which sells, markets, or otherwise distributes raffle tickets, bingo equipment, or any other implements of gambling usable in the lawful conduct of games of chance under this Act, to an organization licensed or authorized to conduct such games of chance under this Act. "Distributor" 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 organization.

6. "Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses" are:

   a. Uses benefiting those organizations which are exempt from federal taxation under section 501(c) (3) of the Internal Revenue Code.

   b. 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 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.

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.

7. "Educational organization" means any nonprofit public or private elementary or secondary school in this state which has been in existence for two years.

8. "Eligible organization" means bona fide nonprofit veterans, charitable, educational, religious, and fraternal organizations, civic and service clubs, and other public-spirited organizations as defined by this Act, which may be licensed by the attorney general or authorized by the governing body of a city or county to conduct games of chance under this Act.

9. "Entire net proceeds" or "net proceeds" means the adjusted gross proceeds less such expenses, charges, fees, taxes, and deductions as are specifically authorized under this Act.

10. "Fraternal organization" means a nonprofit organization within this state, except college and high school fraternities, 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. Such organization shall have existed within this state for two years.

11. "Gross proceeds" means all moneys collected or received from games of chance and admissions thereto.

12. "Licensee" means an eligible organization licensed under the provisions of this Act.

13. "Licensing authority" means the attorney general.

14. "Member" means a person who has qualified for and been admitted to membership in an eligible organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written statement, and who pays regular monthly, annual, or other periodic dues or is a fully paid life member of the eligible organization.

"Member" includes auxiliary members, but excludes social and honorary members.

15. "Other public-spirited organization" means a nonprofit organization recognized by the governing body of a city or county by resolution as public-spirited and eligible to conduct games of chance under this Act.

16. "Religious organization" means any nonprofit organization, church, body of communicants, or group gathered in common membership for mutual support and edification in piety, worship, and religious observances which has been so gathered or united in this state for two years.

17. "Veterans organization" means any congressionally chartered organization within this state, or any branch or lodge or chapter of a nonprofit national or state organization within this state, the membership of which consists of individuals who were members of the armed services or forces of the United States. Such organizations shall have been in existence in this state for two years.

SECTION 2. ORGANIZATIONS ELIGIBLE UNDER ACT - USE OF NET PROCEEDS. Nonprofit veterans, charitable, educational, religious, and fraternal organizations, civic and service clubs, and public-spirited organizations, as those terms are defined by this Act, are eligible to conduct games of chance under the conditions of this Act. The entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses as defined by this Act. Notwithstanding any other provision of this Act, an eligible organization, which is not required to be licensed by the attorney general, may use the net proceeds of such games of chance to directly benefit the eligible organization; however, none of the proceeds may be used for capital improvements or the purchase of furnishings. For purposes of this section, a capital improvement is defined as the construction, renovation, remodeling or repair of a building which tends to enhance its value, beauty or utility or to adapt it for further purposes. For purposes of this section, a furnishing is defined as furniture, draperies, or equipment.

SECTION 3. LICENSURE - EXCEPTIONS FOR RAFFLES AND BINGO - CITY AND COUNTY LICENSURE - FEES - SUSPENSION AND REVOCATION.

1. 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. However, an eligible organization desiring 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, shall apply directly to the governing body of the city in

which it conducts its principal activities or, if its principal activites are conducted within 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 raffles and bingo subject to authorization by a city or county shall be made on forms provided by the attorney general and shall be accompanied by a ten dollar permit fee payable to the city or county governing body.

2. The attorney general shall license such organizations which conform to the requirements of this Act 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.

3. Games of chance shall be operated or conducted only on premises or sites set forth in the application as follows:

   a. Class A license applicants shall be limited to one location. A special permit for an alternate location may be granted by the attorney general for a single specific occasion upon written request.

   b. Class B license applicants shall first secure approval of the proposed site or sites on which it intends to conduct games of chance under this Act 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 ten dollar fee for this permit.

   c. Rented premises shall be subject to rules adopted by the attorney general.

   d. Only one eligible organization at a time may conduct games of chance at a specific location.

   e. Licenses, rules of play and state identification devices shall 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 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 Act for violations by the licensee, or any officer, director, agent, member, or employee of the licensee, of this Act or any rule or regulation adopted under this Act.

SECTION 4. COLLEGE FRATERNITIES AND SORORITIES ALLOWED TO CONDUCT RAFFLES - USE OF PROCEEDS. A college fraternity or sorority recognized by the administration of a North Dakota college or university shall be eligible to conduct raffles and bingo under the provisions of this Act. The entire net proceeds of such raffles shall be devoted to educational, charitable, patriotic, or other public-spirited uses as defined by this Act.

SECTION 5. CITY APPROVAL FOR RAFFLES. A college fraternity or sorority shall apply in writing to the governing body of the city in which it is located, or to the board of county commissioners where the college is located outside the geographical limits of a city, for permission to conduct a raffle at least thirty days prior to each occasion. The application shall state the time, place, and educational, charitable, patriotic, or other public-spirited uses to which the proceeds will be devoted. The applicant fraternity or sorority shall include a signed acknowledgment by the administration of the college or university that the applicant is a recognized fraternity or sorority. The governing body may at its own discretion, and upon application by a fraternity or sorority, grant permission for raffles and bingo to be held at specifically designated times and places for specific uses covering a one-year period. The governing body may by ordinance or resolution establish authorization fees not to exceed ten dollars for an authorization for one occasion and not to exceed twenty-five dollars for an authorization covering more than one occasion. If the governing body, at its own discretion, chooses to authorize raffles or bingo pursuant to this Act, the governing body may do so by resolution.

SECTION 6. 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 Act.

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 Act shall be deducted from adjusted gross proceeds, except bona fide expenses in reasonable amounts as provided under section 11. No games of chance shall be conducted with any equipment other than equipment owned by or rented at a reasonable rate from an eligible organization.

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 Act.

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 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 Act. 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 Act and their spouses and bona fide guests may participate in playing games of chance conducted by such licensed organization.

9. No person, firm, corporation, association, or organization convicted of a felony or a class A misdemeanor, or determined by the attorney general to have participated in organized crime or unlawful gambling, shall be permitted to sell, distribute, conduct, or assist in games of chance under this Act.

SECTION 7. GAMES OF CHANCE ALLOWED. Eligible organizations shall be permitted to conduct the following games of chance:

1. Eligible organizations licensed by the attorney general shall be permitted to conduct bingo, raffles, pull tabs, jars, punchboards, twenty-one, and sports pools for professional sports only.

2. College fraternities or sororities may conduct raffles and bingo.

SECTION 8. PUNCHBOARDS AND JARS - SALE OF CHANCES. No person or organization engaged in the selling of chances from jars or punchboards under this Act shall 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 of the highest denomination of winners have been sold.

SECTION 9. SPORTS POOLS - CONTROL BY LICENSEE - RULES POSTED. Any licensee or other eligible organization may allow the playing of sports pools on the premises or authorized site. Sports pools shall be allowed for professional sports only. If sports pools are allowed, they shall be conducted and controlled by the licensee or other eligible organization. Any rules affecting the conduct of sports pools or requirements of participants shall be clearly posted. The maximum wager on any sports pool shall not exceed five dollars. The amounts paid to sports pool participants in prizes shall not exceed two-thirds of the gross proceeds.

SECTION 10. TWENTY-ONE - SALE OF CHIPS - REDEMPTION - WAGER - LIMIT - RULES OF PLAY. Any licensee or other eligible organization may conduct and control the playing of the card game twenty-one on the licensee's or eligible organization's premises or authorized site, but at no other location. No money shall be allowed on the table. The licensee or eligible organization shall provide playing chips of various denominations to the participants. Chips shall be redeemed by the licensee or eligible organization for their full value. A maximum limit per wager shall be two dollars and no player may play more than two hands. Only the player actually playing a hand may place a wager on any hand. Twenty-one is a card game played by a maximum of seven players and one dealer. The dealer shall be a representative of the eligible organization sponsoring the game of chance. All players play their hand against the dealer's hand. In order to remain in the hand being dealt, neither the player nor the dealer may play a hand with a count greater than twenty-one. A count of twenty-one obtained with two cards is termed a natural twenty-one and is entitled to an automatic pay out. In the case of matching or tie count between the player and the dealer no winner is declared and both persons keep their wager. Each licensee or eligible organization conducting twenty-one shall post rules relating to the conduct of the game in a conspicuous location near where the game is played.

SECTION 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 be deposited in a special account of the eligible organization which shall contain only such 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.

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 incurred in connection with holding, operating, or conducting any game of chance pursuant to this Act shall 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 shall not include overhead, capital costs, and general maintenance. Total expenses for games of chance shall not exceed thirty-five percent of the total adjusted gross proceeds from each such occasion. The figure used for adjusted gross proceeds shall be as determined in subsection 1 of section 1 of this Act before any reduction for taxes.

4. Expense payments for games of chance deductible from adjusted gross proceeds shall 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.

SECTION 12. TAX BASED ON ADJUSTED GROSS PROCEEDS. A tax of five percent of the total adjusted gross proceeds received by a licensed eligible organization shall be paid to the licensing authority for deposit in the general fund on a quarterly basis in such manner and upon such forms as shall be prescribed by the licensing authority by rule. The figure used for adjusted gross proceeds shall be as determined in subsection 1 of section 1 of this Act before any reduction for expenses. The amount of this tax shall

be paid from adjusted gross proceeds and not charged against the percentage limitation of expenses.

SECTION 13. EXAMINATION OF BOOKS AND RECORDS. The licensing authority and its agents, and representatives of the governing body of a city or county with respect to eligible organizations authorized by that governing body, shall have the power to examine or cause to be examined the books and records of any eligible organization licensed or authorized to conduct games of chance under this Act to the extent that such books and records relate to any transaction connected with holding, operating, or conducting any game of chance.

SECTION 14. DISTRIBUTORS - LICENSURE. 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 license fee. Each applicant shall provide such necessary and reasonable information as the attorney general may require.

Every nonresident manufacturer or distributor of raffle tickets or equipment for games of chance doing business in this state shall appoint a North Dakota agent who shall be licensed as a distributor. No distributor shall sell, market, or otherwise distribute raffle tickets or equipment for games of chance except to eligible organizations.

Every eligible organization shall acquire all raffle tickets or equipment for games of chance from a distributor licensed under this Act, 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.

No licensed or authorized eligible organization shall be a distributor. No distributor may be a wholesaler of liquor or alcoholic beverages.

The attorney general shall have the power, on his own motion based on reasonable grounds or on written complaint, to suspend or revoke a 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 Act or any rule adopted under this Act.

SECTION 15. FORM AND DISPLAY OF LICENSE. Each license or authorization required under this Act shall contain a statement of the name and address of the licensee or authorized eligible organization and such other information as the licensing or authorizing authority may designate.

Each license or resolution issued for the conduct of any game or games of chance shall be conspicuously displayed at the place where the same is to be conducted at all times during any game of chance and for at least thirty minutes thereafter. The sale of a raffle ticket shall not require the display of the license or authorizing resolution.

SECTION 16. VIOLATION OF ACT - MISDEMEANOR - FORFEITURE OF LICENSURE - INELIGIBILITY FOR YEAR. Any person who knowingly makes a false statement in any application for a license or authorizing resolution or in any statement annexed thereto, or who fails to keep sufficient books and records to substantiate the receipts, expenses, or uses resulting from games of chance conducted under this Act, or who falsifies any books or records so far as they relate to any transaction connected with the holding, operating, and conducting of any game of chance, or who violates any of the provisions of this Act, any rule adopted under this Act, or of any term of a license shall be guilty of a class A misdemeanor. If convicted, such organization or person shall forfeit any license or authorizing resolution issued to it pursuant to this Act and shall be ineligible to reapply for a license or authorization for two years thereafter.

SECTION 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, 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 Act; 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 Act; 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.

Not approved or disapproved by the Governor

Filed April 15, 1981

STATE GOVERNMENT

CHAPTER 515

HOUSE BILL NO. 1266
(Mertens, Berg, Nicholas)

FEDERAL AGENCY LAND PURCHASE ANALYSIS

AN ACT to repeal section 54-01-05.4 of the North Dakota Century Code, relating to the authority of the governor to require the filing of an impact analysis on land acquisition by a federal agency.

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

SECTION 1. REPEAL. Section 54-01-05.4 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 16, 1981

CHAPTER 516

HOUSE BILL NO. 1086
(Legislative Council)
(Interim State and Federal Government "B" Committee)

SALE OR EXCHANGE OF STATE-OWNED LAND

AN ACT to provide for prefiling of legislative bills for the sale or exchange of state-owned land; for a written report from the supervising agency controlling the land; for review of the bill and report by the commissioner of university and school lands; and for sale of such state-owned land at public auction; to amend and reenact sections 15-02-05.1 and 54-01-05.2 of the North Dakota Century Code, relating to commissioner of university and school lands review of legislative bills for the sale or exchange of state-owned land as to highest and best use, and the method of selling state-owned land; and to repeal section 54-01-05.3 of the North Dakota Century Code, relating to attorney general and commissioner of university and school lands review of bills providing for the sale of state-owned land; and to provide an effective date.

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

SECTION 1. BILLS AUTHORIZING SALE OR EXCHANGE OF STATE-OWNED LAND TO BE PREFILED - WRITTEN REPORT TO ACCOMPANY BILL - LAND COMMISSIONER TO GIVE OPINION.

1. Every legislative bill authorizing the sale or exchange of state-owned land must be prefiled with the legislative assembly by the first day of the organizational session in December of each even-numbered year. Legislative bills authorizing the sale of state-owned land shall provide for sale at public auction.

2. A written report from the supervising agency, board, commission, department, or institution owning or controlling the land shall accompany each legislative bill and shall include the following:

   a. An analysis of the type of land involved.

b. A title opinion and an updated abstract of title for land sales or exchanges.

c. A determination whether the land is needed for present or future uses of the agency, board, commission, department, or institution.

d. A description of the party or parties, if known, who are interested in the land and the purposes for which the land is desired.

e. A determination whether it is or is not in the best interests of the state to sell or exchange the land.

f. One appraisal for land sales or exchanges when the value of the land is fifty thousand dollars or less, and two or more appraisals when the value of the land is in excess of fifty thousand dollars.

g. A map showing the boundaries of the land proposed to be sold or exchanged; the present ownership of lands adjacent to such land; and the purposes for which the adjacent lands are used. The legal description of the land shall be determined by a land surveyor registered pursuant to chapter 43-19.1.

3. The commissioner of university and school lands shall review each legislative bill proposing the sale or exchange of state-owned land and the written report from the supervising agency, board, commission, department, or institution prior to the beginning of the regular legislative session. The commissioner shall then issue a written opinion concerning the proposed land sale or exchange and, in doing so, shall consider the "highest and best use" of the land as defined by section 15-02-05.1.

4. If a legislative bill required to be prefiled pursuant to this section becomes law, land to be sold shall be offered at public auction conducted by the state land department pursuant to rules promulgated by the department. No land shall be sold at auction for less than appraised value. The buyer or buyers shall additionally pay the cost of preparing the land for sale as determined by the state land department. If more than one appraisal is provided, the appraised value of the land to be sold shall be as determined by the commissioner of university and school lands, but shall not be less than the lowest appraisal or higher than the highest appraisal.

5. All rules promulgated by the department under this section shall be promulgated pursuant to chapter 28-32 and shall be published in the North Dakota Administrative Code.

SECTION 2. AMENDMENT. Section 15-02-05.1 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-02-05.1. ADDITIONAL DUTIES OF COMMISSIONER. In all cases ~~where the attorney general is required by section 54-01-05.3 to review~~ under section 1 involving legislative bills dealing with the sale, ~~lease,~~ or exchange of state land, the commissioner of university and school lands shall provide the ~~attorney general~~ legislative assembly with an opinion as to whether the sale, ~~lease,~~ or exchange in question is consistent with the highest and best use of the land involved, ~~and with an appraisal of the market value of the land~~. As an aid in making the determination, the commissioner shall classify all land owned by the state or its instrumentalities, ~~as defined in subdivision a of subsection 4 of section 54-01-05.3,~~ according to its highest and best use. As used in this section, "highest and best use" means that use of a parcel of land which will most likely produce the greatest benefit to the state and its inhabitants, and which will best meet the needs of the people. In making this determination the considerations of the commissioner shall include: soils capability, vegetation, wildlife use, mineral characteristics, public use, recreational use, commercial or industrial use, aesthetic values, cultural values, surrounding land use, nearness to expanding urban areas, and any other resource, zoning, or planning information relevant to the determination.

SECTION 3. AMENDMENT. Section 54-01-05.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01-05.2. SALE OF STATE-OWNED LAND - NOTICE. ~~Whenever~~ Except as provided by section 1, whenever any department or agency of the state other than the board of university and school lands and the Bank of North Dakota is authorized to sell such real property the same shall be sold for cash by the county auditor or other person designated by the department or agency concerned at public auction at the front door of the courthouse in the county wherein such real property lies, after notice of sale shall have been published in the official paper of the county wherein such property lies for three successive weeks, the last publication to be not less than ten days before the day of sale. Such notice shall be given in the name of the administrative head of the department or agency concerned, and shall state the place, day and hour of the sale, the description of the real property thus sold, and that the state reserves the right to reject any and all bids.

SECTION 4. REPEAL. Section 54-01-05.3 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 5. EFFECTIVE DATE. This Act shall become effective July 1, 1982.

Approved March 3, 1981

CHAPTER 517

HOUSE BILL NO. 1206
(Representatives Thompson, Whalen)
(Senator Roen)

CONCURRENT CRIMINAL JURISDICTION ON CERTAIN LANDS

AN ACT to cede to the United States concurrent criminal jurisdiction on lands within the Theodore Roosevelt national park, Fort Union trading post national historic site, and Knife River Indian villages national historic site, and to provide for retrocession of that jurisdiction.

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

SECTION 1. STATE OFFENSES - CONCURRENT JURISDICTION CEDED TO THE UNITED STATES. Concurrent jurisdiction is hereby ceded to the United States over offenses, as defined in section 12.1-01-04, when committed within boundaries of the tracts of land designated as:

1. Theodore Roosevelt national park.

2. Fort Union trading post national historic site.

3. Knife River Indian villages national historic site.

SECTION 2. CONCURRENT JURISDICTION - VESTED UPON ACCEPTANCE. The concurrent jurisdiction ceded by section 1 of this Act shall be vested upon acceptance by the United States by and through its appropriate officials and shall continue so long as the lands within the designated areas are dedicated to park or historic site purposes.

SECTION 3. RETROCESSION OF JURISDICTION - ACCEPTANCE - FILING.

1. The consent of North Dakota is hereby given to the retrocession by the United States of the jurisdiction granted by section 1 of this Act, either partially or wholly. A partial retrocession may be with respect to particular territory or particular offenses, or both. The governor is authorized to accept any such retrocession of jurisdiction on behalf of North Dakota.

2. When the governor receives written notification from the authorized official or agent of the United States that the United States desires or is willing to retrocede jurisdiction to North Dakota as provided in subsection 1, the governor may accept, and after filing the original acceptance with the secretary of state, the retrocession of jurisdiction will become effective.

Approved February 20, 1981

CHAPTER 518

HOUSE BILL NO. 1265
(Mertens, Berg, Nicholas)

LEGISLATIVE CONSENT FOR FEDERAL LAND PURCHASES

AN ACT to amend and reenact section 54-01-15 of the North Dakota Century Code, relating to acquisition of national forest lands by the United States; and to repeal section 54-01-07 of the North Dakota Century Code, relating to legislative consent to purchase of lands by the United States.

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

SECTION 1. AMENDMENT. Section 54-01-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01-15. ACQUISITION OF NATIONAL FOREST LANDS BY UNITED STATES ~~OF AMERICA~~ - JURISDICTION OF STATE OVER SUCH LANDS. The ~~consent of the state is given to the acquisition by the~~ United States may, with the specific consent of the legislative assembly as to each tract acquired, acquire, by purchase, gift, or condemnation with adequate compensation, ~~of~~ such lands in North Dakota as in the opinion of the federal government may be needed for the establishment of national forests. The state shall retain a concurrent jurisdiction with the United States in and over lands so acquired to the extent that civil process in all cases, and such criminal process as may issue under the authority of the state against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this section had not been enacted. The legislative consent required by this section shall be in the form of a duly enacted bill.

SECTION 2. REPEAL. Section 54-01-07 of the North Dakota Century Code is hereby repealed.

Approved March 16, 1981

CHAPTER 519

SENATE BILL NO. 2359
(Senator Lips)
(Representatives Gerl, Unhjem)

STATE ART GALLERY

AN ACT to designate the university of North Dakota art galleries as the North Dakota state art gallery.

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

SECTION 1. The university of North Dakota art galleries, established in 1972 on the university campus in Grand Forks, is hereby designated the North Dakota state art gallery. No general fund moneys shall be used to support the North Dakota art gallery now or in the future.

Approved March 11, 1981

CHAPTER 520

HOUSE BILL NO. 1494
(Representatives Strinden, Backes)
(Senators Nething, Redlin)

LEGISLATOR'S EXPENSE ALLOWANCE AND COMPENSATION

AN ACT to amend and reenact section 54-03-20 and subsection 1 of section 54-35-10 of the North Dakota Century Code, relating to the living allowance received by legislators during the legislative session and the compensation of members of the legislative council and its committees for attending sessions of the legislative council or its committees; and declaring an emergency.

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

SECTION 1. AMENDMENT. Section 54-03-20 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03-20. ALLOWANCE FOR LIVING AND OTHER EXPENSES OF MEMBERS OF THE LEGISLATIVE ASSEMBLY. Each member of the legislative assembly of the state of North Dakota shall be entitled to and shall receive the sum of ~~seventy~~ eighty-five dollars a day, as reimbursement for his living expenses, including meals, lodging, uncompensated travel, and other necessary expenses, for each calendar or natural day during the period of any organizational, special, or regular session. The expense allowance shall be paid immediately following the organizational session in December and at the end of 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 or natural day during a legislative session for the purpose of calculation of the expense allowance provided by this section.

In addition, each such member shall receive during the term for which he was elected, for uncompensated expenses incurred in the execution of his public duties during the biennium, the sum of one hundred ~~fifty~~ eighty dollars a month, which sum shall be payable every six months. Provided, however, should a member die or resign from office during his term, he shall be paid only the allowances

provided for in this section for the period for which he was actually a member.

Attendance at any organizational, special, or regular session of the legislative assembly by any member thereof shall be a conclusive presumption of the expenditure of the expense allowances set out in this section and those expense allowances shall be excluded from gross income for income tax purposes. The provisions of this section shall be retroactive to January 1, ~~1979~~ 1981.

SECTION 2. AMENDMENT. Subsection 1 of section 54-35-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The members of the council and the members of any committee of the council shall be compensated for the time spent in attendance at sessions of the council and of its committees at the rate of ~~fifty-two~~ sixty-two dollars and fifty cents per day and shall also be paid for expenses incurred in attending said meetings and in the performance of their official duties in the amounts provided by law for other state officers.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 9, 1981

CHAPTER 521

HOUSE BILL NO. 1558
(Wagner)

SALARIES OF STATE OFFICIALS

AN ACT to amend and reenact sections 4-01-21, 15-21-02, 26-01-03, 34-05-01.2, subsection 1 of section 49-01-05, and sections 54-07-04, 54-08-03, 54-09-05, 54-10-10, 54-11-13, 54-12-11, and 57-01-04 of the North Dakota Century Code, relating to the salaries of elected state officials; and providing an effective date.

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

SECTION 1. AMENDMENT. Section 4-01-21 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-01-21. SALARY OF COMMISSIONER OF AGRICULTURE. The commissioner of agriculture shall receive an annual salary of ~~thirty-three~~ forty-eight thousand ~~five-hundred~~ dollars.

SECTION 2. AMENDMENT. Section 15-21-02 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-21-02. SALARY AND TRAVELING EXPENSES. The superintendent of public instruction shall receive an annual salary of ~~thirty-four~~ forty-eight thousand dollars. He shall be allowed in addition thereto his expenses incurred in the discharge of his official duties, such expenses to be paid monthly on a warrant prepared by the department of accounts and purchases and signed by the state auditor, upon the filing of an itemized and verified statement of expenses.

SECTION 3. AMENDMENT. Section 26-01-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-01-03. SALARY OF COMMISSIONER OF INSURANCE. The annual salary of the commissioner of insurance shall be ~~thirty-three~~ forty-eight thousand ~~five-hundred~~ dollars ~~effective January 1, 1981,~~

~~thirty-five-thousand--one--hundred--seventy-five--dollars--effective January-1,--1982,--thirty-six--thousand--nine--hundred--thirty-three dollars--effective--January-1,--1983,--thirty-eight--thousand--seven hundred-eighty-dollars-effective-January-1,-1984,-and-forty-thousand seven-hundred-twenty-dollars-effective-January-1,-1985.~~

SECTION 4. AMENDMENT. Section 34-05-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-05-01.2. DEPARTMENT OF LABOR TO BE ADMINISTERED BY COMMISSIONER OF LABOR. The department of labor shall be administered by a commissioner of labor who shall be elected for a four-year term on a no-party ballot in the year 1966 and every four years thereafter in the same manner as provided for no-party candidates pursuant to chapter 16-08. Following his election, the term of the commissioner of labor shall commence on the same day as the terms for other elected state officials. The commissioner of labor shall possess the same qualifications for office as the commissioner of agriculture and he shall receive an annual salary of ~~thirty-three~~ forty-eight thousand ~~five-hundred~~ dollars.

SECTION 5. AMENDMENT. Subsection 1 of section 49-01-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-01-05. SALARY OF COMMISSIONERS.

1. The salary of each commissioner shall be as provided in the following schedule, which shall be full compensation for all official services:

   a. For the public service commissioner elected to the term of office commencing on January 1, 1981, thirty-three thousand five hundred dollars per annum effective on that date~~,-thirty-five~~, and forty-eight thousand ~~one--hundred--seventy-five~~ dollars per annum effective January 1, ~~1982,--thirty-six--thousand--nine hundred---thirty-three--dollars--per--annum--effective January-1,-1983,-thirty-eight-thousand--seven--hundred eighty--dollars--per--annum-effective-January-1,-1984, and-forty-thousand-seven-hundred--twenty--dollars--per annum-effective-January-1,-1985~~ 1987.

   b. For the public service commissioner elected to the term of office commencing on January 1, 1983, ~~thirty-six~~ forty-eight thousand ~~nine---hundred thirty-three~~ dollars per annum effective on that date~~, thirty-eight-thousand-seven-hundred-eighty-dollars-per annum-effective-January-1,-1984,--and--forty--thousand seven--hundred--twenty--dollars--per--annum--effective January-1,-1985~~.

   c. For the public service commissioner elected to the term of office commencing on January 1, 1985, ~~forty~~

forty-eight thousand ~~seven hundred twenty~~ dollars per annum effective on that date.

SECTION 6. AMENDMENT. Section 54-07-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-07-04. SALARY OF GOVERNOR. The governor shall receive an annual salary of ~~forty-seven~~ sixty-five thousand dollars for all services performed by him.

SECTION 7. AMENDMENT. Section 54-08-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-08-03. SALARY OF LIEUTENANT GOVERNOR. The lieutenant governor shall receive an annual salary of ~~eight~~ nine thousand seven hundred thirty dollars for all services performed by him.

SECTION 8. AMENDMENT. Section 54-09-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-09-05. SALARY OF SECRETARY OF STATE. The secretary of state shall receive an annual salary of ~~thirty-three~~ forty-eight thousand ~~five hundred~~ dollars.

SECTION 9. AMENDMENT. Section 54-10-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-10. SALARY OF STATE AUDITOR. The state auditor shall receive an annual salary of ~~thirty-three~~ forty-eight thousand ~~five hundred~~ dollars.

SECTION 10. AMENDMENT. Section 54-11-13 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-11-13. SALARY OF STATE TREASURER. The state treasurer shall receive an annual salary of ~~thirty-three~~ forty-eight thousand ~~five hundred~~ dollars.

SECTION 11. AMENDMENT. Section 54-12-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-12-11. SALARY OF ATTORNEY GENERAL. The attorney general shall receive an annual salary of ~~thirty-eight~~ fifty-five thousand four hundred dollars.

SECTION 12. AMENDMENT. Section 57-01-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-01-04. SALARY. The annual salary of the state tax commissioner shall be ~~thirty-three~~ forty-eight thousand ~~five-hundred~~ dollars.

SECTION 13. EFFECTIVE DATE. The provisions of this Act, with the exception of section 5, will become effective on January 1, 1985. Section 5 of this Act will become effective in accordance with its own terms.

Approved March 11, 1981

CHAPTER 522

SENATE BILL NO. 2108
(Committee on State and Federal Government)
(At the request of the Secretary of State)

SECRETARY OF STATE'S FEES

AN ACT to amend and reenact section 54-09-04 of the North Dakota Century Code, relating to the fees collected by the secretary of state.

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

SECTION 1. AMENDMENT. Section 54-09-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-09-04. FEES. The secretary of state, for services performed in his office, unless otherwise provided by law, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in his office, one dollar for every four pages or fraction thereof.

2. For affixing his signature, certificate, or seal, or combination thereof to any document, ~~two~~ five dollars.

3. For filing a certificate of appointment of attorney, five dollars.

4. ~~Repealed by S.L. 1977, ch. 482, § 1.~~

~~5.~~ For any other document signed by the governor, except a commission, and attested by the secretary of state, five dollars.

~~6.~~ 5. For searching records and archives of the state, two dollars.

~~7.~~ 6. For filing any paper not otherwise provided for, ~~one dollar~~ five dollars.

~~8.--For--filing-documents-and-issuing-certificates-for-foreign and-domestic-profit-and-nonprofit--corporations,--fees--as prescribed-in-the-general-law-governing-corporations.~~

~~9.--For--filing-documents-and-issuing-certificates-for-foreign and-domestic-cooperative-associations,-fees-as--prescribed in-chapter-10-15.~~

~~10.~~ 7. For filing utility property transfers, five dollars, and issuing a certificate of filing, ~~two~~ five dollars.

No member of the legislative assembly, and no state or county officer shall be charged for any search relative to matters appertaining to duties of his office, nor shall he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to his official duties. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state.

Approved March 6, 1981

CHAPTER 523

HOUSE BILL NO. 1530
(Gorder, Richie)

DRUG CONTROL CASH FUND AMOUNT

AN ACT to amend and reenact section 54-12-14 of the North Dakota Century Code, relating to the attorney general drug control cash fund.

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

SECTION 1. AMENDMENT. Section 54-12-14 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-12-14. DRUG CONTROL CASH 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 fund in a ~~sum-not-to-exceed-one-hundred-thousand-dollars~~ 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 attorney general shall, with the concurrence of the director of the department of accounts and purchases, 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.

Approved March 5, 1981

CHAPTER 524

HOUSE BILL NO. 1196
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

HOUSING FINANCE PROGRAMS

AN ACT to create and enact sections 54-17-07.3, 54-17-07.4, 54-17-07.5, 54-17-07.6, and 54-17-07.7 of the North Dakota Century Code, relating to the industrial commission acting as a state housing finance agency; a home mortgage finance program; a mobile home and manufactured housing finance program; a multifamily housing finance program; housing revenue bonds; allocation of housing revenue bonds; grants, contributions, loans, or other aid; and terms of loans; to amend and reenact sections 54-17-01, 54-17-07.1, and 54-17-07.2 of the North Dakota Century Code, relating to the industrial commission acting as a state housing finance agency; an advisory board; and to housing revenue bonds; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 54-17-01 as amended and reenacted by measure No. 7 at the 1980 general election is hereby amended and reenacted to read as follows:

54-17-01. INDUSTRIAL COMMISSION TO MANAGE INDUSTRIES OF STATE AND TO ACT AS A STATE HOUSING FINANCE AGENCY ~~IN---PROVIDING RESIDENTIAL--MORTGAGE--LOANS--FOR--PERSONS--OR--FAMILIES--OF-LOW-AND MODERATE-INCOME~~. The commission created to conduct and manage, on behalf of the state of North Dakota, certain utilities, industries, enterprises, including ~~a--home--mortgage~~ housing finance ~~program~~ programs, and business projects established by law shall be known as the industrial commission of North Dakota, but may be designated as the industrial commission. In the creation of the industrial commission, it is the intention of the legislative assembly that all acts of the industrial commission shall be the acts of the state of North Dakota functioning in its sovereign capacity.

SECTION 2. AMENDMENT. Section 54-17-07.1 as created and enacted by measure No. 7 at the 1980 general election is hereby amended and reenacted to read as follows:

54-17-07.1. ~~HOME--MORTGAGE--FINANCE--PROGRAM--OF--COMMISSION~~ ADVISORY BOARD - RULES. ~~Acting-in-its-capacity-as-a--state--housing finance--agency,-the-industrial-commission-is-authorized-to-purchase or-contract-to-purchase-from-lenders-mortgage-loans-made-to--persons or--families--of--low-and-moderate-income-to-finance-the-purchase-or substantial--rehabilitation--of--owner---occupied,---single---family residential--dwelling--units--which--shall--include-mobile-homes-and manufactured-housing.--The-term-lenders-shall-mean-any-bank-or-trust company--chartered--by--the--state--of--North-Dakota-or-any-national banking-association--located--in--North--Dakota,--state--or--federal savings--and--loan--association--located--in--North--Dakota,-and-FHA approved-mortgagee-or-other-mortgage-banking-institutions--currently actively--engaged--in-home-mortgage-lending-in-North-Dakota-approved by-the-commission.--The-term-persons-or-families-of-low-and-moderate income--shall--mean--persons--or--families-whose-financial-means-are insufficient,-taking-into-account-such--factors--as--the--commission shall--deem--relevant,--to--secure--decent-safe-and-sanitary-housing provided--by--private--industry--without--the--financial--assistance afforded--by--the--home--mortgage-finance-program-of-the-commission.~~ The commission shall appoint a ~~five-member-Advisory-Board~~ six-member advisory board consisting of representatives of lenders, ~~and-others engaged-in~~ the residential real estate industry, the mobile home and manufactured housing industry, and home owners and buyers, and in consultation with such board may adopt rules and regulations for the conduct of its ~~home--mortgage~~ housing finance program which may, among other matters, establish requirements for the type and purchase price of dwelling units and multifamily facilities eligible to be financed, the income limits for eligible low or moderate income persons or families, the interest rates and other terms of mortgage loans ~~by-lenders-eligible-for-purchase-by-the-commission~~ to be financed, requirements relating to federal or private mortgage insurance or guaranties, and the general terms and conditions for the issuance and security of housing revenue bonds to be issued.

SECTION 3. AMENDMENT. Section 54-17-07.2 as created and enacted by measure No. 7 at the 1980 general election is hereby amended and reenacted to read as follows:

54-17-07.2. ~~HOUSING-REVENUE-BONDS-OF-COMMISSION.--In-order-to fund-its-home-mortgage-finance-program,-the-commission-is-authorized to--issue--revenue--bonds--which--shall--be--sold--at--not-less-than ninety-five-percent-of-par-plus-any-accrued-interest.--The-principal of--and--interest--on-such-bonds-shall-be-payable-only-from-revenues generated-under-the-home-mortgage-finance--program,--and--the--bonds shall--not--constitute-a-debt-of-the-state-of-North-Dakota-and-shall contain-a-statement-to-that-effect-on-their-face.--The-bonds-may--be sold--at--public-or-private-sale-or-by-negotiation-as-the-commission may-direct,-shall-mature-not-more-than-forty-years-from--their--date or--dates--and--shall--contain--such--terms--and--provisions--as-the commission-shall-determine.--The-commission-may-capitalize-from-bond proceeds--all-expenses-incidental-to-the-issuance-of-the-bonds-or-to its-housing-mortgage-finance-program,-including,-without-limitation, any-reserves-for-the-payment-of-the-bonds.~~ DEFINITIONS. As used in sections 54-17-07.1 through 54-17-07.7:

1. "Lenders" means any bank or trust company chartered by the state of North Dakota or any national banking association located in North Dakota, state or federal savings and loan association located in North Dakota, and federal housing administration approved mortgagee or other mortgage banking institutions actively engaged in home mortgage lending in North Dakota approved by the commission.

2. "Multifamily housing facility" means any facility containing five or more residential dwelling units, provided that at least twenty percent of the units in each facility shall be held for occupancy by persons or families of low and moderate income for such period of time as the commission may determine, and may include such related public or private facilities intended for commercial, cultural, recreational, community, or other civic purpose as the commission may approve.

3. "Persons and families of low or moderate income" means persons or families whose financial means are insufficient, taking into account such factors as the commission shall deem relevant, to secure decent, safe, and sanitary housing provided by private industry without the financial assistance afforded by the housing finance programs of the commission.

SECTION 4. Section 54-17-07.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

54-17-07.3. HOUSING FINANCE PROGRAMS. Acting in its capacity as a state housing finance agency, the industrial commission is authorized to establish the following housing finance programs:

1. Home Mortgage Finance Program. A program to purchase or contract to purchase from lenders mortgage loans made to persons or families of low and moderate income to finance the purchase or substantial rehabilitation of owner occupied, single family residential dwelling units, which shall include mobile homes and manufactured housing.

2. Mobile Home and Manufactured Housing Finance Program. A program to purchase or contract to purchase from lenders loans made to persons or families of low and moderate income to finance the purchase of mobile homes and manufactured housing other than on a real property mortgage basis.

3. Multifamily Housing Finance Program. A program to make, purchase, and commit to make and purchase construction, permanent, and combined construction and permanent mortgage loans (including participations in mortgage loans) for the acquisition, construction, refurbishing, reconstruction, rehabilitation, or improvement of multifamily housing facilities.

SECTION 5. Section 54-17-07.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

54-17-07.4. HOUSING REVENUE BONDS. In order to fund its housing finance programs, the commission is authorized to issue revenue bonds or evidences of debt and indebtedness of the state which shall be sold at not less than ninety-five percent of par plus any accrued interest. The principal of and interest on such bonds shall be payable only from revenues generated under the applicable housing finance programs. The bonds shall not constitute a debt of the state of North Dakota and shall contain a statement to that effect on their face. The bonds may be sold at public or private sale, shall mature not more than fifty years from their date or dates, and shall contain such terms and provisions as the commission shall determine. The commission may capitalize from bond proceeds all expenses incidental to the issuance of the bonds or to the applicable housing finance program, including, without limitation, any reserves for the payment of the bonds. All revenue bonds issued by the commission to fund a housing finance program shall be secured separately from revenue bonds issued to fund its other housing finance programs.

SECTION 6. Section 54-17-07.5 of the North Dakota Century Code is hereby created and enacted to read as follows:

54-17-07.5. STATE REALLOCATION UNDER THE MORTGAGE SUBSIDY BOND TAX ACT OF 1980. Pursuant to sections 103A(g), 103A(g)(4) and 103A(g)(6)A of the Internal Revenue Code of 1954, hereafter referred to as the "code", the limit for housing revenue bonds to be issued shall be allocated as follows:

1. To the industrial commission to fund its housing home mortgage and mobile home and manufactured housing finance programs, seventy-five percent of the "state ceiling", as defined in section 103A(g)(4) of the code.

2. To home rule cities now or hereafter authorized to issue bonds subject to section 103A(g) of the code, twenty-five percent of the "state ceiling".

The applicable limit for bonds of any home rule city shall be determined by multiplying twenty-five percent of the state ceiling by a fraction, the numerator of which is the population of the home rule city as shown in the 1980 federal decennial census and the denominator of which is the aggregate population of all home rule cities now or hereafter authorized to issue bonds as shown in the 1980 federal decennial census. The governing board of any home rule city referred to in this section may by appropriate resolution or legislative action transfer to any other such home rule city or cities or to the industrial commission its local portion of the state ceiling for any calendar year, such transfer to be irrevocable upon enactment in accordance with law.

SECTION 7. Section 54-17-07.6 of the North Dakota Century Code is hereby created and enacted to read as follows:

54-17-07.6. ACCEPTANCE OF GRANTS, CONTRIBUTIONS, LOANS, OR OTHER AID. Acting in its capacity as a state housing finance agency, the industrial commission is authorized to contract for, accept, and administer any grant, contribution, or loan of funds, property, or other aid in any form from the federal government or from any other source, and to do all things necessary to qualify for any grant, contribution, or loan under any federal program, including those things necessary to qualify for assistance under the federal housing programs in effect from time to time.

SECTION 8. Section 54-17-07.7 of the North Dakota Century Code is hereby created and enacted to read as follows:

54-17-07.7. TERMS OF LOANS. Notwithstanding any other provision of law, the industrial commission is authorized to require, as a condition to the origination and purchase of loans and mortgage loans to be purchased by it, prepayment penalties, restrictions upon assumability, default provisions, rights to accelerate, rights to increase the interest rate, and any other terms the commission may determine to be necessary or desirable to assure the repayment of its housing revenue bonds and the exemption from federal income taxes of the interest payable on its housing revenue bonds under the Internal Revenue Code of 1954. All such terms shall be enforceable by the originator, the commission, or any successor holder of the loans or mortgage loans unless expressly waived in writing by or on behalf of the commission.

SECTION 9. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 11, 1981

CHAPTER 525

HOUSE BILL NO. 1269
(Representative Mertens)
(Senator Wenstrom)

HOME WEATHERIZATION GRANT PROGRAM

AN ACT to provide grants for home weatherization programs; and to provide an appropriation.

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

SECTION 1. GRANT PROGRAM FOR HOME WEATHERIZATION PROGRAMS. The industrial commission or its designee shall administer a home weatherization grant program to provide financial assistance to regional offices which administer the United States department of energy home weatherization program. Grant moneys shall be used for direct consumer benefit programs to support labor and material costs for roof repair and heating plant repair to effect energy conservation. No funds shall be used for administrative purposes.

SECTION 2. APPLICATION FOR GRANTS. Each regional office which administers the United States department of energy home weatherization program may apply for the grants provided in this Act under such reasonable guidelines as may be adopted by the industrial commission or its designee. Each application must be accompanied by a two-year budget, including a productivity work plan. Each regional office shall be eligible for a base amount of forty thousand dollars for fiscal year 1982 and forty-five thousand dollars for fiscal year 1983.

SECTION 3. APPROPRIATION. There is hereby appropriated from income of the special trust fund created by subdivision 2 of section 7 of initiated measure No. 6 approved on November 4, 1980, the sum of $680,000, or so much thereof as may be necessary, to the industrial commission or its designee for grants as provided in this Act for the biennium beginning July 1, 1981, and ending June 30, 1983.

Approved April 1, 1981

CHAPTER 526

SENATE BILL NO. 2432
(Senators Barth, Albers, Dotzenrod)
(Representatives E. Pomeroy, Swiontek)

BEGINNING FARMER LOAN GUARANTEE PROGRAM

AN ACT to provide a seller-sponsored loan guarantee program by the industrial commission for loans to beginning farmers; and to provide an appropriation.

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

SECTION 1. INDUSTRIAL COMMISSION LOAN GUARANTEES FOR SELLER-SPONSORED LOANS BETWEEN LANDOWNERS AND BEGINNING FARMERS. The industrial commission shall act as a guarantor for seller-sponsored loans between landowners and beginning farmers, as defined by subsection 2 of section 57-38-67. In the event of a default, the state of North Dakota shall pay the lender ninety percent of the sums due and payable under the security interest. The commission may adopt necessary rules under chapter 28-32 to determine whether a lender qualifies for a loan guarantee. However, the purchaser must qualify as a beginning farmer as defined by subsection 2 of section 57-38-67. A seller-sponsored loan which is a contract for deed must extend for not less than fifteen 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. The maximum dollar amount of any guarantee may not exceed two hundred thousand dollars on a loan secured by real property and one hundred twenty-five thousand dollars on a loan secured by personal property. The loan guarantee shall be void only if the guaranteed loan was obtained by fraud or material misrepresentation of which the original lender or subsequent holder had actual knowledge.

SECTION 2. PROCEDURE ON DEFAULT ON GUARANTEED BEGINNING FARMER SECURITY LOAN. The industrial commission shall adopt rules pursuant to chapter 28-32 defining a default.

1. Within ninety days of a default on a guaranteed beginning farmer security loan, the lender shall send notice to the beginning farmer stating that the commission must be notified if the default continues for another ninety days, and the consequences of that default. The lender and the beginning farmer may agree to take any steps reasonable to

assure the fulfillment of the loan obligation. After one hundred eighty days from the initial default, if the beginning farmer has not made arrangements to meet his obligation, the lender shall file a claim with the commission, identifying the loan and the nature of the default, and assigning to the state all of the lender's security and interest in the loan in exchange for payment according to the terms of the loan guarantee. If the commission determines that the terms of the loan guarantee have been met, the commission shall authorize payment of state funds to the lender, and shall notify the defaulting party. The state of North Dakota shall then become the holder of the mortgage or other security interest, and taxes shall be levied and paid on the land as though the owner were a natural person and not the state. The commission may, on behalf of the state, commence foreclosure proceedings in the manner provided by law.

2. Property acquired by the commission, upon default of the beginning farmer, shall be disposed of in accordance with chapter 47-30. Proceeds from the sale of a parcel of property obtained by the state pursuant to this section shall be paid into the guarantee fund established by section 3 of this Act to the extent that funds from the guarantee fund were disbursed according to the terms of the loan guarantee. Proceeds in excess of the amount disbursed from the guarantee fund shall be paid into the general fund.

SECTION 3. ESTABLISHMENT AND MAINTENANCE OF ADEQUATE GUARANTEE FUNDS - USE OF LANDS AND MINERALS TRUST - APPROPRIATION. The industrial commission shall establish and at all times maintain in the Bank of North Dakota an adequate guarantee reserve fund in a special account in the Bank. The guarantee reserve fund shall be maintained from the lands and minerals trust created by section 15-08.1-08 and any moneys transferred from the lands and minerals trust to maintain the guarantee reserve fund are appropriated to reimburse lenders for guaranteed loans in default. The securities in which the moneys in the reserve fund may be invested shall meet the same requirements as those authorized for investment under the state investment board. The income from such investments shall be made available for the cost of administering the state guarantee loan program and income in excess of that required to pay the costs of administering the program shall be deposited in the reserve fund. The total amount of funds from the lands and minerals trust used as a guarantee reserve fund under this Act may not exceed two million dollars. The amount of reserves for all guaranteed loans shall be determined by a formula which will assure, as determined by the Bank, an adequate amount of reserve.

Approved April 8, 1981

CHAPTER 527

SENATE BILL NO. 2074
(Legislative Council)
(Interim Judiciary "C" Committee)

APPOINTMENT OF FEDERAL AID COORDINATOR

AN ACT to amend and reenact section 54-27.1-01 of the North Dakota Century Code, relating to appointment of the federal aid coordinator.

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

* SECTION 1. AMENDMENT. Section 54-27.1-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-27.1-01. FEDERAL AID COORDINATOR OFFICE - APPOINTMENT - LOCATION OF OFFICE. There is created ~~in the office of the lieutenant governor~~ within the executive branch a federal aid coordinator office. The ~~lieutenant governor shall be the coordinator. If the lieutenant governor cannot serve as coordinator prior to June 30, 1981, the~~ coordinator shall be appointed by and shall serve at the pleasure of the governor ~~until June 30, 1981. The lieutenant governor, while serving as coordinator, shall receive the total salary and unvouchered expense allowance in the amount provided for the state tax commissioner during the period beginning July 1, 1979, and ending June 30, 1981. If the coordinator is appointed by the governor, the~~. The salary of the coordinator shall be set by the governor within the limits of legislative appropriation. The coordinator may employ such other persons as may be necessary and may fix their compensation within the appropriation made for that purpose. If possible, the entire federal aid coordinator office shall be housed at one location on the state capitol grounds, subject to sufficient space being made available by the director of institutions. If sufficient space is not available to house the entire office in one location on the state capitol grounds, the entire office may be housed at one location in the city of Bismarck.

Approved March 11, 1981

* NOTE: Section 54-27.1-01 was also amended by section 3 of Senate Bill No. 2356, chapter 534.

CHAPTER 528

HOUSE BILL NO. 1443
(Representatives Wald, Strinden)
(Senator Nething)

ECONOMIC DEVELOPMENT COMMISSION

AN ACT to create and enact section 54-34-05.1 of the North Dakota Century Code, relating to the appointment of special committees by the governor for research and economic development; to amend and reenact section 4-14.1-04, subsection 6 of section 10-30-04, sections 21-11-02, 21-11-03, 21-11-04, 21-11-05, 21-11-06, 24-03-21, 24-17-06, subsection 1 of section 54-07-01.2, and sections 54-34-01, 54-34-02, 54-34-03, 54-34-03.1, 54-34-04, 54-34-06, 54-34-08, 54-36-01, 55-06-01, and 55-08-02.1 of the North Dakota Century Code, relating to the name change of the business and industrial development commission to the economic development commission and the membership, purpose, and authority of the commission; to repeal section 54-34-10 of the North Dakota Century Code, relating to legislative intent on international marketing efforts of state agencies; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 4-14.1-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14.1-04. AGRICULTURAL PRODUCTS UTILIZATION COMMISSION - MEETINGS - PERSONNEL - ADVISORY COMMITTEE. The agricultural products utilization commission shall meet at least once annually, and shall report to each session of the legislative assembly. The commission may secure office space and employ needed personnel for the performance of its duties, may hire consultants, and may contract with public entities or private parties for services. The agricultural products utilization commission shall have an advisory committee composed of three persons, one each designated by the director of the ~~business--and--industrial~~ economic development ~~department~~ commission, the president of the North Dakota state university, and the state commissioner of agriculture.

SECTION 2. AMENDMENT. Subsection 6 of section 10-30-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Cooperate with and avail itself of the facilities of the ~~business-and-industrial~~ economic development commission and any other similar governmental agencies; to cooperate with and assist, and otherwise encourage, local organizations in the various communities of the state the purpose of which shall be the promotion, assistance, and development of the business prosperity and economic welfare of such communities and of this state.

SECTION 3. AMENDMENT. Section 21-11-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-11-02. APPLICATION FOR LOAN - FORM - CONTENTS - PREFERENCE OF APPLICATIONS. Any privately or cooperatively owned enterprise for the purpose of securing a loan from this state for purposes of planning, constructing, acquiring, equipping, improving, or extending facilities for the conversion of North Dakota's natural resources into low cost power and the generation and transmission of such power, and the acquisition of real and personal property and water and mineral rights needed for such facilities, or any of such purposes, may file an application with the North Dakota ~~business-and-industrial~~ economic development commission. ~~Such~~ The application shall be in ~~such~~ the form ~~as-may-be~~ required by the ~~business-and-industrial-development~~ commission and shall be accompanied by a complete and fully detailed outline and description of the applicant's plan of operation. In the consideration of applications the ~~business--and--industrial-development~~ commission shall consider the following factors:

1. Preference shall be given to applicants with the following qualifications:

   a. Applicants who are experienced in the generation or transmission of power, and who at the time of application have access to alternate markets for the sale of such power.

   b. Applicants who are residents of North Dakota, or private or cooperative enterprises incorporated under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person or corporation owns part or all of the stock of the applicant or is engaged in a partnership or joint enterprise with the applicant.

2. The provisions of subsection 1 shall not prohibit the commission from approving loans to applicants not possessing the qualifications therein described, if in the judgment of the commission such approval would better

carry out the objectives of this chapter as stated in section 21-11-01.

3. Each application shall include information for the purpose of showing to the commission and shall be approved only if the commission shall determine:

   a. That the facilities proposed to be financed by the loan will result in significant additional industrial or other economic activity in North Dakota which would not occur in the absence of a state loan.

   b. That the cost of power furnished by the facilities financed by the loan will be significantly lower than it would be without a loan made under this chapter.

   c. That the facilities financed will furnish power at the lowest possible cost to stimulate industrial development, benefit the general public, and expand the use of North Dakota fuel resources.

4. In considering applications the ~~business-and-industrial development~~ commission shall have authority to establish additional reasonable criteria with respect to the financial qualification of individuals and organizations requesting loans.

SECTION 4. AMENDMENT. Section 21-11-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-11-03. PROCESSING OF APPLICATION - FEE - PURPOSE. The ~~business--and--industrial~~ economic development commission shall process each application and if it determines the applicant is eligible for the loan and has complied with all requirements, it shall request an application fee of not more than fifty thousand dollars. Such fee shall be deposited in a special and separate fund in the state treasury and shall be expended by the ~~business-and industrial-development~~ commission for purposes of investigating the applicant and evaluating the technical and economic feasibility of the plans and specifications as submitted by the applicant. The ~~business--and--industrial--development~~ commission may consult or contract with any person or private, state, or federal department, agency, or entity, for purposes of such investigation or evaluation. All departments, agencies, institutions, and officials of this state and its political subdivisions shall provide to the ~~business-and industrial--development~~ commission such aid, information, and assistance as it may request in regard to any matter relative to the applicant or such applicant's plans and specifications. The ~~business--and--industrial-development~~ commission shall be authorized to conduct any private or public hearing it may deem necessary in the course of such investigation or evaluation. Any unexpended portion of the funds received as an application fee shall be refunded to the applicant after the payment of all costs of investigation and evaluation of the application. There is hereby

appropriated from each application fee such funds as may be necessary to pay all costs of investigation and evaluation and pay refunds as provided in this section.

SECTION 5. AMENDMENT. Section 21-11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-11-04. APPROVAL OR REJECTION OF APPLICATION. Upon completion of all investigations and evaluations of any matter relative to the applicant or the submitted application and plan, the ~~business-and-industrial~~ economic development commission shall either reject the application as submitted, approve the application as submitted, or offer to approve the application if modified in accordance with any recommendation made by the ~~business--and industrial--development~~ commission as a result of any such investigation or evaluation. If the applicant fails or refuses to agree to such modifications, the application shall be rejected.

SECTION 6. AMENDMENT. Section 21-11-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-11-05. APPROVED APPLICATION FILED WITH INDUSTRIAL COMMISSION AND LEGISLATIVE COUNCIL. Upon approval of the application, as submitted or modified, the ~~business-and-industrial~~ economic development commission shall file such application, along with its report and recommendations, received by it as a result of any investigation and evaluation, with the state industrial commission and with the legislative council. The legislative council shall prepare and submit any necessary legislation for the appropriation of additional funds or the authorization of the issuance of bonds at the following session of the legislative assembly, or at a special session if called in accordance with the constitution.

SECTION 7. AMENDMENT. Section 21-11-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-11-06. DISBURSEMENTS OF LOAN - INSPECTION FEE. If the industrial commission finds that the approved loan application has been filed and processed as required by this chapter and the proposed loan agreement is in proper legal form and the amount to be disbursed thereunder, with other previous disbursements, does not exceed the funds appropriated for that purpose, it shall authorize the execution of the loan agreement with the applicant by the director of the ~~business--and--industrial~~ economic development ~~department~~ commission on behalf of the state. Prior to the disbursement of any funds pursuant to such loan agreement, the applicant shall deliver to the director ~~of--the--business--and industrial-development-department~~ a supervision fee in such amount as may be specified in the loan agreement, which fee shall be deposited in a special fund in the state treasury. Such fee shall be expended by the ~~business--and-industrial~~ economic development commission for the purpose of periodic inspection of the construction of such power generation or transmission facilities,

and disbursements to the borrower under such loan agreement shall be made only upon certification by the director ~~of the business and industrial development department~~ or a person appointed by ~~him~~ the director that ~~such~~ the construction is being carried on in accordance with the loan agreement and that ~~such~~ the loan funds are due the borrower under ~~such~~ the agreement. Upon the completion of the construction of such facilities, any unexpended balance of such inspection fee shall be refunded to the borrower. There is hereby appropriated from each such inspection fee such funds as may be necessary to provide for such inspections and refunds as provided in this section.

SECTION 8. AMENDMENT. Section 24-03-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-03-21. PREPARATION OF ROAD MAPS - PUBLICATION OF TOURIST INFORMATION. The commissioner shall prepare for general distribution, road maps of the state highway system and such other roads as he shall deem necessary~~, and the commissioner shall provide for publication, advertising, and dissemination of information concerning highways or such other publicity matter as he shall deem advisable to promote the use of North Dakota highways and attract tourists to the state or to prolong their stay in the state~~. Any tourist-oriented material printed on road maps shall be prepared by the economic development commission at no expense to the department.

SECTION 9. AMENDMENT. Section 24-17-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-17-06. HIGHWAY CORRIDOR BOARD - MEMBERS. There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this chapter, the highway corridor board. The board shall be composed of the following five members: the North Dakota state highway commissioner or his authorized agent; the director of the ~~business and industrial~~ economic development ~~department~~ commission or his authorized agent; the commissioner of agriculture or his authorized agent; a representative of the North Dakota outdoor advertising association to be designated by its president and to serve a term of four years; a representative of the North Dakota motel association designated by its president to serve a term of two years. At the expiration of the term of any member appointed to the board, his successor shall be appointed for a term of four years.

* SECTION 10. AMENDMENT. Subsection 1 of section 54-07-01.2 of the 1979 Supplement to 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, 50-06-02, 50-06-03.1, 50-26-01, 51-10-13, ~~54-03-20.2,~~ 54-34-03, 54-42-01, 54-54-02, 55-01-01, 55-06-01,

* NOTE: Subsection 1 of section 54-07-01.2 was also amended by section 29 of House Bill No. 1418, chapter 486, and section 54-07-01.2 was also amended by section 45 of House Bill No. 1069, chapter 91.

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 social service board of North Dakota.

s. The governor's council on human resources.

t. The North Dakota trade commission.

u. ~~The legislative compensation commission.~~

~~v.~~ The ~~business and industrial~~ economic development commission.

~~w.~~ v. The merit system council.

~~x.~~ w. The North Dakota council on the arts.

~~y.~~ x. The state historical board.

~~z.~~ y. The Yellowstone-Missouri-Fort Union commission.

~~aa.~~ z. The state water conservation commission.

~~bb.~~ aa. The state water pollution control board.

~~cc.~~ bb. The workmen's compensation bureau.

SECTION 11. AMENDMENT. Section 54-34-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-01. ~~TITLE.--This chapter shall be known as the Business and Industrial Development Act.~~ PURPOSE OF CHAPTER. The commission and director appointed under this chapter are intended to carry out a program of promotion and economic development to enhance the general welfare of the state through the establishment of new business and industry, the expansion of existing business and industry, the development of new markets for agricultural, and other products, the encouragement of international trade, the development of tourism, and the attraction of new residents, business, and industry.

SECTION 12. 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 ~~BUSINESS AND INDUSTRIAL~~ THE ECONOMIC DEVELOPMENT ~~DEPARTMENT~~ COMMISSION. The governor, or his designee, shall appoint a ~~state~~ director of the ~~business and industrial~~ economic development ~~department~~ commission hereinafter called the "director"~~, who shall administer and carry out the functions and programs of the department. Such appointment shall be for a four-year term at~~. The director shall serve at the pleasure of the governor and shall receive a salary set by the governor within the limits of legislative appropriations. ~~The director may be removed from such position at the will of the governor.~~ The director shall be ~~compensated for his~~ allowed actual and necessary travel expenses ~~in carrying on his official duties in~~ at the same ~~manner~~ rate as for other ~~state~~ officials of this state.

SECTION 13. 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 ~~BUSINESS AND INDUSTRIAL~~ ECONOMIC DEVELOPMENT COMMISSION. The ~~business and industrial~~ economic development commission, hereafter called the commission, shall consist of the governor as chairman and eight members appointed by ~~him~~ the governor, one member to be appointed from each of the ~~six~~ seven judicial districts and ~~two members~~ one member to be appointed

from the state at large. The members shall be appointed for a term of four years staggered so that the terms of two members expire each year. Vacancies shall be filled in the same manner as the original appointment, except that vacancies occurring for other than the expiration of a term shall be filled by appointment for only the remainder of the term of the member causing the vacancy. Appointment to the commission by the governor shall be upon the basis of the special knowledge or interest of the member in the economic development of the state. All members of the commission shall be reimbursed for expenses incurred in attending meetings and otherwise performing official duties at the same rates and in the same manner as other state officials.

SECTION 14. 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 ~~economic~~ business and industrial development commission serving upon such commission upon the effective date of this ~~chapter,~~ Act shall automatically become members of the ~~business--and--industrial~~ economic development commission and shall so serve during any unexpired portion of the term for which they were appointed as members of the ~~economic~~ business and industrial development commission without regard to the judicial district of their residence. Thereafter, members of the ~~business--and--industrial~~ economic development commission shall be appointed in accordance with the provisions of section 54-34-03.

SECTION 15. 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 ~~BUSINESS--AND--INDUSTRIAL~~ ECONOMIC DEVELOPMENT COMMISSION. ~~Meetings--of--the~~ The commission shall ~~be-at-least-quarterly-or-additionally~~ meet at the call of the governor ~~or--upon--the--written--notice--of--three--members--of--the commission~~ at least quarterly. Five members of the commission shall constitute a quorum. A The governor shall designate a vice chairman of the commission ~~shall-be-elected-by-the-members-of-the-commission and-shall-preside-over-meetings-in-the-absence-of-the-governor~~. The director ~~of-the-commission~~ shall act as secretary of the commission. ~~It-shall-be-the-duty-of-each-commissioner-to~~ The commission shall advise and assist the ~~chairman~~ governor and the director in the performance of the functions, duties, and activities ~~in--relation~~ relative to ~~business-and-industrial~~ economic development as provided in this chapter.

SECTION 16. Section 54-34-05.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

54-34-05.1. APPOINTMENT OF SPECIAL COMMITTEES. The governor, in the governor's discretion, 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 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 17. AMENDMENT. Section 54-34-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-06. DUTIES OF DIRECTOR OF ~~BUSINESS AND INDUSTRIAL~~ THE ECONOMIC DEVELOPMENT ~~DEPARTMENT~~ COMMISSION. The director, under the supervision of the governor and subject to legislative appropriation, shall ~~have the following powers and duties~~:

1. ~~To--appoint~~ Appoint such personnel ~~to assist him~~ as may be deemed necessary to carry out the provisions of this chapter, and to fix their compensation~~;~~.

2. ~~To--plan~~ Plan, execute, and direct a program of publicity, research, and agricultural and industrial ~~development~~ promotion which will:

   a. ~~attract--entrepreneurs~~ Attract investors, investment capital, and new residents~~;~~.

   b. ~~further--the--development and use of all the resources of this state;--and~~

   ~~c.--assist~~ 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. ~~To~~ 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 ~~business--and--industrial~~ economic development of the state~~;~~.

4. ~~To--cooperate~~ 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 ~~business and industrial~~ economic development of the state~~;~~.

5. ~~To--receive~~ Receive and accept from any source, ~~public or private~~ 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. ~~To--encourage~~ 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~~,--and~~.

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. To do all things reasonably necessary and proper to realize the benefits and carry out the provisions of this chapter.

~~All--state--departments,--institutions,--and--officials--shall furnish-assistance-as-may-reasonably-be-requested-by-the-director-in carrying--out-the-provisions-of-this-chapter-and-may-use-portions-of their-funds-for-such-purpose.~~

~~The--director--shall--not-be-appointed-or-required-to-serve-on any--additional--boards,--committees,--or---commissions---of---state government.---His--sole-responsibility,-except-as-otherwise-provided by-the-legislative-assembly,-shall-be--to--encourage,--promote,--and advertise-in-the-interests-of-business-and-industrial-development-in the-state-of-North-Dakota-as-provided-in-this-chapter.~~

SECTION 18. AMENDMENT. Section 54-34-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-08. PATENTS AND PROFITS. Any and all patents for equipment, processes, methods, designs, or developments based upon research conducted under this chapter or by the ~~department~~ commission shall inure to and be taken out or assigned to the state of North Dakota.

SECTION 19. AMENDMENT. Section 54-36-01 of the 1979 Supplement to 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; executive director of the social service board of

North Dakota; state health officer; director of ~~the~~ job service North Dakota ~~employment security bureau~~; 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 ~~state~~ director of the ~~business and industrial~~ economic development ~~department~~ 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.

SECTION 20. AMENDMENT. Section 55-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-06-01. YELLOWSTONE-MISSOURI-FORT UNION COMMISSION. There shall be a Yellowstone-Missouri-Fort Union commission, hereinafter referred to as the "commission", declared to be a governmental agency with the authority to exercise the powers specified herein, or which may be reasonably implied, composed of the governor as chairman, the president of the senate, the speaker of the house, the superintendent of the state historical board, the director of the ~~business and industrial~~ economic development ~~department~~ commission, all ex officio, and five citizens of the state to be appointed by the governor who shall serve without compensation for the purpose of investigating, in cooperation with the state of Montana and the National Park Service, the historical importance and significance of the area and for formulating and executing plans for the preservation of the historic sites illustrative of the history of the United States.

SECTION 21. AMENDMENT. Section 55-08-02.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-02.1. OUTDOOR RECREATION INTERAGENCY COUNCIL - COMPOSITION - FUNCTIONS. A state outdoor recreation interagency council shall exist and shall be composed of the state engineer of the water conservation commission, commissioner of the state game and fish department, superintendent of the state historical board, commissioner of the state highway department, executive secretary of the North Dakota state soil conservation committee, state parks and recreation director, chairman of the state water conservation

commission, state health officer, director of the ~~North Dakota business and industrial~~ economic development ~~department~~ commission, state forester, director of the North Dakota travel division, and the commissioner of the state land department. The governor or his designee shall be council chairman.

The members of the council shall be vested with the power, authority, and duty to:

1. Deal with the distribution of state general fund appropriations which are to be matched with federal outdoor recreation grants-in-aid at the state level. Each member shall have one vote in such matters.

2. Meet periodically at the call of the chairman and shall keep minutes and other financial records dealing with such meetings.

3. Cooperate with the United States or any appropriate agency thereof, particularly in connection with the distribution and use of federal aid funds which the state may become eligible to receive.

4. Encourage cooperation among public, voluntary, and commercial agencies and organizations.

5. Subject to the approval of the governor, may adopt and promulgate and may amend, modify, or revise such rules and regulations for the conduct of its affairs as may be deemed necessary, including the time, place, and notice of regular meetings, call and notice of special meetings, and number of members required for a quorum to transact business.

SECTION 22. REPEAL. Section 54-34-10 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 23. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 26, 1981

CHAPTER 529

HOUSE BILL NO. 1075
(Legislative Council)
(Interim Legislative Procedure and Arrangements Committee)

LEGISLATIVE CHAMBER AND MEMORIAL HALLWAY AUTHORITY

AN ACT to create and enact a new subsection to section 54-35-02 of the North Dakota Century Code, relating to the powers and duties of the legislative council over the use of the legislative chambers and displays in memorial hallway; and to amend and reenact section 54-21-18 of the North Dakota Century Code, relating to the authority of the director of institutions over the capitol.

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

SECTION 1. AMENDMENT. Section 54-21-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-21-18. CUSTODY OF OFFICE BUILDING - CONSIDERED PART OF CAPITOL BUILDING - DIRECTOR HAS CONTROL OF PUBLIC PROPERTY. The director of institutions shall control, manage, and maintain the state office building. The building shall be considered a part of the state capitol building within the meaning of statutes relating to the custody, maintenance, and control of the state capitol building and grounds, and within the meaning of statutes requiring state departments or agencies to maintain their offices in the state capitol building.

~~The~~ Except as otherwise provided by law, the director shall have charge and control of the executive mansion, the capitol, and the park and public grounds connected therewith.

SECTION 2. A new subsection to section 54-35-02 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To control the use of the legislative chambers and permanent displays in memorial hallway. Guidelines may be established pursuant to this subsection and the council, or its designee, shall administer any guidelines which are established.

Approved March 3, 1981

CHAPTER 530

HOUSE BILL NO. 1452
(Representatives Martinson, G. Larson, Gerl)
(Senator Cussons)

POWERS OF COMMITTEE ON PUBLIC EMPLOYEES RETIREMENT PROGRAMS

AN ACT to amend and reenact section 54-35-02.4 of the North Dakota Century Code, relating to the powers and duties of the committee on public employees retirement programs; and declaring an emergency.

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

SECTION 1. AMENDMENT. Section 54-35-02.4 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-35-02.4. COMMITTEE ON PUBLIC EMPLOYEES RETIREMENT PROGRAMS - POWERS AND DUTIES.

1. The committee on public employees retirement programs shall consider and report on those legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, the retirement programs of state employees or employees of any political subdivision. The committee shall make a thorough review of any measure or proposal which it takes under its jurisdiction, including an actuarial review. The committee shall report its findings and recommendations, along with any necessary legislation, to the legislative council and to the legislative assembly.

2. To carry out its responsibilities, the committee, or its designee, is authorized to ~~enter~~:

   a. Enter into contracts, including retainer agreements, with an actuary or actuarial firm for expert assistance and consultation. ~~The committee may also call~~

   b. Call on personnel from state agencies or political subdivisions to furnish such information and render

such assistance as the committee may from time to time request.

c. Establish rules for its operation, including the submission and review of proposals and the establishing of standards for actuarial review.

3. The committee ~~shall~~ may solicit draft measures and proposals from interested persons during the interim between legislative sessions, and may also study measures and proposals referred to it by the legislative assembly or the legislative council.

4. A copy of the committee's report concerning any legislative measure shall, if that measure is introduced for consideration by a legislative assembly, be appended to the copy of that measure which is referred to a standing committee.

5. A legislative measure affecting a public employees retirement program shall not be introduced in either house unless it is accompanied by a report from the committee. A majority of the members of the committee, acting through the chairman, shall have sole authority to determine whether any legislative measure affects a public employees retirement program.

6. Any amendment made during a legislative session to a legislative measure affecting a public employees retirement program shall not be considered by a standing committee unless it is accompanied by a report from the committee on public employees retirement programs.

7. Any legislation enacted in contravention of the provisions of this section shall be invalid and of no force and effect, and any benefits provided under such legislation shall be reduced to the level current prior to enactment.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 3, 1981

CHAPTER 531

SENATE BILL NO. 2419
(Thane, Barth, Nething, Redlin)

GARRISON DIVERSION OVERVIEW COMMITTEE

AN ACT to create a new section to chapter 54-35 of the North Dakota Century Code, relating to a statutory Garrison diversion overview committee.

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

SECTION 1. A new section to chapter 54-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 floor 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. 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.

Approved March 31, 1981

CHAPTER 532

HOUSE BILL NO. 1467
(Strinden)

LEGISLATIVE COUNCIL SCIENCE AND TECHNOLOGY PROGRAM

AN ACT to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to a legislative council science and technology program.

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

SECTION 1. A new section to chapter 54-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

SCIENCE AND TECHNOLOGY PROGRAM - STAFF - POWERS AND DUTIES.

1. The legislative council, or its designee, shall provide scientific and technological research and staff services to the legislative branch. The services shall be provided in accordance with the existing statutory authority of the legislative council and within the framework of its other staff services.

2. The legislative council staff office shall provide the scientific and technological services, and the council, or its designee, may hire such additional staff as are necessary, and set compensation for any additional staff within the limits of legislative appropriations.

3. The council, or its designee, shall structure the provision of scientific and technological services and assistance to the legislative assembly; and shall receive such cooperation and assistance from other state agencies as it may reasonably request.

Approved March 6, 1981

CHAPTER 533

HOUSE BILL NO. 1295
(Strinden, Kuchera, Swiontek)

CENTRAL HEATING SOURCE JOINT AGREEMENTS

AN ACT to authorize and encourage joint agreements to furnish or receive heat from a central heating source.

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

SECTION 1. JOINT AGREEMENTS FOR HEAT FROM A CENTRAL HEATING SOURCE. Any political subdivision, nonprofit hospital, or nursing home of this state, through its governing body, may enter into an agreement with any state agency or institution to furnish or receive heat from a central heating source. The director of institutions or the state health officer must be the contracting party in an agreement involving a state institution under the director's or health officer's control. Political subdivisions, nonprofit hospitals, nursing homes, and state agencies and institutions are encouraged to enter into agreements pursuant to this section.

Approved March 9, 1981

CHAPTER 534

SENATE BILL NO. 2356
(Committee on Appropriations)

OFFICE OF MANAGEMENT AND BUDGET

AN ACT to rename the department of accounts and purchases as the office of management and budget; to create and enact a new section to chapter 54-07 and a new section to chapter 54-44 of the North Dakota Century Code, relating to the designation of the office of management and budget as the agency to administer nonstatutorily assigned governmental functions; and to amend and reenact sections 54-27.1-01 and 54-44-01 and subsection 1 of section 54-44-11 of the North Dakota Century Code, relating to the federal aid coordinator office, the responsibilities of the office of management and budget, and the state purchasing operating fund.

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

SECTION 1. OFFICE OF MANAGEMENT AND BUDGET TO REPLACE DEPARTMENT OF ACCOUNTS AND PURCHASES. Wherever the terms "department of accounts and purchases", "director of the department of accounts and purchases", "director of the state department of accounts and purchases", "director of accounts and purchases", and "department" when referring to the department of accounts and purchases, appear in this code, the term "office of management and budget", "director of the office of management and budget", "director of the state office of management and budget", or "office", as the case may be, shall be substituted therefor. The director of the office of management and budget is to be substituted for, and take any action previously to be taken by, and shall perform any duties previously to be performed by the director of the department of accounts and purchases.

SECTION 2. A new section to chapter 54-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

OFFICE OF MANAGEMENT AND BUDGET TO BE DESIGNATED OR APPOINTED AS ADMINISTERING STATE AGENCY. The governor may designate or appoint the office of management and budget as the state agency responsible for administering any statutory function where that function is not statutorily placed in a specific state entity. The

office of management and budget shall administer the statutory functions received pursuant to this section in accordance with applicable statutory provisions.

* SECTION 3. AMENDMENT. If Senate Bill No. 2074 is not approved by the Forty-seventh Legislative Assembly or does not otherwise take effect, then section 54-27.1-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-27.1-01. FEDERAL AID COORDINATOR OFFICE - ~~APPOINTMENT--LOCATION-OF-OFFICE~~ DIRECTOR. There is created in the office of ~~the lieutenant-governor~~ management and budget a federal aid coordinator office. The ~~lieutenant-governor-shall-be-the-coordinator.---If--the lieutenant-governor--cannot--serve-as-coordinator-prior-to-June-30, 1981,-the-coordinator-shall-be-appointed-by-and-shall-serve--at--the pleasure--of--the--governor--until--June--30,--1981.--The-lieutenant governor,-while-serving-as--coordinator,--shall--receive--the--total salary--and-unvouchered-expense-allowance-in-the-amount-provided-for the-state-tax-commissioner-during-the-period-beginning-July-1,-1979, and--ending--June--30,-1981.--If-the-coordinator-is-appointed-by-the governor,-the~~ director of the office of management and budget may be the coordinator or the director may appoint a coordinator who shall serve at the pleasure of the director. The salary of ~~the~~ an appointed coordinator shall be set by the ~~governor~~ director within the limits of legislative appropriation. The coordinator may employ such other persons as may be necessary and may fix their compensation within the appropriation made for that purpose. If possible, the entire federal aid coordinator office shall be housed at one location on the state capitol grounds, subject to sufficient space being made available by the director of institutions. If sufficient space is not available to house the entire office in one location on the state capitol grounds, the entire office may be housed at one location in the city of Bismarck.

SECTION 4. AMENDMENT. Section 54-27.1-01 of the 1979 Supplement to the North Dakota Century Code as amended and reenacted by section 1 of Senate Bill No. 2074, as approved by the Forty-seventh Legislative Assembly, is hereby amended and reenacted to read as follows:

54-27.1-01. FEDERAL AID COORDINATOR OFFICE - ~~APPOINTMENT--LOCATION-OF-OFFICE~~ DIRECTOR. There is created ~~within-the--executive branch~~ in the office of management and budget a federal aid coordinator office. The ~~coordinator-shall-be-appointed-by-and-shall serve--at--the--pleasure--of--the-governor~~ director of the office of management and budget may be the coordinator or the director may appoint a coordinator who shall serve at the pleasure of the director. The salary of ~~the~~ an appointed coordinator shall be set by the ~~governor~~ director within the limits of legislative appropriation. The coordinator may employ such other persons as may be necessary and may fix their compensation within the appropriation made for that purpose. If possible, the entire federal aid coordinator office shall be housed at one location on the state

* NOTE: Section 54-27.1-01 was also amended by section 1 of Senate Bill No. 2074, chapter 527.

capitol grounds, subject to sufficient space being made available by the director of institutions. If sufficient space is not available to house the entire office in one location on the state capitol grounds, the entire office may be housed at one location in the city of Bismarck.

SECTION 5. AMENDMENT. Section 54-44-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44-01. ~~DECLARATION OF LEGISLATIVE INTENT~~ RESPONSIBILITY OF THE OFFICE OF MANAGEMENT AND BUDGET. ~~It is the intent of the legislative assembly to establish a department of accounts and purchases which together with the~~ The office of ~~the~~ management and budget ~~will~~ is to be a central authority, vested with the control and supervision of the fiscal administration of the executive branch of the government, and ~~which will be~~ is directly responsible to the governor. ~~It is further the intent of the legislative assembly to endow the~~ The office of the state auditor ~~with~~ has the primary responsibility of conducting a true independent post audit of all the executive departments and agencies. ~~In addition it is the intent of this body to consolidate and vest in the office of the state tax commissioner the~~ The responsibility of collecting additional taxes is consolidated and vested in the office of the state tax commissioner.

~~Therefore, the provisions of this~~ This chapter shall be liberally construed in a manner which will implement ~~the intent of the legislative assembly herein declared~~ this section.

SECTION 6. A new section to chapter 54-44 of the North Dakota Century Code is hereby created and enacted to read as follows:

RESPONSIBILITY TO ADMINISTER UNASSIGNED STATUTORY FUNCTIONS OF STATE GOVERNMENT. The office of management and budget shall administer all statutory functions assigned to the executive branch of state government but not statutorily placed with any specific state entity.

* SECTION 7. AMENDMENT. Subsection 1 of section 54-44-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The ~~department of accounts and purchases~~ office of management and budget shall establish a state purchasing ~~department~~ operating fund to be used for the procurement and maintenance of an inventory of equipment and supplies for the state departments and agencies. Any surplus in this fund in excess of one hundred thousand dollars on June thirtieth of each year shall be transferred to the state general fund.

Approved March 31, 1981

* NOTE: Section 54-44-11 was also amended by section 1 of Senate Bill No. 2133, chapter 538.

CHAPTER 535

SENATE BILL NO. 2410
(Committee on Appropriations)

LINE ITEM SALARY REQUIREMENTS

AN ACT to amend and reenact section 6-01-11, subsection 1 of section 10-04-03, and sections 15-02-03, 15-41-03, 19-01-03, 20.1-02-03, 27-02-03, 27-03-03, 27-04-03, 34-05-04, 37-03-01, 39-02-02, 39-03-07, 54-12-07, 54-24-01, 54-44-03, 65-02-02, and 65-11-03 of the North Dakota Century Code, relating to the establishment of salaries of certain state officials and employees within amounts appropriated by the legislative assembly.

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

SECTION 1. AMENDMENT. Section 6-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-01-11. SALARY OF ~~STATE EXAMINER~~ COMMISSIONER. The salary of the ~~state examiner~~ commissioner shall ~~be, for each biennium,~~ within the amount appropriated ~~therefor~~ for salaries by the legislative assembly. ~~He~~ The commissioner shall be allowed, in addition ~~thereto~~ to his salary, his necessary and actual expenses incurred in the discharge of his official duties. ~~His~~ The commissioner's salary and expenses shall be audited and paid in the manner in which the salary and expenses of other state officers are paid.

SECTION 2. AMENDMENT. Subsection 1 of section 10-04-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state securities commissioner shall be appointed by the governor and confirmed by the senate, and shall hold his office for a term of four years and until his successor has been appointed, confirmed by the senate, and has qualified, unless he is removed sooner as herein provided. However, an interim appointment may be made by the governor if the senate is not in session and such interim appointee may hold office until the senate has had an opportunity to confirm or reject such appointment, and

his term of office shall commence on the first day of July in each year next following a national presidential election. The state securities commissioner shall be skilled in securities, and shall not be an incumbent of any other public office in the state, or in any county, municipality, or public institution thereof, and shall not own, hold, or control any stocks, capital, bonds, or securities, and shall not hold the office of trustee, assignee, officer, agent, or employee of any financial institution under his jurisdiction or of any corporation engaged in the business of guaranteeing or ensuring the fidelity or faithful performance of the duties or the solvency of public officers or of public depositaries. The governor may remove from office any state securities commissioner who violates or fails to discharge faithfully the duties of his office or who becomes disqualified under the provisions of this section.

It shall be the prime duty of such commissioner to administer the provisions of this chapter. The commissioner shall receive a salary ~~of such~~ within the amount ~~as shall be~~ appropriated for salaries by the legislative assembly. The commissioner shall use a seal with the words "securities commissioner, North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner shall authenticate proceedings and documents used by him in the administration of this chapter. The commissioner shall employ from time to time such clerks and employees as are necessary for the administration of this chapter, and they shall perform ~~such~~ the duties ~~as~~ assigned by the commissioner ~~shall assign~~. In the absence or disability of the commissioner, his chief deputy shall administer the provisions of this chapter, as acting commissioner.

SECTION 3. AMENDMENT. Section 15-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-02-03. COMMISSIONER - SALARY. The salary of the commissioner of university and school lands shall be ~~established by act of appropriation~~ within the amount appropriated for salaries by the legislative assembly.

SECTION 4. AMENDMENT. Section 15-41-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-41-03. DIRECTOR OF SECONDARY EDUCATION - APPOINTMENT - QUALIFICATIONS - TERMS - COMPENSATION. The superintendent of public instruction, with the approval of the state board of higher education, shall appoint a director of secondary education. Such director shall be a graduate of a college or university of recognized standards and shall have had at least five years of successful experience either as principal of a high school or superintendent of city schools in this state. His term of office

shall be for two years commencing on July first of each odd-numbered year. His salary shall be within the amount appropriated ~~therefor from--time--to-time~~ for salaries by the legislative assembly, and he shall receive his actual and necessary expenses incurred in the discharge of his official duties.

SECTION 5. AMENDMENT. Section 19-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-03. DIRECTOR OF DEPARTMENT - APPOINTMENT, BOND, OATH, SALARY. The commission shall appoint a director of the department who shall serve at the will of the commission. He shall act as secretary of the commission and shall keep such minutes and books as the commission shall determine. Subject to the supervision of the commission, he shall have general charge of the department. Before assuming the duties of his office, he shall furnish a bond in the sum of twenty-five thousand dollars for the faithful performance of his duties and the proper accounting for all moneys collected in his office. The premium for such bond shall be paid as an expense of the department. The director shall take the oath of office and file the same in the manner required of other state officers. He shall receive ~~an annual~~ a salary ~~of such~~ within the amount ~~as~~ appropriated ~~therefor~~ for salaries by the legislative assembly.

SECTION 6. AMENDMENT. Section 20.1-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-02-03. COMPENSATION AND EXPENSES OF COMMISSIONER - AUDIT AND PAYMENT. The ~~biennial~~ salary of the commissioner shall be within the amount appropriated ~~therefor~~ for salaries by the legislative assembly ~~together with the actual and~~. The commissioner shall be reimbursed for the necessary expenses incurred by him in the performance of his duties. ~~His~~ The commissioner's salary and expenses shall be paid out of the game and fish fund and shall be audited and paid in the same manner as the salary and expenses of other state officers.

SECTION 7. AMENDMENT. Section 27-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-03. STENOGRAPHERS FOR SUPREME COURT. The supreme court may employ such stenographic assistance as may be necessary, but the salaries and expenses therefor shall not exceed the ~~sum~~ amount appropriated for ~~such purpose~~ salaries and expenses by the legislative assembly.

SECTION 8. AMENDMENT. Section 27-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-03-03. SALARY OF CLERK OF SUPREME COURT. The salary of the clerk of the supreme court~~, for each biennium,~~ shall be within the amount appropriated ~~therefor~~ for salaries by the legislative assembly.

SECTION 9. AMENDMENT. Section 27-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-04-03. SALARY OF SUPREME COURT REPORTER. The salary of the supreme court reporter~~,--for-each-biennium,~~ shall be within the amount appropriated ~~therefor~~ for salaries by the legislative assembly.

SECTION 10. AMENDMENT. Section 34-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-05-04. EMPLOYMENT OF ASSISTANTS. The commissioner of labor may employ necessary help and assistants for the purpose of administering and enforcing labor laws, rules, and regulations, and may fix their compensation and bonds. The total amount of compensation paid for such purposes, however, shall not exceed the amount appropriated ~~therefor~~ for compensation by the legislative assembly.

SECTION 11. AMENDMENT. Section 37-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-03-01. ADJUTANT GENERAL - APPOINTMENT - QUALIFICATIONS - TERM - SALARY - OFFICE AT CAPITAL - REMOVAL. The adjutant general shall be appointed by the governor, and shall have been a federally recognized commissioned officer of the national guard for a period of at least three years immediately preceding his appointment. His term of office shall be for six years and shall commence on July 1, 1941, and on every sixth anniversary thereof. Any vacancy in such office may be filled by the governor, but an appointment to fill a vacancy shall be made only for the unexpired term. The salary of the adjutant general shall be within the ~~biennial~~ appropriation ~~made for this purpose~~ for salaries by the legislative assembly. He shall have his office at the state capital. The provisions of chapter 37-04 relating to the vacation of commissions, retirement, and discharge shall apply to the adjutant general.

SECTION 12. AMENDMENT. Section 39-02-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-02-02. SALARY AND EXPENSES OF REGISTRAR. The salary of the registrar for all services rendered in any capacity whatever shall be~~,-for-each-biennium,~~ within the amount appropriated ~~therefor~~ for salaries by the legislative assembly. He shall be allowed in addition thereto his necessary and actual expenses incurred in the discharge of his official duties.

SECTION 13. AMENDMENT. Section 39-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03-07. SALARY OF SUPERINTENDENT - LIMITATIONS. The salary of the superintendent shall be ~~in such sum as shall be~~ within the amount appropriated~~,--from--time--to--time,~~ for salaries by the legislative assembly. The salary of the assistant superintendent

and each patrolman shall be fixed by the superintendent, and ~~all salaries~~ shall be paid ~~monthly~~ in the same manner as other state employees are paid.

SECTION 14. AMENDMENT. Section 54-12-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-12-07. SALARY OF ASSISTANT ATTORNEYS GENERAL. The ~~annual~~ salary of the assistant attorneys general shall be ~~as--provided~~ within the amount appropriated for salaries by the legislative assembly ~~from-time-to-time~~ and shall be payable in the same manner as other departmental payrolls.

SECTION 15. AMENDMENT. Section 54-24-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-24-01. STATE LIBRARY - STATE LIBRARIAN APPOINTED BY DIRECTOR OF INSTITUTIONS. The director of institutions shall appoint an executive officer to be known as the state librarian, who shall receive ~~such-annual~~ a salary ~~as-shall-be-provided~~ within the amount appropriated for salaries by the legislative assembly. The state librarian shall have control of the work and shall be director of the state library.

SECTION 16. AMENDMENT. Section 54-44-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44-03. DIRECTOR OF DEPARTMENT OF ACCOUNTS AND PURCHASES. There shall be a director of the department of accounts and purchases who shall be appointed by and serve at the will of the governor. The salary of the director shall be set by the governor within the limits of the ~~appropriation--made--therefor~~ amount appropriated for salaries by the legislative assembly, and the director and other employees of the department shall be reimbursed for expenses incurred in carrying out the duties of their office at the same rate and in the same manner as other state officials. The director shall be empowered to ~~prescribe--regulations~~ adopt rules, not inconsistent with law or rules established by the governor, for the administration of the department of accounts and purchases, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of the records, documents, and property pertaining thereto. He shall be empowered to set up such divisions or other internal organization within the department that he shall deem necessary in order to efficiently carry out the duties, powers, and responsibilities of the department.

The director of the department of accounts and purchases shall execute an official bond in the sum of one hundred thousand dollars.

SECTION 17. AMENDMENT. Section 65-02-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-02. OATH OF OFFICE - SALARY. Before commencing to perform his duties, each commissioner shall file an oath of office in the usual form and shall be bonded by the state bonding department in the sum of five thousand dollars for the faithful discharge of his duties as such commissioner and the proper accounting for all moneys received by him as such officer. Each commissioner shall receive ~~such~~ a salary ~~as is~~ within the amount appropriated for salaries by the legislative assembly.

SECTION 18. AMENDMENT. Section 65-11-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-11-03. SALARY OF SAFETY ENGINEER. The salary of the safety engineer shall be within the ~~sum~~ amount appropriated for ~~that purpose~~ salaries by the legislative assembly, plus necessary travel expenses.

Approved March 11, 1981

CHAPTER 536

HOUSE BILL NO. 1557
(Committee on Appropriations)

UNEMPLOYMENT COMPENSATION ASSESSMENTS

AN ACT to amend and reenact section 54-44-04.3 of the North Dakota Century Code, relating to reduction or suspension of unemployment compensation assessments to state departments and institutions.

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

* SECTION 1. AMENDMENT. Section 54-44-04.3 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44-04.3. UNEMPLOYMENT COMPENSATION ASSESSMENTS TO DEPARTMENTS AND INSTITUTIONS. Beginning July 1, 1979, all departments and institutions of the state of North Dakota shall pay to the department of accounts and purchases one percent of the first six thousand dollars of each employee's earnings. Such assessments shall be paid to the department of accounts and purchases in accordance with guidelines established by the office of the budget, from the general fund and special funds appropriated for salaries and wages to the individual departments and institutions. The moneys received from such assessments shall be deposited by the department of accounts and purchases into a fund for the purpose of paying unemployment compensation claims. The director of accounts and purchases may decrease or suspend the assessments provided for in this section upon determination that the funds deposited pursuant to this section are sufficient to offset anticipated obligations.

Approved March 3, 1981

* NOTE: This section has been redesignated as section 54-44-04.2

CHAPTER 537

HOUSE BILL NO. 1618
(Lipsiea)

SURPLUS PROPERTY DISTRIBUTION

AN ACT to create and enact a new subsection to section 54-44-04 and two new sections to chapter 54-44 of the North Dakota Century Code, relating to placing responsibility for distribution of federal and state surplus property in the department of accounts and purchases; and to repeal chapter 15-61 of the North Dakota Century Code, relating to the personnel, powers, and duties of the division of surplus property of the department of public instruction.

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

SECTION 1. A new subsection to section 54-44-04 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Shall distribute federal and state surplus property pursuant to sections 2 and 3 of this Act.

SECTION 2. A new section to chapter 54-44 of the North Dakota Century Code is hereby created and enacted to read as follows:

FEDERAL SURPLUS PROPERTY - DEPARTMENT OF ACCOUNTS AND PURCHASES RESPONSIBLE FOR DISTRIBUTION - POWERS AND DUTIES OF DIRECTOR.

1. The department of accounts and purchases is responsible for the fair and equitable distribution, through donation, of all federal surplus property transferred to the state in accordance with the Federal Property and Administrative Services Act of 1949, as amended [63 Stat. 378; 40 U.S.C. 484 (j)], hereinafter referred to as the "federal Act".

2. The director of the department of accounts and purchases, or such subordinate officer as the director shall designate:

a. May receive, investigate, and make recommendations on applications for federal surplus property available under the federal Act.

b. May acquire any federal surplus property transferred to the state under the federal Act.

c. May distribute any federal surplus property pursuant to the federal Act to:

(1) Any public agency for use in carrying out or promoting for the residents of a given political subdivision one or more public purposes; or

(2) Nonprofit educational institutions, public health institutions, or organizations which are exempt from taxation under section 501 of the Federal Internal Revenue Code, for purposes of education or public health or research for those purposes.

d. May store the federal surplus property.

e. Shall develop, submit, and implement a state plan of operation for distribution of federal surplus property and comply with the federal Act and rules and regulations adopted thereunder. Provided, the director may continue the state plan of operation developed by the department of public instruction.

f. May cooperate and enter into agreements with other surplus property agencies and federal agencies to screen and acquire surplus property and exchange property, facilities, personnel, and services.

g. May provide information and assistance for acquiring federal surplus property to entities listed in subdivision c.

h. May assess and collect service charges from participating recipients to cover direct and reasonable cost of services under this section. The service charges shall be deposited with the state treasurer in a surplus property special fund and used pursuant to the federal Act. The state treasurer shall credit all interest earned to the fund if the director requests the state treasurer to invest portions of the fund.

i. Adopt rules and take other action necessary to distribute federal surplus property pursuant to the federal Act.

SECTION 3. A new section to chapter 55-44 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

STATE SURPLUS PROPERTY - DEPARTMENT HEADS TO INFORM DIRECTOR - DISPOSITION OF PROPERTY - PROCEEDS - EXCHANGE OF PROPERTY.

1. The person in charge of any department, agency, or institution of the state shall inform the director of accounts and purchases whenever that department, agency, or institution possesses surplus property, whether originally obtained with state or federal funds, and the person in charge believes that the state surplus property may be used by any other department, agency, institution, or political subdivision of the state.

2. The director of accounts and purchases shall dispose of the state surplus property in the following manner:

   a. By transferring it to other state departments, institutions, or agencies without cost other than transportation expenses which shall be paid by the receiving agency. Provided, when the state surplus property was originally purchased pursuant to an appropriation other than from the general fund of the state, the agency receiving that state surplus property shall pay an amount equal to the fair market value of the property. Moneys received pursuant to this subdivision shall be deposited in the fund from which the original purchases were made.

   b. If not disposed of under subdivision a, then by sale on sealed bids or at public auction to the highest and best bid for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.

   c. If not disposed of under subdivisions a or b, title to the property shall be transferred to political subdivisions without cost, except transportation expenses.

3. All proceeds of property sold under this section, less sales costs, shall be deposited in the general fund except as provided in subdivision a of subsection 1.

4. No department, agency, or institution may exchange items as part of a purchase price of new items until a detailed statement of the value of the items to be exchanged and request for approval have been submitted to the director of accounts and purchases. The director shall approve the exchange only if the director has determined that the item has been valued at fair value.

SECTION 4. REPEAL. Chapter 15-61 of the North Dakota Century Code is hereby repealed.

Approved March 5, 1981

CHAPTER 538

SENATE BILL NO. 2133
(Committee on Appropriations)
(At the request of the Department of Accounts and Purchases)

ACCOUNTS AND PURCHASES OPERATING FUNDS

AN ACT to amend and reenact section 54-44-11 of the North Dakota Century Code, relating to operating funds in the department of accounts and purchases.

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

* SECTION 1. AMENDMENT. Section 54-44-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44-11. DEPARTMENT'S OPERATING FUNDS CREATION.

1. The department of accounts and purchases shall establish a state purchasing department operating fund to be used for the procurement and maintenance of an inventory of equipment and supplies for the state departments and agencies. Any surplus in this fund in excess of one hundred thousand dollars on June thirtieth of each year shall be transferred to the state general fund.

2. The department of accounts and purchases shall establish a state printing operating fund to be used for the procurement and maintenance of an inventory of printing equipment and supplies for the state departments and agencies. ~~Any surplus in this fund in excess of fifty thousand dollars on June thirtieth of each year shall be transferred to the state general fund.~~

3. The department of accounts and purchases shall establish a state central data processing operating fund to be used for the procurement and maintenance of data processing equipment and supplies and for providing data processing services to state departments and agencies. ~~Any surplus in this fund in excess of two hundred twenty-five thousand dollars on June thirtieth of each year shall be transferred to the state general fund.~~

* NOTE: Subsection 1 of section 54-44-11 was also amended by section 7 of Senate Bill No. 2356, chapter 534.

4. Each office, agency, or institution provided with purchasing, printing, or data processing services, unless exempted by law, shall pay to the department of accounts and purchases a proportionate share of the cost of such service as determined by the director of the department of accounts and purchases, based on actual costs and actual usage. The amounts paid to the department of accounts and purchases by the various offices, agencies, and institutions shall be deposited in the appropriate operating fund and shall be expended in accordance with legislative appropriations.

Approved March 6, 1981

CHAPTER 539

SENATE BILL NO. 2049
(Legislative Council)
(Interim Data Processing Committee)

BUDGET FILING AND DATA PROCESSING AUTHORITY

AN ACT to create and enact a new section to chapter 54-44.2 and one new subsection to section 54-44.2-02 of the North Dakota Century Code, defining data processing terms, and establishing procedures for data processing resource planning; and to amend and reenact sections 54-44.1-04 and 54-44.2-01 and subsection 3 of section 54-44.2-02 of the North Dakota Century Code, relating to the filing of budgets with the executive budget office, the appointment of the central data processing director, and the powers and duties of the office of central data processing.

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

SECTION 1. AMENDMENT. Section 54-44.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.1-04. BUDGET ESTIMATES OF BUDGET UNITS FILED WITH THE OFFICE OF THE BUDGET - DEADLINE. The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of his budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The estimates so submitted shall bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The director of the budget in his discretion may extend the filing date for any budget unit ~~for--not--more--than-forty-five-days~~ if he finds there is some ~~unusual~~ circumstance which makes it ~~absolutely-impossible-to-file-an estimate-of-financial-requirements-for-such-budget-unit~~ advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare such budget unit's estimate of financial requirements except such estimate shall not exceed ninety percent of such budget unit's previous biennial appropriation. The director of

the budget or such subordinate officer as he shall designate shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which shall be open to the public.

SECTION 2. A new section to chapter 54-44.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

DEFINITIONS. As used in this chapter:

1. "Data processing" or "electronic data processing" means the systematic sequencing of operations performed by data processing equipment and/or programs 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. "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 3. AMENDMENT. Section 54-44.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.2-01. OFFICE OF CENTRAL DATA PROCESSING - CREATION. The office of central data processing is hereby established in the department of accounts and purchases. The director of the department of accounts and purchases shall ~~be--its--ex--officio director~~ appoint a director of central data processing. ~~Such~~ The director of ~~the~~ central data processing ~~office~~ shall supervise and regulate electronic data processing activities of all of the executive branch state agencies, institutions, departments, and boards, except the job service North Dakota ~~employment security bureau~~ and the office of the adjutant general. The office of central data processing shall establish an electronic data processing center which shall, unless excepted by the director, be used by all executive branch state agencies, departments, and institutions except the institutions under the control of the board of higher education, the ~~state employment bureau~~ job service North Dakota, and the office of the adjutant general. The office of central data processing shall provide data processing services to the legislative and judicial branches of government. If the office

of central data processing is unable to fulfill a request for service from the legislative or judicial branch of government, the service may be procured by the legislative or judicial branch within the limits of legislative appropriations.

The director of central data processing shall ~~appoint a central data processing supervisor who shall~~ be appointed upon the basis of education, experience, and other qualifications in data processing and administration, without reference to partisan politics, and ~~who~~ shall serve at the pleasure of the director of ~~central data processing~~ the department of accounts and purchases. The director of central data processing shall employ such other professional, technical, and clerical personnel as he may deem necessary to carry out the duties prescribed in this chapter and shall, within the limits of the legislative appropriation, fix the salaries of all employees within the office of central data processing. All personnel within the office of central data processing shall be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

SECTION 4. AMENDMENT. Subsection 3 of section 54-44.2-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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. ~~The director of the office of central data processing shall require each department, agency, or institution, except the job service North Dakota and the office of adjutant general, which may desire to maintain or procure data processing services or equipment not available from the office of central data processing, to submit a written request for these services or equipment, accompanied by full justification for their need, to the director of the office of central data processing, who must approve such request in writing before such department, institution, or agency shall be authorized to procure, maintain, or contract for these services or equipment from sources other than the office of central data processing. The director of the office of central data processing shall not approve any such requests for authority to rent, purchase, or to otherwise acquire or contract for additional or new data processing services or equipment unless, after full study of the justification submitted and such further study or independent evaluation and testing as he shall deem necessary, he shall find that such services cannot be reasonably provided by the office of central data processing and that such equipment would be fully and economically usable and compatible with the central data processing system.~~ 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 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. If an equipment purchase or rental is authorized, the equipment~~,---except---that--which--may--be--purchased--for institutions-under-the-control--of--the--board--of--higher education,~~ shall become the property of the office of central data processing ~~and-shall--be--delivered--to--such office--by--the--vender--of--such--equipment--and-shall-be operated-by--personnel--of--the--office--of--central--data processing~~. The director of central data processing may authorize a user agency to house and operate electronic data processing equipment.

SECTION 5. A new subsection to section 54-44.2-02 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

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 department of accounts and purchases 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.

Approved April 1, 1981

CHAPTER 540

SENATE BILL NO. 2261
(Melland)

BUDGET DATA INFORMATION PRESENTATION

AN ACT to amend and reenact section 54-44.1-07 of the North Dakota Century Code, relating to the presentation of budget data information by the director of the budget to the legislative council.

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

SECTION 1. AMENDMENT. Section 54-44.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.1-07. PRESENTATION OF BUDGET DATA - HOW PRESENTED TO THE ~~LEGISLATURE~~ LEGISLATIVE ASSEMBLY. The director of the budget or his designated subordinate shall present the budget data information in section 54-44.1-06, including the budget and revenue proposals recommended by the governor, and make available sufficient copies thereof to ~~a special committee~~ the budget section of the legislative council ~~on budget review~~. The budget data shall be completed and made available to the budget section of the legislative council, or its designee, in such form as may be acceptable to it by December first of each year next preceding the session of the ~~legislature~~ legislative assembly, or at such later date as may be set by the budget section chairman. The chairman of the ~~legislative council or its committee on budget review~~ budget section shall set the time and place at which such budget data is to be presented.

Approved March 19, 1981

CHAPTER 541

HOUSE BILL NO. 1316
(A. Olson)

STATE PERSONNEL BOARD MEMBERSHIP

AN ACT to amend and reenact section 54-44.3-03 and 54-44.3-05 of the North Dakota Century Code, relating to employees who are eligible to vote for members of the state personnel board.

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

SECTION 1. AMENDMENT. Section 54-44.3-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.3-03. STATE PERSONNEL BOARD - COMPOSITION - TERMS - VACANCIES - QUALIFICATIONS ~~OF MEMBERS~~.

1. Effective July 1, 1975, there is hereby created a five-member state personnel board. The board shall be composed of a constitutionally elected official, who shall be the chairman of the board; a member appointed by the board of higher education; one member appointed by the governor; and two members elected by ~~the state~~ employees classified under sections 54-44.3-19 and 54-44.3-20. The constitutionally elected officials shall meet at the call of the governor within ten days after the effective date of this chapter and thereafter at the expiration of the term of the constitutionally elected member and select by a majority vote the constitutionally elected official who shall serve on the board.

2. The term of the member of the board appointed by the governor and the respective terms of the members of the board elected by ~~the state~~ classified employees shall be for six years. The constitutionally elected official's term of office shall be for four years or the remainder of ~~his~~ the official's term of office, whichever is shorter. However, for the initial composition of the board, the following procedures shall apply:

~~1.~~ a. The member of the board first appointed by the governor shall serve for a period of two years.

~~2.~~ b. One of the two members of the board elected by ~~the state~~ classified employees shall first serve a term of two years.

~~3.~~ c. One of the two members of the board elected by ~~the state~~ classified employees shall first serve a term of five years.

Thereafter, all appointments and elections to the personnel board will be for six years' duration.

3. Any vacancy in office shall be filled for the unexpired term in the same manner as the selection of the person vacating the office.

4. The member of the board appointed by the governor shall be a resident of the state for at least sixty days, and shall be known to be in sympathy with the application of merit principles to public employment. Each member of the board elected by ~~the state~~ classified employees shall be a resident of the state for at least sixty days, and shall be known to be in sympathy with the application of merit principles to public employment. No member of the board appointed by the governor or elected by ~~the state~~ classified employees ~~shall~~ may have held a position in a political party within four years immediately preceding ~~his~~ the member's appointment or election to the board, and those members of the board elected by ~~the state~~ classified employees shall be full-time employees in good standing of the classified service.

SECTION 2. AMENDMENT. Section 54-44.3-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.3-05. ELECTION COMMITTEE. The governor, the secretary of state, and the attorney general shall constitute a three-member committee to develop rules and regulations for a secret ballot election among all ~~eligible state~~ employees eligible under sections 54-44.3-19 and 54-44.3-20 to carry out the election of the two members of the board elected by ~~the state~~ classified employees. All elections of members of the board shall be the responsibility of the director who will ensure that proper and due notification is given to all employees in sufficient time to enable potential candidates to initiate necessary petitions and conduct campaigns. Nominees for candidacy shall be required to submit petitions containing no less than two hundred names of employees in good standing ~~in the~~ classified ~~service~~ under sections 54-44.3-19 and 54-44.3-20. All elections will be conducted through a secret ballot process.

Approved March 2, 1981

CHAPTER 542

SENATE BILL NO. 2047
(Legislative Council)
(Interim Budget "B" Committee)

CENTRAL PERSONNEL COMPENSATION PLAN CHANGES

AN ACT to amend and reenact section 54-44.3-12.1 of the North Dakota Century Code to allow changes to the central personnel compensation plan during a biennium.

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

SECTION 1. AMENDMENT. Section 54-44.3-12.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.3-12.1. REVISIONS TO ~~CLASSIFICATION AND~~ COMPENSATION ~~PLANS~~ PLAN. Revisions to ~~classification and~~ the compensation ~~plans~~ plan shall only be made on July first, following the close of a regular legislative session. ~~Such revisions~~, except that new classifications may be added to the compensation plan during a biennium when deemed necessary by the director. Revisions to the compensation plan shall only be made to the extent the legislative assembly appropriates funds to implement such plans.

Approved March 11, 1981

CHAPTER 543

HOUSE BILL NO. 1046
(Legislative Council)
(Interim Budget "B" Committee)

MENTAL HEALTH AND HUMAN SERVICE CENTER CENTRAL PERSONNEL COVERAGE

AN ACT to amend and reenact section 54-44.3-19 of the North Dakota Century Code, relating to the status of mental health and retardation service units and human service centers under the central personnel division classification and pay plan.

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

* SECTION 1. AMENDMENT. Section 54-44.3-19 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.3-19. BOARD AUTHORITY TO PROVIDE SERVICE TO CITIES ~~AND~~, POLITICAL SUBDIVISIONS, AND OTHER ENTITIES. The board may enter into agreement with any city or political subdivision of this state to furnish any of its services and facilities, other than factfinding or conciliation services, and ~~such~~ the agreement shall provide for reimbursement to the state of the cost of the services and facilities furnished. All cities and political subdivisions of this state may enter into ~~such~~ the agreements. The board and division shall provide coverage to other agencies or political subdivisions as may by federal laws or regulations be required to be subject to a personnel system in order to obtain federal grants-in-aid. The board and division shall provide coverage to ~~mental-health and--retardation--service--units,--human--service-centers,-and-other units-resulting-from-combinations-of-mental-health--and--retardation service--units,--area-social-service-centers,-and-other-functions-or services-of--state--agencies--or~~ political subdivisions upon the request of ~~such--centers--or--units.--Such-other~~ the subdivisions. Other agencies, departments, or divisions, or positions, ~~shall~~ may be placed under the complete or limited board and division personnel plan in the manner and to the extent the legislative assembly shall by law direct.

Approved February 18, 1981

* NOTE: Section 54-44.3-19 was also amended by section 35 of House Bill No. 1418, chapter 486.

CHAPTER 544

HOUSE BILL NO. 1072
(Legislative Council)
(Legislative Audit and Fiscal Review Committee)

CENTRAL MICROFILM UNIT REVENUE DEPOSIT

AN ACT to amend and reenact section 54-46.1-01 of the North Dakota Century Code, relating to the central microfilm unit.

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

SECTION 1. AMENDMENT. Section 54-46.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-46.1-01. CENTRAL MICROFILM UNIT. The secretary of state, in his capacity as state records administrator, shall establish and maintain a central microfilm unit and microfilm any record of any state office, agency, or department in either the executive, legislative, or judicial branch of state government, if he shall determine the cost of such microfilming is reasonable in relation to ~~such~~ the record's historical significance or the frequency and type of use of ~~such~~ the record. Each office, agency, and department shall reimburse the central microfilm unit for the actual costs incurred in microfilming its records, which collections shall be deposited in ~~a--special~~ the general fund in the state treasury. Expenditures required for the operation of the central microfilm unit shall be made from ~~such~~ the general fund and shall be limited to ~~such~~ the amounts ~~as~~ appropriated by the legislative assembly. The secretary of state shall employ ~~such--other~~ professional, technical, and clerical personnel as he ~~may-deem~~ deems necessary to carry out the duties prescribed in this chapter and shall, within the limits of the legislative appropriation, fix the salaries of all employees within the central microfilm unit. All personnel within the central microfilm unit shall be allowed their actual and necessary travel expenses at the same rate as for other employees of the state. The central microfilm unit shall be located in the state capitol building. The secretary of state is further authorized to perform microfilm services for the state institutions and for any county, when they request such services, and the secretary of state agrees that the request is consistent with good records management practices.

Approved April 1, 1981

CHAPTER 545

SENATE BILL NO. 2107
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

POLITICAL SUBDIVISION COMBINATION FOR P.E.R.S.

AN ACT to amend and reenact subsections 5 and 6 of section 54-52-01 and section 54-52-02.1 of the North Dakota Century Code, relating to the definition of "funding agent" and "governmental unit", and authorizing other political subdivisions to join the public employees retirement system.

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

SECTION 1. AMENDMENT. Subsections 5 and 6 of section 54-52-01 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. "Funding agent" or "agents" means ~~the insurance company~~ an investment firm, trust bank, or other financial institution ~~whom~~ which the retirement board ~~selects~~ may select to hold and invest the employers' and members' contributions ~~and pay certain benefits~~.

6. "Governmental unit" means the state of North Dakota or a county or city thereof, a school district, including the Fargo school district, or any combination thereof, a district health unit, and the Garrison Conservancy District.

SECTION 2. AMENDMENT. Section 54-52-02.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-02.1. COUNTY, CITY, AND NONCERTIFIED SCHOOL DISTRICT EMPLOYEES AUTHORIZED TO JOIN PUBLIC EMPLOYEES RETIREMENT SYSTEM. The boards of county commissioners of the several counties ~~and~~, the governing ~~bodies~~ body of any city ~~or~~, school district ~~are~~, or any combination thereof is hereby authorized on behalf of ~~their~~ its permanent employees, and permanent noncertified employees only in the case of school districts, to enter into agreements with the state retirement board for the purpose of extending the benefits of the public employees retirement system, as provided in this chapter,

to such employees. Such an agreement may, in accordance with this chapter, contain provisions relating to benefits, contributions, effective date, modification, administration, and other appropriate provisions as the ~~state~~ retirement board and the board of county commissioners ~~or~~, the governing body of a city ~~or~~, a school district, or any combination thereof shall agree upon, but such agreement shall provide that:

1. The county, city, or school district, or any combination thereof will contribute on behalf of each eligible employee an amount equal to that provided in section 54-52-06.

2. A portion of the moneys, paid by the counties, cities, or school districts, or any combination thereof may be used to pay administrative expenses of the retirement board.

Notwithstanding any other provision of this chapter, no political subdivision of this state not participating in the retirement system on June 30, 1977, shall thereafter become a participant in the system until an actuarial study is performed under the direction of the board to calculate the cost of that portion of benefits to be paid by the retirement system to the employees of such political subdivision based on any prior service or on any service after June 30, 1977, and before the date of initial participation in the retirement system, or both; and the political subdivision has adopted a method, approved by the board, to pay the costs determined in this subsection over a period not to exceed twenty-five years from June 30, 1977. No political subdivision may discontinue participation in the fund without first making such payment to the fund as may be necessary for the fund to pay the future benefits of the eligible employees of such political subdivision as determined on the basis of rules and regulations promulgated by the board.

Approved March 18, 1981

CHAPTER 546

HOUSE BILL NO. 1111
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

PUBLIC EMPLOYEE RETIREMENT SERVICE REPURCHASE

AN ACT to create and enact a new section to chapter 54-52 of the North Dakota Century Code, relating to the repurchase of past service by former members of the public employees retirement system.

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

SECTION 1. A new section to chapter 54-52 of the North Dakota Century Code is hereby created and enacted to read as follows:

REPURCHASE OF PAST SERVICE UPON REEMPLOYMENT. An individual with ten or more 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 service. An individual who terminates with less than ten years of service, may, upon reemployment, repurchase past service in accordance with the rules and regulations established by the board.

Approved February 4, 1981

CHAPTER 547

HOUSE BILL NO. 1157
Mertens

PUBLIC EMPLOYEE POSTPONED RETIREMENT BENEFIT CALCULATION

AN ACT to amend and reenact section 54-52-17 of the North Dakota Century Code, providing credit for years of service for those members of the public employees retirement system who retired on or after July 1, 1977.

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

* SECTION 1. AMENDMENT. Section 54-52-17 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-17. FORMULATION OF PLAN. Participating members shall receive benefits according to this section and according to the rules and regulations promulgated by the retirement board, not inconsistent with this chapter. No person shall receive a prior service benefit if the person was not continuously employed by a governmental unit in North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date or postponed retirement date, as defined in this section. No participating member shall receive credit for more than thirty years of full-time employment unless such member has contributed to the plan or its predecessor established on July 1, 1966, in excess of thirty years; members who have contributed to these plans in excess of thirty years shall receive credit for the years of full-time employment after July 1, 1966. Part-time employment will be recognized as full-time employment on such a prorated basis as the board may prescribe.

2. Retirement benefits shall be calculated from the participating member's final average salary, which is the average of the highest salary received by the member for

* NOTE: Various portions of section 54-52-17 were also amended by section 1 of Senate Bill No. 2111, chapter 548, sections 1 and 2 of House Bill No. 1110, chapter 549, sections 1 and 2 of Senate Bill No. 2104, chapter 550, and by section 1 of House Bill No. 1631, chapter 551.

any sixty consecutive months employed during the last one hundred twenty months of employment. Months not employed or months where employment was not full time shall be excluded in arriving at the sixty months to be used for the purpose of computing an average. If the participating member has worked for less than sixty months at the normal retirement date, the final average salary shall be the average salary for the total months of employment.

3. Retirement dates shall be defined as follows:

   a. Normal retirement date is the first day of the month next following the month in which the member attains the age of sixty-five years.

   b. Postponed retirement date is the first day of the month next following the month in which the member actually severs his employment after attaining the age of sixty-five years.

   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 years of eligible employment.

   d. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules and regulations of the retirement board, and has completed at least ten years of eligible employment. No member shall be eligible for benefits resulting from a disability unless he shall also be determined eligible for benefits under the Social Security Act as amended.

4. Retirement benefits shall be calculated by the retirement board as follows:

   a. Normal retirement benefits for all retirees reaching normal retirement date shall be an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which shall be determined as follows:

      (1) Service benefit equals one and four-hundredths percent of final average salary multiplied by the number of years of service employment.

      (2) Prior service benefit equals one and four-hundredths percent of final average salary multiplied by the number of years of prior service employment.

b. Postponed retirement benefits shall be calculated as for normal retirement benefits for those members who retired on or after July 1, 1977.

c. 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 eligible for early retirement benefits only after having completed ten years of eligible employment.

d. Disability retirement benefits shall be calculated as for normal retirement benefits accrued to the date of termination of employment due to permanent and total disability.

5. Upon termination of employment after completing ten years of eligible employment but prior to normal retirement date, a member who does not elect to receive early retirement benefits shall be eligible to receive deferred vested retirement benefits payable commencing on his normal retirement date equal to one hundred percent of his accrued normal retirement benefits.

6. If a member dies after completing ten years of eligible employment, but prior to retiring, the surviving spouse of the member shall receive monthly retirement benefits equal to fifty percent of the deceased member's accrued normal retirement benefits until the spouse dies or remarries, whichever first occurs. If the spouse dies or remarries, he shall come under the provisions of subsection 8.

7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, he or his designated beneficiary shall be entitled to the balances of his employee account fund and the vested portion of his vesting fund, both as of June 30, 1977, with five percent annual interest thereon to date of termination. In addition, the member or his designated beneficiary shall be entitled to his contribution made after June 30, 1977, with five percent annual interest thereon to the date of termination. If the termination results from death or permanent and total disability, the member shall be deemed one hundred percent vested in the vesting fund on June 30, 1977.

8. If a member who is receiving retirement benefits or his surviving spouse who is receiving retirement benefits dies or if the surviving spouse remarries before the total amount of benefits paid to either or both equals the amount of the member's contribution with five percent interest, plus the vested amount on June 30, 1977, with

five percent interest, the difference shall be paid to such spouse, his surviving beneficiary, if any, or his estate.

9. The retirement board shall promulgate regulations providing for the receipt of retirement benefits in the following optional forms:

a. Joint and survivor, with fifty percent or one hundred percent options.

b. Level social security option, which shall be available only to early retirees.

c. Life with five- or ten-year certain options.

Unless a member requests that he receive benefits according to one of these options at the time of applying for retirement, all retirement benefits shall be in the form of a lifetime monthly pension.

Approved February 4, 1981

CHAPTER 548

SENATE BILL NO. 2111
(Melland)

PUBLIC EMPLOYEE POSTPONED RETIREMENT DATE

AN ACT to amend and reenact subsection 3 of section 54-52-17 of the North Dakota Century Code, relating to retirement dates under the public employees retirement system.

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

* SECTION 1. AMENDMENT. Subsection 3 of section 54-52-17 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Retirement dates shall be defined as follows:

a. Normal retirement date is the first day of the month next following the month in which the member attains the age of sixty-five years.

b. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed his employment after attaining the age of sixty-five years.

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 years of eligible employment.

d. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules and regulations of the retirement board, and has completed at least ten years of eligible employment. No member shall be eligible for benefits resulting from a disability unless he shall also be determined eligible for benefits under the Social Security Act as amended.

Approved March 5, 1981

* NOTE: Subdivision d of subsection 3 of section 54-52-17 was also amended by section 1 of House Bill No. 1110, chapter 549, and section 54-52-17 was also amended by section 1 of House Bill No. 1157, chapter 547.

CHAPTER 549

HOUSE BILL NO. 1110
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

PUBLIC EMPLOYEE DISABILITY BENEFIT CALCULATION

AN ACT to amend and reenact subdivision d of subsection 3 and subdivision d of subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to the computation of disability benefits under the public employees retirement system.

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

* SECTION 1. AMENDMENT. Subdivision d of subsection 3 of section 54-52-17 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

d. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules and regulations of the retirement board, and has completed at least ~~ten--years~~ one hundred eighty days of eligible employment. No member shall be eligible for benefits resulting from a disability unless he shall also be determined eligible for benefits under the Social Security Act as amended.

** SECTION 2. AMENDMENT. Subdivision d of subsection 4 of section 54-52-17 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

d. Disability retirement benefits shall be calculated ~~as for-normal-retirement-benefits-accrued-to-the-date--of termination--of--employment-due-to-permanent-and-total disability~~ at sixty percent of the member's final average salary, reduced by the member's primary benefits under the Social Security Act as amended, and by any workmen's compensation benefits paid.

Approved February 4, 1981

* NOTE: Subsection 3 of section 54-52-17 was also amended by section 1 of Senate Bill No. 2111, chapter 548, and section 54-52-17 was also amended by section 1 of House Bill No. 1157, chapter 547.

** NOTE: Section 54-52-17 was also amended by section 1 of House Bill No. 1157, chapter 547.

CHAPTER 550

SENATE BILL NO. 2104
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

PUBLIC EMPLOYEE RETIREMENT BENEFITS CONTINUATION

AN ACT to amend and reenact subsections 6 and 8 of section 54-52-17 of the North Dakota Century Code, relating to the continuation of public employees' retirement benefits for surviving spouses regardless of remarriage.

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

* SECTION 1. AMENDMENT. Subsection 6 of section 54-52-17 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. If a member dies after completing ten years of eligible employment, but prior to retiring, the surviving spouse of the member shall receive monthly retirement benefits equal to fifty percent of the deceased member's accrued normal retirement benefits until the spouse dies ~~or remarries, whichever first occurs~~. If the spouse dies ~~or remarries, he shall come under~~ the provisions of subsection 8 shall be applicable.

** SECTION 2. AMENDMENT. Subsection 8 of section 54-52-17 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. If a member who is receiving retirement benefits or his surviving spouse who is receiving retirement benefits dies ~~or if the surviving spouse remarries~~ before the total amount of benefits paid to either or both equals the amount of the member's contribution with five percent interest, plus the vested amount on June 30, 1977, with five percent interest, the difference shall be paid to such spouse, his surviving beneficiary, if any, or his estate.

Approved March 6, 1981

* NOTE: Section 54-52-17 was also amended by section 1 of House Bill No. 1157, chapter 547.

** NOTE: Subsection 8 of section 54-52-17 was also amended by section 1 of House Bill No. 1631, chapter 551, and section 54-52-17 was also amended by section 1 of House Bill No. 1157, chapter 547.

CHAPTER 551

HOUSE BILL NO. 1631
(Black, Gates)

PUBLIC EMPLOYEES RETIREMENT ACCOUNT INTEREST RATE

AN ACT to amend and reenact subsections 7 and 8 of section 54-52-17 of the North Dakota Century Code, relating to interest payable on employee account funds under the public employees retirement system.

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

* SECTION 1. AMENDMENT. Subsections 7 and 8 of section 54-52-17 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, he or his designated beneficiary shall be entitled to the balances of his employee account fund and the vested portion of his vesting fund, both as of June 30, 1977, with ~~five~~ six percent annual interest thereon to date of termination. In addition, the member or his designated beneficiary shall be entitled to his contribution made after June 30, 1977, with ~~five~~ six percent annual interest thereon to the date of termination. If the termination results from death or permanent and total disability, the member shall be deemed one hundred percent vested in the vesting fund on June 30, 1977.

8. If a member who is receiving retirement benefits or his surviving spouse who is receiving retirement benefits dies ~~or--if--the-surviving-spouse-remarries~~ before the total amount of benefits paid to either or both equals the amount of the member's contribution with ~~five~~ six percent interest, plus the vested amount on June 30, 1977, with ~~five~~ six percent interest, the difference shall be paid to such spouse, his surviving beneficiary, if any, or his estate.

Approved March 11, 1981

* NOTE: Subsection 8 of section 54-52-17 was also amended by section 2 of Senate Bill No. 2104, chapter 550, and section 54-52-17 was also amended by section 1 of House Bill No. 1157, chapter 547.

CHAPTER 552

SENATE BILL NO. 2106
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

POLITICAL SUBDIVISION STATE GROUP INSURANCE PARTICIPATION

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to the participation of political subdivisions in the uniform group insurance program and to the amount a governing body may provide for the monthly premium; and to amend and reenact subsections 1 and 7 of section 54-52.1-01 of the North Dakota Century Code, relating to the definitions of "eligible employee" and "department, board, or agency".

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

SECTION 1. A new section to chapter 54-52.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

COUNTY, CITY, NONCERTIFIED SCHOOL DISTRICT EMPLOYEES AND EMPLOYEES OF ANY COMBINATION THEREOF AUTHORIZED TO JOIN UNIFORM GROUP INSURANCE PROGRAM - EMPLOYER CONTRIBUTION. The board of county commissioners of any county, the governing body of any city or school district, or any combination thereof, which has elected to participate in the North Dakota public employees retirement system, is hereby authorized on behalf of its permanent employees, and permanent noncertified employees only in the case of school districts, to extend the benefits of the uniform group insurance program, as provided in this chapter, to such employees.

The boards of county commissioners of participating counties and the governing bodies of participating cities, school districts or any combinations thereof may determine the amount of the governing bodies' monthly contribution towards the total monthly premium amount required of each eligible participating employee.

SECTION 2. AMENDMENT. Subsection 1 of section 54-52.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Eligible employee" ~~shall mean all~~ means every permanent ~~employees~~ employee who ~~are~~ is employed by the state, county, city, school district, or any combination thereof. Eligible employees ~~shall also~~ include members of the legislative assembly, judges of the supreme court, elective state officers as defined by subsection 1 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" ~~shall mean~~ means any person hired with the intent that he ~~shall~~ be employed for more than twenty hours per week for more than five months each year.

SECTION 3. AMENDMENT. Subsection 7 of section 54-52.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. "Department, board, or agency" ~~shall--mean~~ means the departments, boards, agencies, or associations of this state, and ~~shall include~~ includes the state's charitable, penal, and higher educational institutions; the Bank of North Dakota; ~~and~~ the state mill and elevator association; and counties, cities, and school districts participating under chapter 54-52.

Approved March 18, 1981

CHAPTER 553

HOUSE BILL NO. 1459
(Representative Kretschmar)
(Senator Wenstrom)

COMMISSION ON UNIFORM STATE LAWS

AN ACT to provide for the appointment of members of the commission on uniform state laws, to prescribe the duties of commissioners, and to provide administrative procedures for the commission.

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

SECTION 1. COMMISSION ON UNIFORM STATE LAWS - MEMBERSHIP. The commission on uniform state laws shall consist of five members: one shall be 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. 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. VACANCIES. The office of any appointed commissioner becomes vacant upon death, resignation, or failure or refusal to serve. The appointing authority shall make an appointment to fill the vacancy for the unexpired term of the former appointee.

SECTION 3. MEETING AND ORGANIZATION. The commissioners shall meet at least once each two-year period and shall organize by

electing one of their number as chairman and another as secretary. The chairman and secretary shall hold their respective offices for a term of two years and until their successors are elected.

SECTION 4. DUTIES OF COMMISSIONERS AND COMMISSION. Each commissioner shall attend the annual meeting of the national conference of commissioners on uniform state laws and shall promote uniformity in state laws on those subjects where uniformity may be deemed desirable and practicable. The commission shall also promote as far as practicable the uniform judicial application and construction of all uniform state laws. Prior to each biennial legislative session, and at any other time as the commission may deem proper, the commission shall report to the legislative assembly an account of its transactions and its advice and recommendations for legislation.

SECTION 5. NO COMPENSATION FOR COMMISSIONERS. The commissioners shall serve without compensation for services as commissioners, but they shall 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 department of accounts and purchases upon vouchers submitted by the commissioners.

Approved March 5, 1981

CHAPTER 554

HOUSE BILL NO. 1654
(Backes, Strinden)
(Approved by the Committee on Delayed Bills)

NORTH DAKOTA CENTENNIAL COMMISSION

AN ACT to establish a North Dakota centennial commission, to set forth its powers and duties, to provide for payment of commissioners' expenses, and to provide for termination of the commission.

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

SECTION 1. DEFINITION. In this Act, "commission" means the North Dakota centennial commission.

SECTION 2. ESTABLISHMENT OF A NORTH DAKOTA CENTENNIAL COMMISSION. The governor shall appoint a North Dakota centennial commission consisting of seven members.

SECTION 3. POWERS AND DUTIES. The commission shall:

1. Plan, promote, and designate parks, sites, and activities in North Dakota for special purposes and development during the 1989 centennial celebration of North Dakota statehood.

2. Conduct and promote studies, investigations, and research into the development of centennial activities.

SECTION 4. MEETINGS - COMPENSATION AND EXPENSES OF COMMISSION MEMBERS - RECORDS. The governor shall appoint the chairman of the commission. The commission shall meet at the call of the chairman and a majority of the commission shall constitute a quorum. Commission members shall receive no compensation but may receive actual mileage and travel expenses as provided by law for state officers and employees. The commission shall keep minutes of its meetings and a record of all its transactions.

SECTION 5. COMMISSION EXPENSES. All expenditures made by the commission in discharging its duties under this Act shall be payable from the governor's budget, within the limits of legislative appropriations, upon vouchers signed and approved by the chairman of

the commission. Upon approval of those vouchers as provided by law, warrant-checks for those expenditures shall be prepared by the department of accounts and purchases.

SECTION 6. REPORT OF COMMISSION. The commission shall report its initial plans and appropriations request for the 1989 North Dakota centennial celebration to the forty-eighth legislative assembly.

SECTION 7. TERMINATION OF COMMISSION. The commission shall terminate June 30, 1983, unless its existence is extended by the forty-eighth legislative assembly.

Approved March 18, 1981

TAXATION

CHAPTER 555

HOUSE BILL NO. 1542
(Representatives R. Anderson, Kent)
(Senator R. Christensen)

FARM HOME PROPERTY TAX EXEMPTION

AN ACT to amend and reenact subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to property tax exemptions for farm homes.

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

SECTION 1. AMENDMENT. Subsection 15 of section 57-02-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15. a. All farm structures, and improvements located on agricultural lands. This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or structures used in connection with a retail or wholesale business other than farming, even though situated on agricultural land, shall not be exempt under this subsection.

b. It is the intent of the legislative assembly that this exemption as applied to a residence shall be strictly construed and interpreted to exempt only a residence which is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption shall not be applied to property which is occupied or used by a person who is not a farmer~~; for this purpose the term "farm"~~. For purposes of this subdivision:

(1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other

similar operations normally associated with farming and ranching, with not less than fifty percent of his annual net income~~;--and--the--term "farmer"~~.

(2) "Farmer" means an individual who normally devotes the major portion of his time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and who normally receives not less than fifty percent of his annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which he lives and for which the exemption is claimed.

(3) "Net income from farming activities" described in paragraph (2) means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:

(a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.

(b) Interest expenses from farming activities which have been deducted in computing taxable income.

(4) For purposes of applying the income requirements of this subdivision, if a husband and wife reside together in a residence claimed as exempt under this subdivision because both or one of them is a farmer, not less than fifty percent of their combined net income from all sources must be net income from farming activities as defined in paragraph (3) in order for the residence to qualify for the exemption.

(5) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant was, or was not, net income from farming activities, provided that if that occupant is married and they both occupy the residence, it shall be stated in the written statement that their net income from farming activities was, or was not, fifty percent or more of their combined net income from all sources.

Approved April 6, 1981

CHAPTER 556

HOUSE BILL NO. 1290
(Hedstrom)

PROPERTY TAX EXEMPTION FOR DISABLED PERSON

AN ACT to create and enact a new subdivision to subsection 20 of section 57-02-08 of the North Dakota Century Code, to allow a homestead credit for any permanently and totally disabled person who is permanently confined to use of a wheelchair; and to amend and reenact subdivision b of subsection 20 of section 57-02-08 of the North Dakota Century Code to increase the income ceiling for disabled veterans to claim the property tax exemption for fixtures, buildings, and improvements.

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

SECTION 1. AMENDMENT. Subdivision b of subsection 20 of section 57-02-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

b. A disabled veteran of the United States armed forces who was discharged under honorable conditions or who has been retired from the armed forces of the United States with an armed forces service-connected disability of fifty percent or greater, or his unremarried widow if such veteran is deceased, if the income of such veteran and his wife, or if such veteran is deceased the income of his unremarried widow, in the calendar year prior to the year for which the exemption is claimed did not exceed ~~five thousand dollars from all sources~~ the maximum amount of income provided in section 57-02-08.1 for receiving a homestead credit under that section exclusive of any compensation or pension for service-connected disability from the United States government, provided that this exemption shall not exceed ~~eight~~ ten thousand dollars of assessed valuation.

SECTION 2. A new subdivision to subsection 20 of section 57-02-08 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Any permanently and totally disabled person who is permanently confined to use of a wheelchair, or, if deceased, the unremarried surviving spouse of such a person, shall be entitled to a reduction of ten thousand dollars of assessed valuation. If the spouse of such a permanently and totally disabled person owns the homestead or if it is jointly owned by them, the same reduction in assessed valuation shall apply as long as both reside thereon. The provisions of this subdivision shall not reduce the liability for special assessments levied upon the homestead. The phrase "permanently confined to use of a wheelchair" means that the person cannot walk with the assistance of crutches or any other device and will never be able to do so and that a physician selected by the local governing board has so certified.

Approved March 31, 1981

CHAPTER 557

SENATE BILL NO. 2292
(Lashkowitz, Grotberg)

BLIND PERSON'S PROPERTY TAX EXEMPTION

AN ACT to amend and reenact subsection 22 of section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for homes owned and occupied by blind persons.

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

SECTION 1. AMENDMENT. Subsection 22 of section 57-02-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

22. All or any part of fixtures, building, and improvements upon any nonfarm land up to an assessed valuation of ~~six~~ ten thousand dollars, owned and occupied as a home by a blind person. Homes owned by the spouse of a blind person, or jointly owned by a blind person and spouse, shall also be exempt within the limits of this subsection as long as the blind person resides in the home. For purposes of this ~~section~~ subsection a blind person shall be defined as one who is totally blind, has visual acuity of not more than 20/200 in the better eye with correction, or whose vision is limited in field so that the widest diameter subtends an angle no greater than twenty degrees.

Approved March 11, 1981

CHAPTER 558

SENATE BILL NO. 2375
(Wright)

PERSONAL PROPERTY TAXATION

AN ACT to amend and reenact subsection 25 of section 57-02-08 of the North Dakota Century Code, relating to the exemption of certain personal property; to repeal sections 57-02-17 and 57-02-22 of the North Dakota Century Code, relating to listing of personal property for assessment purposes; 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 25 of section 57-02-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25. All personal property not required by section 179 of the Constitution of North Dakota to be assessed by the state board of equalization shall become exempt from assessment and taxation in the year 1970 and such property shall not be assessed or taxed for that year or for any year thereafter; provided that this provision shall not apply to any property that is either subjected to a tax which is imposed in lieu of ad valorem taxes or to any particular kind or class of personal property, including mobile homes or house trailers, that is subjected to a tax imposed pursuant to any other provision of law except as specifically provided in this subsection. ~~In--addition,--this---subsection--shall--not--exempt--from--taxation--the personal-property-of-any-corporation-organized-pursuant-to the-nonprofit-laws-of-any-jurisdiction-which-is-not-exempt from-personal-property-taxation-under-any-other-statute.~~

SECTION 2. REPEAL. Sections 57-02-17 and 57-02-22 of the North Dakota Century Code are hereby repealed.

SECTION 3. EFFECTIVE DATE. The provisions of this Act shall be effective for taxable years beginning on or after January 1, 1981.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 19, 1981

CHAPTER 559

SENATE BILL NO. 2165
(Committee on Finance and Taxation)
(At the request of the Tax Department)

PROPERTY TAX HOMESTEAD EXEMPTION FOR PARAPLEGIC PERSON

AN ACT to amend and reenact subsection 26 of section 57-02-08 of the North Dakota Century Code, relating to property tax homestead exemption for a paraplegic disabled person or surviving spouse.

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

SECTION 1. AMENDMENT. Subsection 26 of section 57-02-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26. Fixtures, buildings, and improvements up to a net assessed valuation of ten thousand dollars when owned and occupied as a homestead, as hereinafter defined, by a paraplegic disabled person, or if such person is deceased the unremarried spouse, if the income from all sources of such person and spouse, or if such person is deceased the income from all sources of the unremarried surviving spouse, in the calendar year prior to the year for which the exemption is claimed did not exceed ~~five thousand dollars from all sources~~ the maximum amount of income provided in section 57-02-08.1 for receiving a homestead credit under that section. To obtain such exemption for the first time, a certificate from a medical doctor who is approved by the board of county commissioners, accompanied by an affidavit, showing the facts herein required and a description of the property, shall be filed with the county auditor. Such affidavit and accompanying certificate shall be opened to public inspection. Any person claiming the exemption for any year after the first year shall furnish to the assessor or other assessment officials when requested to do so any information which he believes will support his claim for the exemption for any subsequent year. For purposes of this subsection "homestead" shall have the meaning provided in section 47-18-01 except that it shall also apply to any person who otherwise qualifies under the provisions of this subsection whether or not such person is the head of a family. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year in which such person shall have held title to such exempt property.

Approved March 5, 1981

CHAPTER 560

HOUSE BILL NO. 1446
(E. Pomeroy, Koski)

GEOTHERMAL OR WIND ENERGY DEVICE PROPERTY TAX EXEMPTION

AN ACT to amend and reenact subsection 27 of section 57-02-08 of the North Dakota Century Code to provide a property tax exemption for geothermal or wind energy devices.

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

SECTION 1. AMENDMENT. Subsection 27 of section 57-02-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27. Installations, machinery, and equipment of systems ~~which utilize solar energy for the heating or cooling of~~ in new or existing buildings or structures, designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by utilization of solar, wind, or geothermal energy, provided that if ~~a building or structure has a conventional heating or cooling system which is supplemented by a solar energy system, only the solar energy portion of the total system~~ the solar, wind, or geothermal energy device is part of a system which uses other means of energy, only that portion of the total system directly attributable to solar, wind, or geothermal energy shall be exempt. Provided, however, that any exemptions granted by this subsection shall be valid for a five-year period following installation of any such system. For the purposes of this subsection, solar or wind energy devices shall have the meaning provided in section 57-38-01.8; geothermal energy device means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

Approved March 16, 1981

CHAPTER 561

SENATE BILL NO. 2428
(Dykshoorn)

PROPERTY TAX EXEMPTIONS

AN ACT to create and enact two new subsections to section 57-02-08 of the North Dakota Century Code, relating to exemption of property from taxation; and to provide an effective 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 1979 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Property to which title is held by a city pursuant to chapter 40-57 which is leased to an entity described in subsection 8 and used by the entity as provided in subsection 8 or subleased to a public school district for educational purposes, provided that the entity is qualified as an exempt organization under section 501(c)(3) of the United States Internal Revenue Code of 1954 as amended.

Property, but not including property used for residential purposes, owned by an organization described in subsection 9 and leased to a public school district for educational purposes, provided that the property had previously been owned and occupied by the organization for an exempt purpose described in subsection 9 for a period of at least five years.

SECTION 2. EFFECTIVE DATE. This Act shall be effective for property tax years beginning on or after January 1, 1980.

Approved April 1, 1981

CHAPTER 562

SENATE BILL NO. 2217
(Senators Wenstrom, Solberg, Wright)
(Representatives A. Hausauer, Hoffner, Swiontek)

HOMESTEAD TAX CREDIT

AN ACT to amend and reenact section 57-02-08.1 of the North Dakota Century Code, relating to property tax credits for persons sixty-five years of age or older with limited income; and providing for an effective date.

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

SECTION 1. AMENDMENT. Section 57-02-08.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-08.1. PROPERTY TAX CREDITS FOR PERSONS SIXTY-FIVE YEARS OF AGE OR OLDER WITH LIMITED INCOME.

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled as certified by a physician selected by the local governing body, with an income of ~~nine~~ ten thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment on the assessed valuation on his homestead as defined in section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this subsection regardless of whether or not such person is the head of a family. The exemption to which any person may be entitled shall be determined according to the following schedule:

   a. If the person's income is not in excess of ~~four~~ five thousand five hundred dollars, a reduction of one hundred percent of the assessed valuation of the person's homestead up to a maximum reduction of four thousand dollars of assessed valuation.

b. If the person's income is in excess of ~~four~~ five thousand five hundred dollars and not in excess of ~~five~~ six thousand five hundred dollars, a reduction of eighty percent of the assessed valuation of the person's homestead up to a maximum reduction of three thousand two hundred dollars of assessed valuation.

c. If the person's income is in excess of ~~five~~ six thousand five hundred dollars and not in excess of ~~six~~ seven thousand five hundred dollars, a reduction of sixty percent of the assessed valuation of the person's homestead up to a maximum reduction of two thousand four hundred dollars of assessed valuation.

d. If the person's income is in excess of ~~six~~ seven thousand five hundred dollars and not in excess of ~~seven~~ eight thousand five hundred dollars, a reduction of forty percent of the assessed valuation of the person's homestead up to a maximum reduction of one thousand six hundred dollars of assessed valuation.

e. If the person's income is in excess of ~~seven~~ eight thousand five hundred dollars and not in excess of ~~nine~~ ten thousand dollars, a reduction of twenty percent of the assessed valuation of the person's homestead up to a maximum reduction of eight hundred dollars of assessed valuation.

In no case shall a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection shall not reduce the liability of any person for special assessments levied upon his property. Any person eligible for the exemption herein provided shall sign a statement that he is sixty-five years of age or older or is permanently and totally disabled and that such income, including that of any dependent, as determined in this chapter does not exceed ~~nine~~ ten thousand dollars per annum. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. The assessor shall attach such statement to the assessment sheet and shall show the reduction on the assessment sheet.

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a physician selected by the local governing body, with an income of ~~nine~~ ten thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, and who rents living quarters shall be eligible for refund for that part of his annual rent which is deemed by this subsection to constitute the payment of

property tax and which is further deemed to represent a burdensome share of his income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement, shall be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, said applicant shall receive a refund from the state general fund for that amount in excess of four percent of his annual income, but such refund shall not be in excess of one hundred ~~seventy-five~~ ninety dollars. If the calculation for said refund is less than five dollars, a minimum of five dollars shall be sent to the qualifying applicant. In no case shall a husband and wife who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection shall be made to the tax commissioner before the first day of June of each year by the person claiming the refund. The tax commissioner shall certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall issue the refund from the state general fund to the applicant. In no case shall this subsection apply to rents or fees paid by a person to a nursing home licensed pursuant to section 23-16-01 if that nursing home has been declared exempt from property taxation.

3. All forms necessary to effectuate this section shall be prescribed and designed by the tax commissioner who shall annually distribute an adequate supply of same to each county director of tax equalization. The county directors of tax equalization shall make these forms available upon request.

4. In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any person dependent upon him and not compensated for by insurance or otherwise shall be deducted. For purposes of this section, the term "medical expenses" shall have the same meaning as it has for state income tax purposes.

SECTION 2. EFFECTIVE DATE. The provisions of this Act shall be effective for assessments of property made on or after January 1, 1981, and for periods of rent for periods beginning on or after January 1, 1981.

Approved April 3, 1981

CHAPTER 563

HOUSE BILL NO. 1565
(Mushik, Boyum, Conmy, Mertens)

HOMESTEAD CREDIT FOR SPECIAL ASSESSMENTS

AN ACT to create and enact a new section to chapter 57-02 of the North Dakota Century Code, relating to a homestead credit for special assessments for persons sixty-five years of age or older or who are permanently and totally disabled and who have limited income; to provide for an appropriation; 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 57-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

1. Any person who has qualified for the property tax credit provided for in section 57-02-08.1 may elect to also qualify for an additional homestead credit against that person's homestead for the portion of any special assessment levied by a city under title 40 that becomes due for the same year. This credit shall be granted only at the election of the qualifying person. The person making the election shall do so by filing with the county auditor a claim for the special assessment credit on a form prescribed by the tax commissioner. The claim shall be filed with the county auditor on or before February first of the year in which the special assessment or installment thereof becomes payable.

2. Prior to March 1, 1983, and prior to that same date each year thereafter, the county auditor of each county shall certify to the state tax commissioner on forms prescribed by him the name and address of each person for whom the special assessment credit provided for in subsection 1 was allowed for the preceding year, the amount of credit allowed for the special assessment or installment thereof, the total amount of the special assessment credits due in each special assessment district and such other information as may be prescribed by the tax commissioner.

The tax commissioner shall audit such certifications, make such corrections as may be required, and certify to the state treasurer for payment to each county on or before June 1, 1983, and prior to that same date each year thereafter, the sum of the amounts computed by adding the special assessment credits allowed for each homestead in the county for the preceding year.

The county treasurer upon receipt of the payment from the state treasurer shall forthwith apportion and distribute the payment to each special assessment district in the county according to the total credits allowed for each respective special assessment district.

Supplemental certifications by the county auditor and by the state tax commissioner and supplemental payments by the state treasurer may be made after the dates prescribed herein to make such corrections as may be necessary because of errors therein.

3. Any credit allowed under subsection 1 of this section, plus interest in the amount of nine percent per year from the time the credit is taken, shall create a lien in favor of the state against the property upon which the special assessment credit is allowed and shall remain a lien upon the property from the time the credit is allowed until the lien is fully satisfied by depositing the amount of the lien in the state general fund. No transfer of title to the homestead because of sale, death or otherwise shall be made without the lien being satisfied. At the time a credit under subsection 1 of this section is allowed, the county auditor shall cause a notice of lien of record to be filed against subject property with the register of deeds.

This lien shall have precedence over all other liens except general tax liens and prior special assessment liens and shall not be divested at any judicial sale. No mistake in the description of the property covered by this lien or in the name of the owner of such property shall defeat the lien if the property can be identified by the description in the special assessment list.

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 $100,000, or so much thereof as may be necessary, to the state treasurer for the reimbursement to the county treasurer for city special assessment tax credits as provided for in this section for the biennium beginning July 1, 1981, and ending June 30, 1983.

SECTION 3. EFFECTIVE DATE. This Act shall be effective for special assessments or installments thereof that become payable on or after January 1, 1982.

Approved April 6, 1981

CHAPTER 564

SENATE BILL NO. 2323
(Senators Moore, Shablow, Wright)
(Representatives Berg, Kingsbury, Riehl)

PROPERTY TAX REFORM

AN ACT relating to the taxation of property at true and full value, the assessment of agricultural land, protection of taxpayers and taxing districts for certain years, and statements of full consideration; to create and enact five new subsections to section 57-02-01 of the North Dakota Century Code, relating to definitions; to amend and reenact sections 57-02-11, 57-02-27, and 57-02-28, subsection 1 of section 57-13-04, and section 57-55-04 of the North Dakota Century Code, relating to the annual assessment of property at true and full value, the basis for the computation of property taxes, the powers and duties of the state board of equalization, and the taxation of mobile homes; to provide a penalty; 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. PROPERTY TO BE VALUED AT TRUE AND FULL VALUE. Beginning with the year 1981, all assessors and boards of equalization shall place the values of all items of taxable property at the true and full value of the property except as otherwise specifically provided by law, and the amount of taxes that may be levied on such property for the year 1981 and each year thereafter shall be limited as provided in this Act. For the purposes of this Act, the term "true and full value" has the same meaning as provided in subsection 4 of section 57-02-01, except that "true and full value" of agricultural lands shall be as determined pursuant to section 2 of this Act.

SECTION 2. VALUATION AND ASSESSMENT OF AGRICULTURAL LANDS. "True and full value" of agricultural lands shall be their agricultural value for the purposes of this Act. Agricultural value shall be defined as the "capitalized average annual gross return". The "annual gross return" shall be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, "annual gross return" for cropland means thirty

percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means fifty percent of an amount determined to represent the annual gross income potential of the land which would be produced if the land were used for the growing of hay. The "average annual gross return" for each county shall be determined as follows:

1. Take the annual gross returns for the most recent six years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the six.

2. Of the four annual gross return figures remaining, determine the sum of the following:

   a. Four times the annual gross return figure for the greatest figure; plus,

   b. Three times the annual gross return figure for the second greatest figure; plus,

   c. Two times the annual gross return figure for the third greatest figure; plus,

   d. The annual gross return figure for the smallest figure.

3. Divide the figure arrived at in subsection 2 by ten.

To find the "capitalized average annual gross return" for years after 1983, the average annual gross return shall be capitalized by a five-year average of the gross federal land bank mortgage rate of interest for North Dakota. The five-year average shall be computed from the most recent five years of the six years used in subsection 1 and the gross federal land bank mortgage rate of interest for each year shall be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate shall not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4. To find the "capitalized average annual gross return" for 1981, 1982, and 1983, the average annual gross return shall be capitalized at seven and one-half percent.

It shall be the duty of the agricultural economics department of North Dakota state university to compute annually an estimate of the average agricultural value per acre of agricultural lands on a statewide and on a countywide basis and to provide the tax commissioner with this information by December first of each year. Prior to January first of each year the tax commissioner shall provide to each county director of tax equalization this estimate of agricultural value for each county.

Prior to February first of each year the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. Such estimate shall be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall, wherever possible, use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

It shall be the duty of each local assessor to determine the relative value of each assessment parcel within his jurisdiction and to determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel shall then be assessed according to the provisions in section 7 of this Act. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change shall be provided to the county director of tax equalization.

* SECTION 3. PROTECTION OF TAXPAYERS AND TAXING DISTRICTS FOR 1981 AND 1982 - EXCEPTIONS AND LIMITATIONS.

1. Each taxing district may levy in 1981 and 1982 the same amount in dollars as that taxing district levied the prior year plus seven percent.

2. No taxing district may levy more taxes expressed in dollars in 1981 and 1982 than the amounts provided in this section.

3. The amount which may be levied by any taxing district in 1981 and 1982 shall be:

   a. Reduced by an amount equal to the sum determined by the application of the mill levies for that taxing district to the final assessed valuation of any land or taxable improvements to real property which is removed from the assessment rolls of that taxing district after the prior year but was included in the assessment for the prior year.

   b. 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 prior year and any mill levies specifically authorized by the electors of that taxing district but not levied for the prior year to the

* NOTE: This section was amended by section 1 of House Bill No. 1374, chapter 565.

final assessed valuation of the taxable property in that taxing district.

c. Increased by an amount equal to the sum determined by the application of the mill levies for that taxing district to the final assessed valuation of any land and taxable improvements to real property which was not taxable in the prior year or was omitted from the assessment rolls for that year but which is included in the assessment for the current year.

d. Increased to reflect increased mill levies authorized by the forty-seventh legislative assembly or if the electors of the taxing district authorize additional levies after the effective date of this Act at either a special or regular election as provided by law.

4. The limitation on the amount which may be levied by a taxing district pursuant to this section shall not apply to the Fargo school district or to any school district in which the electors have approved unlimited mill levies as provided by law.

5. The provisions of this section shall supersede any applicable mill levy limitations otherwise provided by law for 1981 and 1982, but the provisions of this section shall not apply to any of the following:

a. Any irrepealable 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 amendments to the Constitution of North Dakota.

6. The provisions of this section shall not apply to any city which has adopted a home rule charter unless the provisions of the charter specifically provide that state laws related to property tax levy limitations shall apply.

SECTION 4. STATEMENTS OF FULL CONSIDERATION TO BE FILED WITH STATE BOARD OF EQUALIZATION OR REGISTER OF DEEDS - PROCEDURE - SECRECY OF INFORMATION - PENALTY.

1. Any grantee or his authorized agent who presents a deed in the office of the county register of deeds shall certify on the face of the deed any one of the following:

a. A statement that he has filed a report of the full consideration paid for the property conveyed with the state board of equalization.

b. A statement that he has filed a report of the full consideration paid for the property conveyed with the register of deeds.

c. A statement of the full consideration paid for the property conveyed.

d. A statement designating one of the exemptions in subsection 6 which the grantee believes applies to the transaction.

2. The register of deeds shall not record any deed unless it contains one of the statements required by subsection 1.

3. The register of deeds shall accumulate and at least monthly forward to the state board of equalization a report containing the information filed in his office pursuant to subsection 1.

4. The state board of equalization shall prescribe the necessary forms for the statements and reports to be used in carrying out the purposes of this Act, and the forms will contain a space for the explanation of special circumstances which may have contributed to the amount of the consideration.

5. For purposes of this section, the word "deed" means an instrument or writing whereby any real property or interest therein shall be granted, conveyed, or otherwise transferred to the grantee, purchaser, or other person, except any instrument or writing which transfers any ownership in minerals or interests in minerals underlying land if that ownership has been severed from the ownership of the overlying land surface or any instrument or writing for the easement, lease, or rental of real property or any interest therein.

6. The provisions of this section shall not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:

a. Property owned or used by public utilities.

b. Property classified as personal property.

c. A sale where the grantor and the grantee are of the same family or corporate affiliate, if known.

d. A sale which resulted as a settlement of an estate.

e. All sales to or from a government or governmental agency.

f. All forced sales, mortgage foreclosures, and tax sales.

g. All sales to or from religious, charitable, or nonprofit organizations.

h. All sales where there is an indicated change of use by the new owners.

i. All transfer of ownership of property for which is given a quitclaim deed.

j. Sales of property not assessable by law.

k. Agricultural lands of less than eighty acres.

7. The state board of equalization shall guard the secrecy of information contained on statements filed with the board pursuant to subsection 1, and any information contained on statements and any information provided by local officials shall be limited to such data as is necessary to perform their official duties and shall not include the names of any grantors or grantees. Any reports made available to the public must be made in a manner that will not reveal the names of any grantors or grantees. The register of deeds shall guard the secrecy of information contained on reports filed in his office pursuant to subdivision b of subsection 1.

8. Any person who, in the statements provided for in subsection 1, willfully falsifies the consideration paid for the transferred real property or interest therein or who falsely certifies that he has filed a report of full consideration with the state board of equalization is guilty of a class B misdemeanor.

SECTION 5. Five new subsections to section 57-02-01 of the 1979 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Agricultural property" means lands which are used for raising agricultural crops or grazing farm animals but shall not include platted lands.

"Residential property" means all property, or portions of property, used by an individual or group of individuals as a dwelling, but not including hotel and motel accommodations required to be licensed under chapter 23-09 nor structures providing living accommodations for four or more separate family units.

"Centrally assessed property" means all property except railroad operating property, which is assessed by the

state board of equalization pursuant to chapters 57-06 and 57-32.

"Railroad property" means the operating property, including franchises, of each railroad operated in this state including any electric or other street or interurban railway.

"Commercial property" means all property, or portions of property, not included in the above-defined classes of property.

SECTION 6. AMENDMENT. Section 57-02-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-11. LISTING OF PROPERTY - ASSESSMENT THEREOF. Property shall be listed and assessed as follows:

1. ~~Except--as--provided--in-subsection-6-of-this-section,-all~~ All real property subject to taxation shall be listed and assessed every ~~odd-numbered~~ year with reference to its value, on February first of that year~~,-and--shall--not--be reassessed--in--the-following-year,-except-by-order-of-the board--of--county--commissioners--or---tax---commissioner. Property--assessed--in--odd-numbered--years-shall-be-taxed upon-the-assessed-valuation--as--equalized--by--the--state board--of--equalization--in-such-year-and-in-the-following year,-except-as-otherwise-provided-in-this--chapter.---All real--property--becoming--taxable--in-any-intervening-year shall-be-listed-and-assessed-with-reference-to--its--value on-February-first-in-that-year~~.

2. All taxable personal property, except stocks of merchandise, shall be listed and assessed annually with reference to its value on February first of each year. For the purpose of assessment for taxation, each stock of merchandise shall be valued according to the average value for the twelve-month period preceding February first. Each owner shall keep in his place of business a copy of all inventories taken during the preceding year, and all other records and data pertaining to the cost price of such merchandise, and such inventories and other cost data shall be available, at all times, for examination by the assessor or other taxing officers.

3. ~~In--every--even-numbered--year,--at--the-time-of-assessing personal-property,-the-assessor-also-shall-assess-all-real property--that--may--have-become-subject-to-taxation-since the-last-previous-assessment,-and-all-buildings--or--other structures-of-any-kind,-whether-completed-or-in-process-of completion,-and-improvements-on-any-structures-of-over-one hundred--dollars-in-value,-the-value-of-which-has-not-been previously-added-to-nor-included-in-the-valuation--of--the~~

~~land--or-lots-on-which-they-have-been-erected,-except-farm buildings-now-exempt-from-taxation.~~

~~4.~~ Whenever after the first day of February and before the first day of April in any year, it is made to appear to the assessor by the oath of the owner that any building, structure, or other improvement, or tangible personal property, which is listed for taxation for the current year has been destroyed or injured by fire, flood, or tornado, he shall investigate the matter and deduct from the valuation of the property of the owner of such destroyed property an amount which in his judgment fairly represents such deduction as should be made. No deduction shall be made on account of damages covered by insurance or damages amounting to less than one hundred dollars.

~~5.--In---case---of---an--abatement--by--the--board--of--county commissioners-and-tax-commissioner,-or-by-the-judgment--of a-court-of-competent-jurisdiction,-of-the-valuation-of-any parcel-of-real-estate--as--assessed--in--any--odd-numbered year,--the--valuation--after--such--abatement-shall-be-the assessed--valuation--in--the---even-numbered---year---next following,-except-as-herein-otherwise-provided.~~

~~6.--Notwithstanding--the-other-provisions-of-this-section,-the governing-body-of-any-city-or--county--may--by--resolution provide--that--all-real-property-within-the-city-or-county shall-be-listed-and-assessed-annually--with--reference--to its-value-on-February-first-of-each-year.--The-assessments of-real-property-assessed-annually-shall-be-equalized--and corrected--annually--in-the-manner-and-subject-to-the-same requirements--as---are---provided---for---equalizing---the assessments--of--real-property-that-is-listed-and-assessed every-odd-numbered-year.~~

SECTION 7. AMENDMENT. Section 57-02-27 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-27. PROPERTY TO BE ASSESSED AT A PERCENTAGE OF FULL VALUE - CLASSIFICATION OF PROPERTY - LIMITATION ON ASSESSMENT OF ANNEXED AGRICULTURAL LANDS. All property subject to taxation based on the value thereof shall be assessed ~~at-its-true-and-full-value-in money.~~ as follows:

1. All residential property to be assessed at nine percent of true and full value. If any property is used for both residential and nonresidential purposes, the assessment shall be prorated accordingly.

2. All agricultural property to be assessed at ten percent of true and full value as determined pursuant to section 2 of this Act.

3. All commercial and railroad property to be assessed at ten percent of true and full value.

4. All centrally assessed property, except railroad property, to be assessed at fourteen percent of true and full value for the 1981 property tax year, thirteen percent of true and full value for the 1982 property tax year, twelve percent of true and full value for the 1983 property tax year, eleven percent of true and full value for the 1984 property tax year, and ten percent of true and full value for all property tax years beginning on or after January 1, 1985.

The resulting amounts shall be known as the assessed valuation. In determining the true and full value of real and personal property, except agricultural property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price at which said property would sell at auction, or at forced sale, or in the aggregate with all the property in the town or district, but he shall value each article or description by itself, and at such sum or price as he believes the same to be fairly worth in money. In assessing any tract, or lot of real property, there shall be determined the value of the land, exclusive of improvements, and the value of all taxable improvements and structures thereon, and the aggregate value of the property, including all taxable structures and other improvements, excluding the value of crops growing upon cultivated lands. In valuing any real property upon which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell for at a fair voluntary sale for cash. Agricultural lands within the corporate limits of a city~~,--whether--or~~ which are not platted, shall constitute agricultural property and be so classified and valued for ad valorem property tax purposes until such lands are put to another use. Such valuation shall be uniform with the ~~assessed-value~~ valuation of adjoining unannexed agricultural land.

SECTION 8. AMENDMENT. Section 57-02-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-28. BASIS FOR COMPUTATION OF TAX. The value of all property subject to a general property tax, not exempted by law nor subject to any gross sales or other lieu tax, to be used in the computation of the tax levied for the payment of any bonded or improvement warrant indebtedness shall be the ~~full-and-true-value~~ assessed valuation thereof, but the net value of such property to be used in the computation of all other taxes levied thereon shall be fifty percent of the ~~true-and-full-value~~ assessed valuation thereof and the resulting amount shall be known as the taxable valuation. Assessors and boards of review shall assess and return all taxable property at its ~~full--and--true-value~~ assessed valuation, and the county auditor, after equalization by the state board of

equalization, shall make the computation necessary to ascertain said fifty percent value.

SECTION 9. AMENDMENT. Subsection 1 of section 57-13-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Equalize the assessment of ~~land~~ real property by adding to the aggregate value thereof in any assessment district in a county and in every county in the state in which the board may believe the valuation too low, such rate percent as will raise the same to its proper ~~relative~~ value as provided by law, and by deducting from the aggregate assessed value thereof, in any assessment district in a county and in every county in the state in which the board may believe the value too high, such percent as will reduce the same to its proper ~~relative~~ value as provided by law. City lots shall be equalized in the manner provided for equalizing other ~~lands~~ real property;

SECTION 10. AMENDMENT. Section 57-55-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-04. TAXES - HOW DETERMINED - DISBURSEMENT. The tax for each mobile home shall be determined by the director of tax equalization by placing an evaluation on such mobile home based upon its true and full value and by adjusting the valuation of the mobile home by the percentage provided in section 57-02-27 to determine its assessed valuation pursuant to standards and guides as determined by the state tax commissioner and applying such evaluation to the preceding year's total mill levies applying to property within the taxing district wherein the mobile home is located. If a mobile home is acquired or moved into this state during the calendar year, and a tax decal has not been previously issued on such mobile home in this state for such year, the tax shall be determined by computing the remaining number of months of the current year to the nearest full month and multiplying such number by one-twelfth of the amount which would be due for the full year. The taxes collected pursuant to the provisions of this chapter shall be disbursed in the same year they are collected and in the same manner as real estate taxes for the preceding year are disbursed.

SECTION 11. EFFECTIVE DATE. The provisions of this Act shall be effective for assessments of property made on or after January 1, 1981.

SECTION 12. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 30, 1981

CHAPTER 565

HOUSE BILL NO. 1374
(Timm, A. Hausauer)

PROPERTY TAX REFORM CORRECTIONS

AN ACT to amend and reenact section 3 of Senate Bill No. 2323, as approved by the forty-seventh legislative assembly, relating to protection of property taxpayers and taxing districts for 1981 and 1982; to amend and reenact section 57-02-28 of the North Dakota Century Code, as contained in section 8 of Senate Bill No. 2323 as approved by the forty-seventh legislative assembly, sections 57-02-34, 57-12-09, and 57-20-07.1, subdivision m of subsection 1 of section 57-38-01.2, and section 57-38-70 of the North Dakota Century Code, relating to the valuation basis for computation of property taxes, listing of real property for taxation, notice of increased assessment to real estate owners, and mailing of real estate tax statements by county treasurers, and claim for income tax deductions when land is sold or rented to a beginning farmer; to provide that the provisions of this Act are contingent upon the effectiveness of Senate Bill No. 2323, as approved by the forty-seventh legislative assembly; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 3 of Senate Bill No. 2323 as enacted by the forty-seventh legislative assembly is hereby amended and reenacted to read as follows:

SECTION 3. PROTECTION OF TAXPAYERS AND TAXING DISTRICTS FOR 1981 AND 1982 - EXCEPTIONS AND LIMITATIONS.

1. Each taxing district may levy in 1981 and 1982 the same amount in dollars as that taxing district levied the prior year plus seven percent, subject to the adjustments provided in this section.

2. No taxing district may levy more taxes expressed in dollars in 1981 and 1982 than the amounts provided in this section.

3. The amount which may be levied by any taxing district in 1981 and 1982 shall be:

   a. Reduced by an amount equal to the sum determined by the application of the mill levies for that taxing district to the final assessed valuation of any ~~land or taxable improvements to real~~ property which is removed from the assessment rolls of that taxing district after the prior year but was included in the assessment for the prior year.

   b. 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 prior year and any mill levies specifically authorized by the electors of that taxing district but not levied for the prior year to the ~~final~~ net assessed valuation of the taxable property in that taxing district.

   c. Increased by an amount equal to the sum determined by the application of the mill levies for that taxing district to the ~~final~~ net assessed valuation of any ~~land and~~ taxable ~~improvements to real~~ property which was not taxable in the prior year or was omitted from the assessment rolls for that year but which is included in the assessment for the current year.

   d. Increased to reflect new or increased mill levies authorized by the forty-seventh legislative assembly or if the electors of the taxing district authorize additional levies after the effective date of this Act at either a special or regular election as provided by law.

4. The limitation on the amount which may be levied by a taxing district pursuant to this section shall not apply to the Fargo school district or to any school district in which the electors have approved unlimited mill levies as provided by law.

5. The provisions of this section shall supersede any applicable mill levy limitations otherwise provided by law for 1981 and 1982, but the provisions of this section shall not apply to any of the following:

   a. Any irrepealable 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 ~~amendments to the~~ Constitution of North Dakota.

6. The provisions of this section shall not apply to any city which has adopted a home rule charter unless the provisions of the charter specifically provide that state laws related to property tax levy limitations shall apply.

SECTION 2. AMENDMENT. Section 57-02-28 of the North Dakota Century Code, as contained in section 8 of Senate Bill No. 2323 as approved by the forty-seventh legislative assembly, is hereby amended and reenacted to read as follows:

57-02-28. BASIS FOR COMPUTATION OF TAX. The value of all property subject to a general property tax, not exempted by law nor subject to any gross sales or other lieu tax, to be used in the computation of the tax levied for the payment of any bonded or improvement warrant indebtedness shall be the assessed valuation thereof, but the net value of such property to be used in the computation of all other taxes levied thereon shall be fifty percent of the assessed valuation thereof and the resulting amount shall be known as the taxable or net assessed valuation. Assessors and boards of review shall assess and return all taxable property at its assessed valuation, and the county auditor, after equalization by the state board of equalization, shall make the computation necessary to ascertain said fifty percent value.

SECTION 3. AMENDMENT. Section 57-02-34 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-34. WHEN AND HOW ASSESSMENT MADE. The assessor shall perform the duties required of him during the twelve-month period prior to April first and in the following manner: He shall determine both the true and full value as defined by law and the assessed value of each tract or lot of real property listed for taxation, and shall enter ~~the value thereof~~ those values in ~~one column~~ separate columns, and the true and full value and assessed value of all improvements and structures taxable thereon in ~~another column~~ separate columns, opposite such description of property, and in another column shall show the total assessed value of the property by adding the totals of the two previous assessed value columns.

SECTION 4. AMENDMENT. Section 57-12-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-12-09. WRITTEN NOTICE OF INCREASED ASSESSMENT TO REAL ESTATE OWNER. When any assessor has increased the assessed valuation of any lot or tract of land together with any improvements thereon by fifteen percent or more of the last assessment, written notice of the amount of increase over the last assessment, and the amount of the last assessment shall be delivered by such assessor to the property owner or mailed to him at his last known address except that no such notice need be delivered or mailed if the assessment is increased by less than three hundred dollars. The tax commissioner

shall prescribe suitable forms for this notice and such notice shall also show the ~~estimated-market~~ true and full value as defined by law of the property, including such improvements, that the assessor used in making the assessment for the current year and for the year in which the last assessment was made and shall also show the date prescribed by law for the meeting of the local equalization board of the assessment district in which the property is located and the meeting date of the county equalization board. Such notice shall be mailed or delivered to the property owner at least ten days in advance of the meeting date of the local equalization board and shall be mailed or delivered at the expense of the assessment district for which the assessor is employed.

SECTION 5. AMENDMENT. Section 57-20-07.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-20-07.1. COUNTY TREASURER TO MAIL REAL ESTATE TAX STATEMENT. On or before December twenty-sixth of each year, the county treasurer shall mail a real estate tax statement to the owner of each parcel of real property at his last known address. Such tax statements shall include a dollar valuation of the ~~estimated-current market~~ true and full value as defined by law of the property and the total mill levy applicable. Failure of an owner to receive a statement will not relieve that owner of liability, nor extend the discount privilege past the February fifteenth deadline.

* SECTION 6. AMENDMENT. Subdivision m of subsection 1 of section 57-38-01.2 of the 1979 Supplement to the North Dakota Century Code is 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 fifteen years and have an annual interest rate of not more than six percent. 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 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 shall be the amount listed as the ~~current-market~~ 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 his 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,

* NOTE: Subdivision m of subsection 1 of section 57-38-01.2 was also amended by section 1 of Senate Bill No. 2214, chapter 587.

and other personal belongings shall not be included. This statement shall be filed along with the income tax return. For the purposes of this subdivision, "beginning farmer" means any person who:

(1) Is a resident of this state.

(2) Receives more than half his annual income from farming, unless the person initially commences farming during the tax year for which an adjustment will be claimed under this subdivision.

(3) Intends to use any farmland that he wishes to purchase or rent for agricultural purposes.

(4) Has had adequate training, by experience or education, in the type of farming operation which he wishes to begin.

(5) Has, including the net worth of his dependents and spouse, if any, a net worth of less than fifty thousand dollars.

Provided, however, that each adjustment in the above subdivisions authorized under law shall be allowed only to the extent that the adjustment is allocated and apportioned to North Dakota income.

SECTION 7. AMENDMENT. Section 57-38-70 of the 1979 Supplement to 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 state income tax return a notarized statement from the beginning farmer who purchased or rented land from him containing a list of the assets, debts, and net worth of the beginning farmer, 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 shall be the amount listed as the ~~current-market~~ 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 on his tax return that any rental arrangement with any other person was not canceled for the purpose of qualifying for this deduction.

SECTION 8. CONTINGENT EFFECTIVENESS OF ACT. The provisions of this Act shall not become effective if for any reason Senate Bill No. 2323 as approved by the forty-seventh legislative assembly does not become effective, nor shall the provisions of this Act continue

in effect if this Act does become effective and any part of Senate Bill No. 2323 as approved by the forty-seventh legislative assembly is disapproved by gubernatorial veto or referral.

SECTION 9. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 6, 1981

CHAPTER 566

SENATE BILL NO. 2172
(Committee on Finance and Taxation)
(At the request of the Tax Department)

TOWNSHIP AND CITY EQUALIZATION BOARDS MEETING DATES

AN ACT to amend and reenact sections 57-09-01 and 57-11-01 of the North Dakota Century Code, relating to meeting dates for township and city equalization boards; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 57-09-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-09-01. MEMBERSHIP OF BOARD - MEETING.

1. The township board of equalization shall consist of the members of the board of supervisors of each township, and the township clerk shall act as clerk of said board. The board shall meet on the second Monday in April in each year at the usual place of meeting of the township board of supervisors.

2. Notwithstanding the provisions of subsection 1, if the same person performs the duties of assessor for two or more townships or cities, the county director of tax equalization may designate the hour and day in the month of April at which the meeting provided for in subsection 1 shall be held for each such township board of equalization, provided that notice of the hour and day shall be published in the official newspaper of the county and posted at the usual place of meeting at least ten days before such meeting.

SECTION 2. AMENDMENT. Section 57-11-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-11-01. MEMBERSHIP OF BOARD - QUORUM - MEETING.

1. The board of equalization of a city shall consist of the members of the governing body, and shall meet at the usual place of meeting of the governing body of the city, on the second Tuesday in April in each year. The executive officer of the governing body shall act as chairman, but in his absence the governing body may elect one of its members to preside. A majority of the board shall constitute a quorum to transact business, and it may adjourn from day to day until its work is completed. In case a quorum is not present at any time, the clerk may adjourn from day to day and publicly announce the time to which the meeting is adjourned.

2. Notwithstanding the provisions of subsection 1, if the same person performs the duties of assessor for two or more cities or townships, the county director of tax equalization may designate the hour and day in the month of April at which the meeting provided for in subsection 1 shall be held for each such city board of equalization, provided that notice of the hour and day shall be published in the official newspaper of the county and posted at the usual place of meeting at least ten days before such meeting.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 5, 1981

CHAPTER 567

HOUSE BILL NO. 1067
(Legislative Council)
(Interim Judiciary "C" Committee)

STATE PROPERTY TAX REFERENCES

AN ACT to amend and reenact section 57-15-02 of the North Dakota Century Code, relating to the determination of tax rates; and to repeal sections 57-15-03 and 57-15-04 of the North Dakota Century Code, relating to the state tax levy.

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

SECTION 1. AMENDMENT. Section 57-15-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-02. DETERMINATION OF RATE. The tax rate of all taxes, except ~~the rate of the state tax and~~ taxes the rate of which is fixed by law, shall be calculated and fixed by the county auditor within the limitations prescribed by statute. If any municipality shall levy a greater amount than the prescribed maximum legal rate of levy will produce, the county auditor shall extend only such amount of tax as the prescribed maximum legal rate of levy will produce. The rate shall be based and computed on the aggregate net assessed valuation of taxable property in the municipality or district levying the tax. The rate of all taxes shall be calculated by the county auditor in mills, tenths, and hundredths of mills.

SECTION 2. REPEAL. Sections 57-15-03 and 57-15-04 of the North Dakota Century Code are hereby repealed.

Approved March 5, 1981

CHAPTER 568

SENATE BILL NO. 2416
(Senator Lee)
(Representative Freborg)

COUNTY ROAD PROGRAM LEVY MAXIMUM

AN ACT to amend and reenact section 57-15-06.3 of the North Dakota Century Code to increase the tax levy for farm to market and federal aid roads and to provide that excess funds may be used for maintenance of such roads if approved by the electors.

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

SECTION 1. AMENDMENT. Section 57-15-06.3 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-06.3. COUNTY ROAD PROGRAM INCLUDING FARM TO MARKET AND FEDERAL AID - TAX LEVY - USE OF EXCESS FUNDS. The board of county commissioners of any county in this state 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 such program by the state highway department and the federal highway administration, the board may submit such program to the electors of the county with the question of levying a tax of not to exceed ~~ten~~ fifteen mills upon the net taxable assessed valuation of all property in the county for the completion of such program by matching, from the proceeds of such tax, federal funds available for federal aid, secondary and feeder roads, farm to market roads, and all roads as provided for under Public Law 81-769, or future federal aid highway acts of a similar character. If the majority of the electors voting on the question approved such program and levy, annually thereafter until such program is completed the board shall levy a tax not in excess of ~~ten~~ fifteen mills, which levy shall not be subject to the county mill levy limitations, and the proceeds of such tax shall be used, except as herein provided, only for matching federal aid available for such program which shall be the official county road program. 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 of the public hearing shall be mailed by certified letter to all property owners adjoining any road affected by the amended road program and to any other property owners whom the county commissioners may deem necessary. The notice shall be sent thirty days prior to the public hearing. Notice shall also 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. 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 such 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. Such ~~paved-or-other-type~~ road surfacing or maintenance may be ~~used~~ undertaken only after the question has been submitted to the electors of the county at a special election called for that purpose by the county commissioners. The use of such excess funds shall be approved by a majority of the electors voting at such special election. An appeal may be taken under this section as provided in section 11-11-39.

Approved March 19, 1981

CHAPTER 569

SENATE BILL NO. 2299
(Senator Tweten)
(Representative Lipsiea)

COUNTY ROADS PROGRAM

AN ACT to amend and reenact section 57-15-06.3 of the North Dakota Century Code, relating to a county construction program of farm to market and federal aid roads.

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

SECTION 1. AMENDMENT. Section 57-15-06.3 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-06.3. COUNTY ROAD PROGRAM ~~INCLUDING~~ OF FARM TO MARKET AND FEDERAL AID ROADS - TAX LEVY.

1. The board of county commissioners of any county in this state 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 ~~such~~ the program by the state highway department and the federal highway administration, the board may submit ~~such~~ the program to the electors of the county with the question of levying a tax of not to exceed ten mills upon the net taxable assessed valuation of all property in the county for the completion of ~~such~~ the program by matching, from the proceeds of ~~such~~ the tax, federal funds available for federal aid, secondary and feeder roads, farm to market roads, and all roads as provided for under ~~Public--Law 81-769,--or--future~~ federal aid highway acts ~~of-a-similar character~~. If the majority of the electors voting on the question approved ~~such~~ the program and levy, ~~annually thereafter-until-such-program-is-completed~~ the board shall levy a tax not in excess of ten mills~~,-which~~. The levy shall not be subject to the county mill levy limitations~~,-and--the~~. The proceeds of ~~such~~ the tax shall be used, except as ~~herein~~ provided in this section, only for

matching federal aid available for ~~such~~ the program which shall be the official county road program. 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 of the public hearing shall be mailed by certified letter to all property owners adjoining road affected by the amended road program and to any other property owners whom the county commissioners may deem necessary. The notice shall be sent thirty days prior to the public hearing.~~ Notice shall ~~also~~ 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.

2. 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.

3. 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 ~~such~~ 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. ~~Such paved or other type road surfacing may be used only after the question has been submitted to the electors of the county at a special election called for that purpose by the county commissioners. The use of such excess funds shall be approved by a majority of the electors voting at such special election. An appeal may be taken under this section as provided in section 11-11-39.~~

Approved March 25, 1981

CHAPTER 570

HOUSE BILL NO. 1616
(Nagel, O. Hanson, Mushik)

VETERANS' SERVICE OFFICER LEVY

AN ACT to amend and reenact section 57-15-06.4 of the North Dakota Century Code, relating to the levy authorized for county veterans' service officers' salary, traveling, and office expenses.

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

SECTION 1. AMENDMENT. Section 57-15-06.4 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-06.4. LEVY AUTHORIZED FOR COUNTY VETERANS' SERVICE OFFICERS' SALARY, TRAVELING, AND OFFICE EXPENSES. The county commissioners of each county may levy annually a tax of not to exceed ~~three-fourths mill~~ one and one-fourths mills on the dollar of the net assessed taxable valuation of the county, to provide a fund, for the payment of the salary, traveling, and office expenses of the county veterans' service officer authorized to be appointed by section 37-14-18. Such levy shall not be limited by the provisions of section 57-15-06.

Approved March 9, 1981

CHAPTER 571

HOUSE BILL NO. 1328
(Wald)

REGIONAL OR COUNTY CORRECTIONS CENTER LEVY

AN ACT to create and enact a new section to chapter 57-15 and a new subdivision to subsection 3 of section 57-15-06 of the North Dakota Century Code, to exempt from county tax limitations and to authorize a county tax for use in constructing, equipping, operating, and maintaining regional or county corrections centers.

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:

LEVY AUTHORIZED FOR REGIONAL OR COUNTY CORRECTIONS CENTERS. The board of county commissioners of each county may levy an annual tax of not to exceed five mills on the net taxable assessed valuation of the county for the purpose of constructing, equipping, operating, and maintaining regional or county corrections centers.

SECTION 2. A new subdivision to subsection 3 of section 57-15-06 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To taxes levied for the purpose of constructing, equipping, operating, and maintaining regional or county corrections centers.

SECTION 3. PURPOSE. It is the purpose of this Act to promote development of regional or county corrections systems that:

1. Are flexible and adaptable to meet future and changing needs.

2. Protect society while providing safe, humane, and constitutional corrections facilities at the county and local level.

3. Are cost-effective in their implementation and effective in controlling the growing costs of corrections facilities.

4. Provide offenders opportunities for becoming productive members of society through community-oriented corrections services and programs.

5. Provide the court system with increased sentencing alternatives and provide legal equality in sentencing offenders.

6. Respond to the immediate and long-term correctional facility and operational needs at the county and local level.

7. Alleviate the correctional burden at the state level.

8. Enable the criminal justice system and the legislative assembly to assess the effectiveness and benefits of regional and county corrections centers.

Approved March 31, 1981

CHAPTER 572

HOUSE BILL NO. 1482
(Representative Hedstrom)
(Senator Cussons)

CITY LEVY LIMITATIONS

AN ACT to amend and reenact section 57-15-08 of the North Dakota Century Code, relating to tax levy limitations in cities.

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

SECTION 1. AMENDMENT. Section 57-15-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-08. TAX LEVY LIMITATIONS IN CITIES. The aggregate amount levied for general city purposes shall not exceed such an amount as will be produced by a levy of ~~thirty-one~~ thirty-eight mills on the net taxable assessed valuation of property in the city, provided that in cities with a population of over five thousand they be permitted to levy an additional one-half of one mill for each additional one thousand population in excess of five thousand, and provided further that the maximum levy for general city purposes shall not exceed ~~thirty-three~~ forty mills, except that cities, when authorized by a majority vote of the electors of such cities upon the submission of such question at a regularly scheduled or special election called for such purpose pursuant to a resolution approved by the governing body of such cities, may increase the maximum mill levy for general city purposes by not more than ~~five~~ ten mills, and that in a city supporting a band or public library an additional levy, not to exceed one mill on the net taxable assessed valuation of property in such city, may be made for a band, and an additional levy not to exceed four mills on the net taxable assessed valuation of property in such city may be made for a public library.

Approved March 11, 1981

CHAPTER 573

SENATE BILL NO. 2400
(Lips)

CITY ADVERTISING LEVY MAXIMUM

AN ACT to amend and reenact section 57-15-10.1 of the North Dakota Century Code, relating to county and city mill levies for advertising purposes.

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

SECTION 1. AMENDMENT. Section 57-15-10.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-10.1. COUNTIES AND CITIES MAY LEVY FOR CERTAIN ADVERTISING PURPOSES. The board of county commissioners of any county, or the governing body of any city may annually levy a tax for the purpose of advertising the resources and opportunities in the county or city as the case may be and promoting the industrial development thereof. ~~Such~~ The tax shall not exceed the amount produced by the levy of one-half mill on a dollar of the net taxable valuation of the county or by the levy of one mill on a dollar of the net taxable valuation of the city as the case may be.

When any county or city makes the levy provided for by this section, the expenditure of the fund shall be under the direction of the governing boards of ~~such~~ the county or city. The levy of ~~such~~ the one-half or one mill authorized by this section shall not be subject to other mill levy limitations prescribed by law.

Approved March 16, 1981

CHAPTER 574

SENATE BILL NO. 2315
(Senators Vosper, Naaden, Thane)
(Representative Olafson)

TOWNSHIP LAW ENFORCEMENT LEVY

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code to provide a township mill levy for law enforcement.

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:

TOWNSHIP LEVY FOR LAW ENFORCEMENT - AUTHORIZATION - COOPERATION WITH OTHER POLITICAL SUBDIVISIONS. The electors of an organized township may authorize the levy of an amount not to exceed five mills on the dollar of the net taxable assessed valuation for the purpose of hiring law enforcement personnel. Such authorization shall be granted upon a favorable vote of sixty percent of the electors present and voting on the question at the general election immediately succeeding the annual township meeting, provided the question has been included in the annual meeting notice issued by the township clerk pursuant to section 58-04-01. The mill levy authorized by this section shall not be subject to the mill levy limitation imposed by section 57-15-20. In providing for law enforcement services, the board of supervisors may cooperate with one or more additional townships, with a city, or with the county in accordance with the provisions of section 54-40-08.

Approved March 9, 1981

CHAPTER 575

HOUSE BILL NO. 1447
(Dick, Kent)

TOWNSHIP EQUIPMENT LEVY

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to a township mill levy for the purchase and operation of mowing or snow removal equipment.

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:

TOWNSHIP THREE-MILL LEVY FOR MOWING EQUIPMENT. The electors of each township shall have power at the annual meeting to levy not more than three mills on the dollar of the net taxable assessed valuation of taxable property in the township for the purpose of buying and operating mowing or snow removal equipment. The tax levy provided herein shall be over and above the limitations specified in section 57-15-20 and shall be made only if notice of the question of the approval of such levy has been included with or upon the notice of the annual meeting provided for in section 58-04-01.

Approved March 20, 1981

CHAPTER 576

HOUSE BILL NO. 1506
(H. Larson)

UNORGANIZED TOWNSHIP ROAD AND BRIDGE LEVY LIMIT

AN ACT to amend and reenact section 57-15-22 of the North Dakota Century Code to increase the mill levy allowed for roads and bridges in unorganized townships.

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

SECTION 1. AMENDMENT. Section 57-15-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-22. TAX LEVY LIMITATIONS IN UNORGANIZED TOWNSHIPS. ~~Tax levies in unorganized townships shall be limited as follows:~~

The total tax levied by the board of county commissioners in any unorganized township for the construction, maintenance and improvement of any roads and bridges shall not exceed ~~fourteen~~ eighteen mills on the dollar of the net taxable assessed valuation of the township, but this shall not prohibit the levy of general county road and bridge taxes in such unorganized township.

Approved March 11, 1981

CHAPTER 577

SENATE BILL NO. 2324
(Tierney)

UNORGANIZED TOWNSHIP ROAD AND BRIDGE FUND

AN ACT to amend and reenact section 57-15-22.1 of the North Dakota Century Code, relating to a road and bridge fund in unorganized townships.

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

SECTION 1. AMENDMENT. Section 57-15-22.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-22.1. BOARD OF COUNTY COMMISSIONERS MAY TRANSFER UNEXPENDED BALANCE IN ROAD AND BRIDGE FUND IN UNORGANIZED TOWNSHIPS - LIMITATIONS. The board of county commissioners, by resolution, may transfer any unexpended balance of the revenues produced under section 57-15-22 in any unorganized township to a special road and bridge fund to the credit of such unorganized township. ~~Such special--road--and-bridge-fund-shall-not-exceed-a-sum-which-would-be produced-by-a-levy-of-six-mills-on-the-net-taxable-valuation-of--any unorganized--township.~~ Such special road and bridge fund shall not be taken into consideration in determining the budget for the amount to be levied for road and bridge purposes in an unorganized township for the current fiscal year.

Approved March 9, 1981

CHAPTER 578

HOUSE BILL NO. 1478
(Metz)

BUDGET AMENDMENT BY TAXING DISTRICTS

AN ACT to amend and reenact section 57-15-31.1 of the North Dakota Century Code, relating to the amendment of political subdivision budgets.

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

SECTION 1. AMENDMENT. Section 57-15-31.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-31.1. DEADLINE DATE FOR AMENDING BUDGETS AND CERTIFYING TAXES. No taxing district shall certify any taxes or amend its current budget and no county auditor shall accept a certification of taxes or amended budget after the tenth day of October of each year if such certification or amendment results in a change in the amount of tax levied. The current budget, except for property taxes, may be amended during the year for any revenues and appropriations not anticipated at the time the budget was prepared.

Approved March 11, 1981

CHAPTER 579

HOUSE BILL NO. 1089
(Conmy)

PUBLIC TRANSPORTATION LEVY

AN ACT to amend and reenact section 57-15-55 of the North Dakota Century Code, authorizing a mill levy to provide for payments under contract for the provision of a public transportation system.

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

SECTION 1. AMENDMENT. Section 57-15-55 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-55. TAX LEVY FOR PUBLIC TRANSPORTATION. The governing body of any city, upon approval by a majority vote of the electors of such city at any citywide election, may annually levy a tax not in excess of ~~one--mill~~ five mills on the net taxable assessed valuation of property within such city to provide ~~payments-under-a contract-approved-by-such-governing-body-with-a--private--contractor~~ funds for the provision and operation of a public transportation system within such city under a contract approved by such governing body with a private contractor, or by the city itself, which mill levy shall be over and above any mill levy limitations prescribed by law. ~~Such--levy--shall--not--be--made-during-any-year-in-which-the amount-of-unexpended-funds-raised-by-such-levy-shall-equal-or-exceed three--dollars-per-capita-according-to-the-population-of-the-city-as determined-at-the-last-federal-decennial-census.~~

Approved March 3, 1981

CHAPTER 580

HOUSE BILL NO. 1249
(Representatives Black, Gates, A. Olson)
(Senators Holmberg, Stenehjem)

DELINQUENT PROPERTY TAX INTEREST PENALTY

AN ACT to amend and reenact sections 57-24-12 and 57-24-24 of the North Dakota Century Code to provide nine percent annual interest on delinquent property taxes and to delete obsolete references to the hail indemnity tax.

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

* SECTION 1. AMENDMENT. Section 57-24-12 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-24-12. COUNTY AUDITOR TO SELL LANDS AT PUBLIC AUCTION - TIME OF SALE. The sale of lands by the county auditor shall be conducted as follows:

1. On the second Tuesday in December of each year, the county auditor, at his office or the usual place of holding court in the same building, shall sell at public auction the lands, lots, or tracts of real property described in the tax list posted as provided in this chapter. Such sale shall commence at the hour of ten a.m., but may be adjourned from day to day for a period of ten days, whenever adjournment is necessary for the disposal of the lands advertised.

2. Before any tract or parcel of land is offered for sale, the auditor shall announce the total amount of taxes, penalties, ~~interest,~~ and cost of advertising the same for sale, and the part representing personal property taxes, if any, extended against such land.

3. The lands, lots, or parcels of land shall be offered for sale by the county auditor, or his deputy, in the order in which they appear in the advertised list, and each tract or lot shall be offered separately and struck off to the bidder who will pay the total amount as announced by the county auditor under the provisions of subsection 2 of

* NOTE: Section 57-24-12 was also amended by section 53 of House Bill No. 1069, chapter 91.

this section, and who will agree to accept the lowest rate of interest from the date of sale on such total amount, such rate in no case to exceed ~~six~~ nine percent per annum.

4. ~~Such lands, lots, or parcels likewise shall be offered for sale and sold for the total amount of hail indemnity taxes, plus accrued penalties and cost of advertising, to the bidder who will pay such total amount and accept the lowest rate of interest on such total amount from the date of sale, such rate in no case to exceed six percent per annum.~~

~~5.~~ If the sum bid for any tract, lot, or parcel of land is not paid before the sale closes, such tract, lot, or parcel again shall be offered for sale in like manner.

SECTION 2. AMENDMENT. Section 57-24-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-24-24. FORM OF SUBSEQUENT TAX SALE CERTIFICATE. The county auditor shall execute to the payer of subsequent taxes a subsequent tax sale certificate which shall be substantially in the following form:

SUBSEQUENT TAX SALE CERTIFICATE

---------- County, North Dakota

I, --------, county auditor of -------- County in the state of North Dakota, hereby do certify that at the annual tax sale of real estate held on the -------- day of December, 19--, the following described real estate to wit: -------- was sold for the taxes of the year -------- to -------- of -------- for the aggregate sum of -------- ($--------) dollars, and there was issued to such purchaser tax sale certificate No. -------- and that thereafter, the owner of said tax sale certificate paid subsequent taxes upon said real estate for the year -------- which payment was made on -------- and it is hereby certified that there is due him on account of subsequent taxes for said year, the sum of -------- ($--------) dollars, together with interest at ~~six~~ nine percent ~~(6%)~~ (9%) per annum from --------, and that unless redemption shall be made from this subsequent tax sale certificate within three (3) years from December --------, 19--, he will be entitled after due notice given, to a tax deed conveying to him the said real estate.

Given under my hand and the seal of the county auditor of ------- County, North Dakota, this ------ day of -------, 19--.

County Auditor of ---------- County.

Approved March 31, 1981

CHAPTER 581

SENATE BILL NO. 2144
(Committee on Finance and Taxation)
(At the request of the Tax Department)

TELEPHONE COMPANY TAX AND MOBILE HOME TAX REFUND

AN ACT to amend and reenact sections 57-34-02, 57-34-03, and 57-55-04.1 of the North Dakota Century Code, relating to reports of telephone companies, computation of taxes assessed against such companies, and to abatement and refund of mobile home taxes; and to repeal sections 57-02-20, 57-02-21, chapter 57-11.1, and subsection 4 of section 57-55-12 of the North Dakota Century Code, relating to taxation and exemption of personal property and to refund of mobile home taxes.

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

SECTION 1. AMENDMENT. Section 57-34-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-34-02. REPORTS OF TELEPHONE COMPANIES. Each telephone company required to be assessed under the provisions of this chapter~~,---annually,--and--subject--to--the--provisions--of--section 12.1-11-02,-the-president,-secretary,--or--other--official--of--such company,~~ shall annually make and file with the tax commissioner, on or before May first, on such form as the tax commissioner may prescribe, a report containing a statement of its telephone operating receipts in this state during the preceding calendar year, the number of stations in service on December thirty-first preceding, the number of miles [kilometers] of telephone line operated in providing telephone service, and such other information as the tax commissioner may require except that any telephone company having thirty telephone stations or less in service on December thirty-first preceding shall not be required to furnish a statement of its telephone operating receipts. Each report shall contain a statement of the number of stations located in each county served and each school district within such counties and the number of stations maintained per mile [1.61 kilometers] of telephone line in this state. Each report shall be signed, subject to the provisions of section 12.1-11-02, by the president, secretary, or other official of the telephone company. Each telephone company

subject to the provisions of this chapter, at the time of submitting its report to the tax commissioner, shall forward a copy of such report to the county auditor of each county in which it maintains a station or stations.

SECTION 2. AMENDMENT. Section 57-34-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-34-03. COMPUTATION OF TAXES BY TAX COMMISSIONER.

1. On or before August first of each year, the tax commissioner shall compute the total tax to be assessed against each telephone company in this state in the following manner:

~~1.~~ a. Telephone companies maintaining an average of one and twenty-five hundredths telephone stations or less per mile [1.61 kilometers] of telephone line operated in this state shall be taxed at the rate of one-half of one percent of their telephone operating receipts.

~~2.~~ b. Telephone companies maintaining an average of not less than one and twenty-six hundredths and not more than one and seventy-five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state shall be taxed at the rate of one percent of their operating receipts.

~~3.~~ c. Telephone companies maintaining an average of not less than one and seventy-six hundredths and not more than two and twenty-five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state shall be taxed at the rate of one and one-half of one percent of their operating receipts.

~~4.~~ d. Telephone companies maintaining an average of more than two and twenty-five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state shall be taxed at the rate of two percent of their operating receipts.

2. ~~Notwithstanding the provisions of subsections 1 through 4, if~~ If the tax due from any telephone company ~~taxed~~ as computed under ~~the provisions of this chapter shall be~~ subsection 1 is less than fifty cents per station maintained in this state or if such company had less than thirty-one stations in service in this state on the preceding December thirty-first, such company shall be subject to a tax of fifty cents per station~~, and further, notwithstanding~~.

3. Notwithstanding the provisions of subsections 1 ~~through 4~~ and 2, any telephone company having twenty telephone

stations or less in service on December thirty-first preceding the year for which the tax computed under this section is assessed shall be exempt from the provisions of this chapter.

SECTION 3. AMENDMENT. Section 57-55-04.1 of the 1979 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 reviewed and considered by the tax appeals board pursuant to chapter 57-23.1.

* SECTION 4. REPEAL. Section 57-02-20, chapter 57-11.1, and subsection 4 of section 57-55-12 of the North Dakota Century Code and section 57-02-21 of the 1979 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 5, 1981

* NOTE: Section 57-02-20 was amended by section 48 of Senate Bill No. 1069, chapter 91.

CHAPTER 582

SENATE BILL NO. 2187
(Committee on Finance and Taxation)
(At the request of the Tax Department)

TOBACCO PRODUCTS TAX AND MIXED DRINK USE TAX

AN ACT to amend and reenact section 57-36-10 and subsection 2 of section 57-36-11 of the North Dakota Century Code, relating to discounts for purchases of tobacco stamps and fees for county auditors for tobacco products tax meter settings; and to repeal subsection 7 of section 57-40.2-04 of the North Dakota Century Code, relating to use tax exemption for mixed drinks.

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

SECTION 1. AMENDMENT. Section 57-36-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-10. STAMPS MAY BE PURCHASED AT DISCOUNT. Any licensed distributor located within or without this state may purchase stamps at a discount of ~~three~~ five percent of the face value thereof, and the tax commissioner may allow such discount in the settlement of the account of such wholesale distributor upon the payment to him of any moneys which may be or become due to the state by reason of the sale, delivery, or consignment to such distributor of such stamps.

SECTION 2. AMENDMENT. Subsection 2 of section 57-36-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The tax commissioner may designate the county auditor of any county of this state as his representative for the setting of tax meter machines for any particular distributor and for the collection of the cigarette tax due upon each such setting. Any county auditor so designated shall transmit each amount of tax collected and report each meter machine setting to the tax commissioner on or before the next business day, provided that a business day shall not include Saturday; he shall perform such duties in accordance with the procedure prescribed by the tax commissioner. The duties of the county auditor pursuant to this section shall be within the coverage of his official bond. Any county auditor when designated by

the tax commissioner pursuant to this section shall receive from the distributor for his services for setting a meter machine a fee of ~~two~~ five dollars for each meter setting and all such fees received by the county auditor shall be payable to him personally for his services and shall not be credited to any county fund or to any other public fund.

SECTION 3. REPEAL. Subsection 7 of section 57-40.2-04 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 31, 1981

CHAPTER 583

HOUSE BILL NO. 1198
(Committee on Finance and Taxation)
(At the request of the Tax Department)

PENALTIES AND INTEREST ON UNPAID TAXES

AN ACT to amend and reenact subsection 3 of section 57-36-26, subsection 5 of section 57-38-34, and sections 57-38-35.1, 57-38-36, 57-51-10, 57-52-12, 57-54-11, 57-60-09, 57-61-05 of the North Dakota Century Code, relating to interest imposed on unpaid income taxes, interest paid on income tax refunds, and penalties and interest imposed for failure to file returns or pay taxes in connection with tobacco products, oil and gas production, special fuels, motor vehicle fuels, coal conversion facilities, and the severance of coal; and to provide for an effective date.

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

SECTION 1. AMENDMENT. Subsection 3 of section 57-36-26 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section shall be subject to a penalty of ~~three-percent-of-the amount-of-tax-due~~ five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of such tax for each month of delay or fraction thereof excepting the month within which such return was required to be filed or such tax became due. The tax commissioner, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 2. AMENDMENT. Subsection 5 of section 57-38-34 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The tax commissioner may grant a reasonable extension of time for filing a return when, in his judgment, good cause exists. 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 rate of ~~eight~~ twelve percent 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.

SECTION 3. AMENDMENT. Section 57-38-35.1 of the 1979 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. No income tax refunds shall be made by the tax commissioner to any taxpayer unless the amount to be refunded shall exceed one dollar. No remittance of income tax need be made nor any assessment or collection of tax should be made unless the amount exceeds one dollar, including penalties and interest. All refunds and credits for overpayment to any taxpayer may be applied to payment of taxpayer's delinquent income taxes or delayed until taxpayer's delinquent returns have been filed. Interest of ~~seven~~ eleven 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. No remittance of interest on refunds need be made unless the amount of interest exceeds one dollar. 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 4. AMENDMENT. Section 57-38-36 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-36. WHEN PAYMENT OF TAX MAY BE MADE IN QUARTERLY INSTALLMENTS. If the total tax, after the deduction of any of the following: income taxes withheld, declaration of estimated income taxes paid, credit for taxes paid to another state, or any other credits or deductions, exceeds one hundred dollars it may be paid in quarterly installments, and if paid in such installments, the first installment shall be paid at the time fixed by this chapter for filing the return, the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the sixth month, and the fourth installment on the fifteenth day of the ninth month after the time fixed by law for filing the return. Interest at the rate of ~~eight~~ twelve percent per annum shall be charged on all unpaid installment balances during the period from the date fixed by this chapter for filing the return and the date payment of the installment is due. If a taxpayer elects under the provisions of this section to pay the tax in installments, any installment may be paid prior to the date prescribed for its payment. If an installment is not paid in full on or before the date fixed for its payment the whole amount of the unpaid tax shall be paid upon notice and demand from the tax commissioner, and

penalty and interest, as provided in section 57-38-45, shall attach, from and after the time of the failure to make such timely payment, to the whole amount of the unpaid tax.

SECTION 5. AMENDMENT. Section 57-51-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-10. PROCEEDINGS AND PENALTY ON DELINQUENCY. Where the tax provided for in this chapter shall become delinquent ~~it--shall, as--a--penalty--for--such--delinquency,-bear-interest-at-the-rate-of twelve-percent-per-annum,-and~~, there is hereby imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction thereof during which such delinquency continues, excepting the month within which such tax became due, which shall be collected in the manner hereinafter provided. If any person shall fail to make any report herein required, within the time prescribed by law for such report, it shall be the duty of the commissioner to examine the books, records, and files of such person to ascertain the amount and value of such production to compute the tax thereon as provided herein, and he shall add thereto the ~~cost-of-such-examination, together-with~~ amount of any penalties accrued thereon. The tax commissioner, in his discretion for good cause shown, may waive the penalty or the interest provided by this section.

SECTION 6. AMENDMENT. Section 57-52-12 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-52-12. REFUSAL OR FAILURE TO FILE RETURN OR PAY TAX WHEN DUE - DEFICIENCIES - PENALTIES. In case any special fuel dealer refuses or fails to file a return required by this chapter within the time prescribed by section 57-52-10, there is hereby imposed a penalty of five dollars or a sum equal to ~~two~~ five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues, excepting the month within which such tax became due. The state tax commissioner, in his discretion for good cause shown, may waive the penalty or the interest provided by this section. Where a special fuel dealer files a return but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid, interest at the rate of one percent per month or fraction thereof from the date such tax was due to the date of payment in full thereof. If it be determined by the state tax commissioner that the tax reported by any special fuel dealer is deficient, he shall proceed to assess the deficiency on the basis of information available to him and there shall be added to this deficiency interest at the rate of one percent per month or fraction thereof from the date the return was due.

SECTION 7. AMENDMENT. Section 57-54-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-54-11. FAILURE TO FILE REPORT - PENALTY - REVOCATION OF LICENSE - EXCUSE FOR DELAY. If the holder of a license to sell motor fuel at any time shall either refuse or neglect to file the report required to be filed, or pay the full amount of the tax as required by this chapter, there is hereby imposed a penalty of five dollars, or a sum equal to ~~two~~ five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues, excepting the month within which such report was required to be filed or such tax became due, and the state tax commissioner forthwith may revoke such license and, if so, shall notify the holder thereof promptly by a notice sent by registered or certified mail to the post-office address of such holder as the same appears in the state tax commissioner's records. However, if such report is filed and the tax paid within ten days after the date it becomes due and if it is established under oath that the delay was due to accident or justifiable oversight, then the state tax commissioner may continue such license in full force and effect. The state tax commissioner, in his discretion for good cause shown, may waive all or any part of the penalty or the interest provided by this section.

SECTION 8. AMENDMENT. Section 57-60-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-09. PROCEEDINGS AND PENALTY ON DELINQUENCY. Where the tax provided for in this chapter shall become delinquent ~~it--shall, as-a-penalty-for-such-delinquency,-bear-interest-at-the-rate-of-nine percent-per-annum,-and~~, there is hereby imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction thereof during which such delinquency continues, excepting the month within which such tax became due, which shall be collected in the manner hereinafter provided. If any person shall fail to make any report herein required, within the time prescribed by law for such report, it shall be the duty of the commissioner to examine the books, records, and files of such person to ascertain the amount and value of such production to compute the tax thereon as provided herein, and he shall add thereto the ~~cost-of-such-examination,-together-with~~ amount of any penalties accrued thereon. The tax commissioner, in his discretion for good cause shown, may waive the penalty or the interest provided by this section.

* SECTION 9. AMENDMENT. Section 57-61-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 57-61-05 was also amended by section 2 of Senate Bill No. 2180, chapter 619.

57-61-05. PENALTY ON DELINQUENCY - FAILURE TO FILE ~~REPORTS~~ RETURNS. Where the severance tax provided for in this chapter shall become delinquent, ~~it shall, as a penalty for such delinquency, bear interest at the rate of eight percent per annum~~ there is hereby imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction thereof during which such delinquency continues, excepting the month within which such tax became due. The tax commissioner, in his discretion for good cause shown, may waive the penalty or the interest provided by this section. If the quarterly ~~report~~ return is not filed within thirty days after the end of any quarter and taxes due paid, the tax commissioner shall notify the delinquent owner or operator of such delinquency, and if such ~~report~~ return and remittance are not filed within an additional fifteen days, the tax commissioner shall notify the public service commission, which shall forthwith suspend such owner's or operator's license or permit until such time as payment is received, or the issues settled to the satisfaction of the tax commissioner.

SECTION 10. EFFECTIVE DATE. The provisions of this Act shall be applicable to all taxable periods beginning on or after January 1, 1981.

Approved March 11, 1981

CHAPTER 584

SENATE BILL NO. 2186
(Committee on Finance and Taxation)
(At the request of the Tax Department)

ESTATE NOTICE AND TAX REQUIREMENTS

AN ACT to amend and reenact subsection 1 of section 30.1-14-07, subsection 2 of section 30.1-15-14, subsection 2 of section 57-37.1-08, and section 57-37.1-13 of the North Dakota Century Code, relating to notices to the tax commissioner of appointment, proceedings in probate, notices pertaining to estates and given to the tax commissioner by financial institutions and insurance companies, and the distribution of minimum estate tax payments; and to repeal section 57-37.1-05 of the North Dakota Century Code, relating to property previously subject to estate taxes.

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

SECTION 1. AMENDMENT. Subsection 1 of section 30.1-14-07 of 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 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 estate be subject to the laws of this state. ~~A copy of the order of appointment shall be forwarded immediately by the court to the tax commissioner.~~

SECTION 2. AMENDMENT. Subsection 2 of section 30.1-15-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative, and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 30.1-13-03, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 30.1-17-11. ~~A--copy--of the-order-of-appointment-shall-be-immediately-forwarded-by the-court-to-the-tax-commissioner.~~

SECTION 3. AMENDMENT. Subsection 2 of section 57-37.1-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Following the end of each calendar quarterly period, the state treasurer shall pay over to the county treasurer of the appropriate county, for its general fund, the amount of tax collected on the transfer of the property in that county. If any part of the decedent's property at the time of decedent's death had a legal situs within the limits of a city, the share of tax based on such property shall be divided by the state treasurer between the city and the county in proportion to their respective mill levies, except school levies, for the calendar year preceding the year of death. If any part of decedent's property had a legal situs outside the limits of a city, the share of tax based on said property shall go entirely to the county. If the tax determined to be due pursuant to this chapter is in an amount which is one hundred dollars or less, no further apportionment pursuant to this section shall be made and the entire amount due shall be distributed to a county or counties in which the legal situs of the property is located for their general fund. Any distributive share in an amount less than ten dollars, and which has been calculated by the state treasurer pursuant to the provisions of this section, shall be paid to the state general fund and shall not be distributed as otherwise provided for in this section.

* SECTION 4. AMENDMENT. Section 57-37.1-13 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37.1-13. DEPOSITORIES - NOTICE OF TRANSFER OF DECEDENT'S ASSETS.

1. Any safe deposit company, trust company, corporation, bank, or other institution or person having possession, control, custody, or partial control or custody of any securities, deposits or other assets, including shares of the capital stock of, or other interest in, such safe

* NOTE: Subsection 1 of section 57-37.1-13 was also amended by section 2 of Senate Bill No. 2431, chapter 585.

deposit company, trust company, corporation, bank, or other institution, standing in the name of a resident or nonresident decedent, or belonging to or standing in the joint name of such decedent and one or more other persons, who delivers or transfers the same to the personal representative, agent, deputy, trustee, legatee, heir, surviving joint owner, or any other successor in interest of such decedent, shall give the tax commissioner notice of any amount paid that had a value in excess of ~~one~~ five thousand dollars, and the name or names and addresses of the transferees, which notice shall be on a form prescribed by the tax commissioner. Such notice shall be filed with the tax commissioner within thirty days from the date of payment. If no notice is given by the transferor, as prescribed herein, the transferor shall be liable for any estate tax which is unpaid on the asset which was transferred.

2. In the case of an insurer paying proceeds of a life insurance contract in which the decedent had an incident of ownership, determined pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, the insurer may pay the proceeds of the life insurance contract to the stated beneficiary in the contract immediately, however, the insurer shall give the tax commissioner notice of the amount paid to the beneficiary, if in excess of five thousand dollars, and any other information required by the tax commissioner regardless of the amount of the contract. Such notice shall be filed with the tax commissioner within thirty days from the date of payment.

3. The provisions of subsection 1 of this section shall not apply when a request for the transfer of securities has been made by any trust company acting as the personal representative of an estate, provided that the trust company is qualified to do business under the laws of the state of North Dakota.

SECTION 5. REPEAL. Section 57-37.1-05 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 6, 1981

CHAPTER 585

SENATE BILL NO. 2431
(Redlin)

SAFE DEPOSIT BOX ACCESS

AN ACT to amend and reenact section 57-37.1-12 and subsection 1 of section 57-37.1-13 of the North Dakota Century Code, relating to access to the safe deposit box of a decedent.

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

SECTION 1. AMENDMENT. Section 57-37.1-12 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37.1-12. DUTIES OF DEPOSITORIES - INVENTORY OF CONTENTS OF SAFE DEPOSIT BOX REQUIRED. No safe deposit company, trust company, corporation, bank, or other institution or person engaged in the business of renting safe deposit boxes or other receptacles of similar character shall rent any such box or receptacle without first procuring from each person given access thereto an agreement in writing to the effect that upon the death of any person having the right of access to such box or receptacle, notice of such death will be given to such safe depositary, bailee, or lessor before seeking access to such box or receptacle. A safe deposit company, trust company, corporation, bank, or other institution or person having the possession, control, custody, or partial custody of any safe deposit box or similar receptacle shall not permit access to such box or receptacle after the death of any person who at the time of his death had the right or privilege of access thereto, by any other person ~~acting as principal, deputy, agent, personal representative, or cotenant of such deceased person, until a complete inventory of the entire contents of the safe deposit box has been prepared by a person entitled to access to the box in the presence of an officer or other agent of the lessor of the box. The inventory so prepared shall be filed with the state tax commissioner by the lessor of the box within thirty days from the date of its preparation. After the lessor of the box has complied with the provisions of this section, it shall not limit access to the safe deposit box or similar receptacle by persons entitled to access thereto, and it shall be released of all liability to those persons and to the state of North Dakota for any assets, documents, or~~

~~things taken from the safe deposit box or similar receeptacle~~ until a complete inventory of the entire contents of the safe deposit box or receptacle has been prepared by the personal representative of the deceased person or a cotenant of the safe deposit box or receptacle in the presence of an officer or other agent of the lessor of the box. The inventory so prepared shall be filed with the state tax commissioner by the lessor of the box within thirty days from the date of its preparation. After the lessor of the box has complied with the provisions of this section, it shall not limit access to the safe deposit box or similar receptacle by the personal representative of the deceased person or cotenant of the safe deposit box or receptacle or to any other person granted access by county court order, and it shall be released of all liability to the state of North Dakota, and for any assets, documents, or things taken from the safe deposit box or similar receptacle.

* SECTION 2. AMENDMENT. Subsection 1 of section 57-37.1-13 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any safe deposit company, trust company, corporation, bank, or other institution or person having possession, control, custody, or partial control or custody of any securities, deposits or other assets, including shares of the capital stock of, or other interest in, such safe deposit company, trust company, corporation, bank, or other institution, standing in the name of a resident or nonresident decedent, or belonging to or standing in the joint name of such decedent and one or more other persons, who delivers or transfers the same to the personal representative, agent, deputy, trustee, legatee, heir, surviving joint owner, or any other successor in interest of such decedent, shall give the tax commissioner notice of any amount paid that had a value in excess of ~~one~~ five thousand dollars, and the name or names and addresses of the transferees, which notice shall be on a form prescribed by the tax commissioner. Such notice shall be filed with the tax commissioner within thirty days from the date of payment. If no notice is given by the transferor, as prescribed herein, the transferor shall be liable for any estate tax which is unpaid on the asset which was transferred.

Approved March 31, 1981

* NOTE: Section 57-37.1-13 was also amended by section 4 of Senate Bill No. 2186, chapter 584.

CHAPTER 586

HOUSE BILL NO. 1177
(Committee on Finance and Taxation)
(At the request of the Tax Department)

TAXABLE INCOME COMPUTATION

AN ACT to create and enact two new subdivisions to subsection 21 of section 57-38-01 of the North Dakota Century Code, relating to crude oil windfall profit tax deduction for individuals, estates, trusts, and corporations, and to installment sales; and to declare an emergency.

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

SECTION 1. Two new subdivisions to subsection 21 of section 57-38-01 of the 1979 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

As to individuals, estates, trusts, and corporations, the crude oil windfall profit tax enacted as Public Law No. 96-223 [94 Stat. 229] shall be allowable as a deduction in computing taxable income for the first taxable year only, beginning on or after January 1, 1980; provided that the deduction for a corporation shall not exceed one million dollars.

As to individuals, estates, trusts, and corporations, the provisions of the Installment Sales Revision Act of 1980 enacted as Public Law No. 96-471 are hereby retroactively incorporated for the purposes of this chapter and for the purpose of computing taxable income for the first taxable year only, beginning on or after January 1, 1980.

SECTION 2. EMERGENCY. The provisions of this Act are hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 1, 1981

CHAPTER 587

SENATE BILL NO. 2214
(Senators Iszler, Dotzenrod)
(Representatives Nicholas, E. Pomeroy)

BEGINNING FARMER TAX INCENTIVES

AN ACT to amend and reenact subdivision m of subsection 1 of section 57-38-01.2, subsections 2 and 3 of section 57-38-67, and sections 57-38-68 and 57-38-69 of the North Dakota Century Code, relating to the adjustments to taxable income for individuals and fiduciaries derived from sales of land to beginning farmers, the definition of a beginning farmer and landowner, the income tax deduction for land sales to beginning farmers, and providing that rent received from beginning farmers is exempt from income tax; and to provide an effective date.

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

* SECTION 1. AMENDMENT. Subdivision m of subsection 1 of section 57-38-01.2 of the 1979 Supplement to the North Dakota Century Code is 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 fifteen years and have an annual interest rate ~~of not more than six percent~~ 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 notarized statement from the buyer containing a list of the buyer's assets and debts and giving the buyer's net worth, 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 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 his dependents and spouse, if any, for

* NOTE: Subdivision m of subsection 1 of section 57-38-01.2 was also amended by section 6 of House Bill No. 1374, chapter 565.

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 shall not be included. This statement shall be filed along with the income tax return. For the purposes of this subdivision, "beginning farmer" means any person who:

(1) Is a resident of this state.

(2) Receives more than half his annual income from farming, unless the person initially commences farming during the tax year for which an adjustment will be claimed under this subdivision.

(3) Intends to use any farmland that he wishes to purchase or rent for agricultural purposes.

(4) Has had adequate training, by experience or education, in the type of farming operation which he wishes to begin.

(5) Has, including the net worth of his dependents and spouse, if any, a net worth of less than ~~fifty~~ one hundred thousand dollars.

Provided, however, that each adjustment in the above subdivisions authorized under law shall be allowed only to the extent that the adjustment is allocated and apportioned to North Dakota income.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 57-38-67 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Beginning farmer" means any person who:

a. Is a resident of this state.

b. Receives more than half his annual income from farming, unless the person initially commences farming during the tax year for which a deduction will be claimed under sections 57-38-67 through 57-38-70.

c. Intends to use any farmland that he wishes to purchase or rent for agricultural purposes.

d. Has had adequate training, by experience or education, in the type of farming operation which he wishes to begin on the purchased or rented land referred to in subdivision c.

e. Has, including his dependents and spouse, if any, a net worth of less than ~~fifty~~ 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.

3. "Landowner" means any ~~person~~ individual, partnership, trust, or estate owning land in North Dakota, except that any ~~person--who~~ individual, partnership, trust, or estate that acquires such land for the purpose of obtaining the income tax deduction provided for in sections 57-38-67 through 57-38-70 shall not be deemed to be a landowner.

SECTION 3. AMENDMENT. Section 57-38-68 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-68. INCOME TAX DEDUCTION FOR LAND SALE TO BEGINNING FARMERS. Any landowner who sells land consisting of twenty acres [8.09 hectares] or more to a beginning farmer shall be entitled to a reduction in his taxable income ~~for--the--year--in--which--the--sale occurred~~ in an amount equal to ~~fifty-percent-of-any~~ all income realized and otherwise subject to state income taxes after consideration of any capital gains treatment~~,-up-to-a-maximum-of fifty-thousand-dollars~~.

SECTION 4. AMENDMENT. Section 57-38-69 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-69. RENT FROM BEGINNING FARMERS EXEMPT FROM INCOME TAX. ~~Fifty-percent-of-any~~ All income received and otherwise subject to taxation for state income tax purposes resulting from the rental of any land consisting of twenty acres [8.09 hectares] or more by a landowner to a beginning farmer under any agreement providing for a lease for at least three years shall be exempt from income taxes provided that no landowner may exclude more than twenty-five thousand dollars pursuant to this section in any tax year nor may any landlord claim this deduction for agreements with more than one beginning farmer for rentals on the same tract or parcel of land.

SECTION 5. EFFECTIVE DATE. This Act shall be effective after December 31, 1980.

Approved March 30, 1981

CHAPTER 588

HOUSE BILL NO. 1095
(A. Olson, Berg)

BEGINNING BUSINESSMAN TAX INCENTIVES

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to a reduction in taxable income for interest received on contracts for the sale of property to beginning businessmen; to provide for income tax deductions as incentives for sales of businesses to beginning businessmen; and to provide an effective date.

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

SECTION 1. A new subdivision to subsection 1 of section 57-38-01.2 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

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 of this subsection. The contract must extend for not less than ten years and have an annual interest rate equal to the minimum rate allowed by the internal revenue service to meet gift tax requirements. 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 of this subsection, means any person who:

(1) Is a resident of this state.

(2) Receives more than one-half his 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 to use any revenue-producing enterprise that he wishes to purchase for business purposes.

(4) Has had adequate training, by experience or education, in the type of revenue-producing enterprise which he wishes to begin.

(5) Has, including the net worth of that person's dependents and spouse, if any, a net worth of less than one hundred thousand dollars.

SECTION 2. DEFINITIONS APPLICABLE TO SECTIONS 2 THROUGH 5. As used in sections 2 through 5 of this Act, 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 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 2 through 5.

   c. Intends to use any revenue-producing enterprise that he wishes to purchase or rent for business purposes.

   d. Has had adequate training, by experience or education, in the type of revenue-producing enterprise which he 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 2 through 5 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 3. 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 4. RENT FROM BEGINNING BUSINESSMAN EXEMPT FROM INCOME TAX. All income received and otherwise subject to taxation for state income tax purposes resulting from the rental of any revenue-producing enterprise by a businessman to a beginning businessman under any agreement providing for a lease for at least three years is exempt from income taxes provided that no businessman may exclude more than twenty-five thousand dollars pursuant to this section in any tax year nor may any businessman claim this deduction for agreements with more than one beginning businessman for rentals of the same revenue-producing enterprise.

SECTION 5. CLAIM FOR INCOME TAX DEDUCTION FOR REVENUE-PRODUCING ENTERPRISE SALE OR RENTAL TO A BEGINNING BUSINESSMAN. To qualify for the deduction provided in sections 2 through 5, 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 4, the taxpayer shall certify 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 6. EFFECTIVE DATE. The provisions of this Act shall be effective for taxable years beginning on or after January 1, 1981.

Approved March 31, 1981

CHAPTER 589

HOUSE BILL NO. 1284
(A. Olson, Gunderson, Nagel, Olafson, Timm)

INTEREST INCOME TAX ADJUSTMENT

AN ACT to create a new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code to provide a reduction in the taxable income for a limited amount of interest income received by an individual; and to provide an effective date.

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

SECTION 1. A new subdivision to subsection 1 of section 57-38-01.2 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced by any amount, up to a maximum of two hundred dollars received by any person or four hundred dollars if a joint return is filed, as interest earned from a financial institution located in this state. For purposes of this subdivision, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

SECTION 2. EFFECTIVE DATE. This Act shall be effective for taxable years beginning on or after January 1, 1981.

Approved April 6, 1981

CHAPTER 590

HOUSE BILL NO. 1562
(A. Hausauer)

SUBCHAPTER S ELECTION RECOGNITION

AN ACT to amend and reenact section 57-38-01.4 of the North Dakota Century Code, relating to recognition of subchapter S election; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 57-38-01.4 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-01.4. RECOGNITION OF SUBCHAPTER S ELECTION.

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.

2. Notwithstanding the provisions of subsection 1, any person therein described who makes an election under subchapter S of the Internal Revenue Code of 1954, as amended, may elect to have such status not recognized for purposes of filing returns pursuant to this chapter. In such case, the taxable income of the corporation shall be reported as is the taxable income of other corporations that are subject to the provisions of this chapter. The taxable income of each shareholder of such corporation shall be reduced by the amount of federal income taxes paid by the shareholder on that part of the income or gain of the corporation received by the shareholder when received as a dividend pursuant to subdivision i of subsection 1 of section 57-38-01.2 or subdivision g of subsection 1 of section 57-38-01.3. When no election is made for state

income tax purposes, both the shareholders and the corporation shall make adjustments, increases, or decreases to federal taxable income so that the state taxable income figure is determined as though no election had been made for either state or federal income tax filing purposes.

3. Those persons who were required for taxable years beginning prior to January 1, 1969, to file as subchapter S taxpayers under subsection 1 may elect for taxable years beginning on or after January 1, 1969, to have such status not recognized for purposes of filing returns pursuant to this chapter, provided such election is made, on a form prescribed by the tax commissioner, prior to the end of the taxable year that begins in 1969.

4. If an election to have such subchapter S status recognized or not recognized is made under subsection 2 or 3, a termination or revocation of such status or a subsequent election relating thereto shall be made only in accordance with the conditions and requirements prescribed for terminations, revocations and subsequent elections under subchapter S of the Internal Revenue Code of 1954, as amended.

5. The distributed and undistributed taxable income of an electing small business corporation for federal and state income tax purposes derived from or connected with sources in this state does constitute income derived from sources within this state for a nonresident person who is a shareholder of such a corporation, and a net operating loss of such corporation derived from or connected with sources in this state does constitute a loss or deduction connected with sources in this state for such a nonresident individual.

SECTION 2. EFFECTIVE DATE. The provisions of this Act shall be effective for all taxable years still open to audit under the provisions of section 57-38-38 as of January 1, 1981, and all taxable years thereafter.

Approved March 19, 1981

CHAPTER 591

HOUSE BILL NO. 1307
(Representatives Wald, Conmy, Unhjem)
(Senators Nething, Tennefos, Tierney)

INCOME TAX CHARITABLE CONTRIBUTION CREDIT INCREASED

AN ACT to amend and reenact subsections 1 and 2 of section 57-38-01.7 of the North Dakota Century Code, increasing the amounts allowable as an income tax credit for charitable contributions.

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

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 57-38-01.7 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided ~~herein~~ in this subsection, as a credit against the income tax imposed by this chapter for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by ~~such~~ the taxpayer during ~~such~~ the year to nonprofit private institutions of higher education located within the state ~~of North Dakota~~ or to the North Dakota independent college fund.

   a. In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year shall not exceed forty percent of ~~such~~ the taxpayer's total income tax under this chapter for ~~such~~ the year, or ~~one~~ two hundred fifty dollars, whichever is less.

   b. In the case of a corporation, the amount allowable as a credit under this subsection for any taxable year shall not exceed ~~ten~~ twenty percent of ~~such~~ the corporation's total income tax under this chapter for ~~such~~ the year, or ~~one~~ two thousand five hundred dollars, whichever is less.

2. At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided ~~herein~~ in

this subsection, as a credit against the income tax imposed by this chapter for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by ~~such~~ the taxpayer during ~~such~~ the year directly to nonprofit private institutions of secondary education, located within the state ~~of--North Dakota~~.

a. In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year shall not exceed ~~twenty~~ forty percent of ~~such~~ the taxpayer's total income tax under this chapter for ~~such~~ the year, or two hundred fifty dollars, whichever is less.

b. In the case of a corporation, the amount allowable as a credit under this subsection for any taxable year shall not exceed ~~ten~~ twenty percent of ~~such~~ the corporation's total income tax under this chapter for ~~such~~ the year, or two thousand five hundred dollars, whichever is less.

Approved March 20, 1981

CHAPTER 592

HOUSE BILL NO. 1118
(Koski)

ALTERNATIVE ENERGY DEVICE INCOME TAX CREDIT

AN ACT to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to income tax credits for installation of alternate energy devices; and to provide for an effective date.

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

SECTION 1. AMENDMENT. Section 57-38-01.8 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-01.8. INCOME TAX CREDIT FOR INSTALLATION OF GEOTHERMAL, SOLAR, OR WIND ENERGY DEVICES.

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, or wind energy device installed in a building or on ~~the--premises--of--a building~~ property owned by the taxpayer in North Dakota. The credit provided in this section shall be in an amount equal to five percent per year for ~~two~~ three years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and shall be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.

2. For the purposes of this section, ~~"solar~~:

   a. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

   b. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide

heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.

If a geothermal, solar, or wind energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, or wind energy device shall be included in determining the amount of the credit. The costs of installation shall not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, or wind energy device is installed.

SECTION 2. EFFECTIVE DATE. The provisions of this Act shall apply to geothermal, solar, or wind energy devices installed on or after January 1, 1981.

Approved March 11, 1981

CHAPTER 593

SENATE BILL NO. 2358
(Senator Tweten)
(Representative Freborg)

INCOME TAX CREDIT POSSIBILITY

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code to provide for a transfer to a special trust fund and a credit against income taxes if the general fund balance reaches certain levels.

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:

CERTIFICATION OF GENERAL FUND BALANCE - TRANSFER TO TRUST FUND - CREDIT AGAINST INDIVIDUAL AND CORPORATE INCOME TAXES. On or before August 15, 1982, the director of the office of management and budget shall certify to the tax commissioner the revenue which has been credited to the state general fund during the fiscal year beginning July 1, 1981, and ending June 30, 1982. If that amount exceeds four hundred thirty million dollars, the state treasurer, upon order of the office of management and budget, shall transfer the revenue which has been credited in excess of that amount to the special trust fund established by subsection 2 of section 7 of initiated measure No. 6 approved in the November 1980 general election, but in no event shall this transfer exceed twenty million dollars. If the revenue which has been credited to the state general fund during the fiscal year beginning July 1, 1981, and ending June 30, 1982, exceeds four hundred sixty million dollars, there shall be allowed, in addition to the transfer provided above, to individuals, estates, trusts, and corporations required to file income tax returns, a one-time credit for each taxpayer against the amount of tax liability imposed by sections 57-38-29 and 57-38-30 for the first taxable year beginning on or after January 1, 1982. The credit shall be in the amount of ten percent of the taxpayer's income tax liability, and shall be placed on the state income tax returns for individuals, estates, trusts, and corporations as a separate line item on each type of return which shall follow the computation of tax liability pursuant to the provisions of this chapter.

Approved April 8, 1981

* NOTE: This section is temporary and is not codified.

CHAPTER 594

SENATE BILL NO. 2347
(Senators Goodman, Melland, Olin)
(Representatives A. Hausauer, Strinden, Timm)

OPTIONAL INCOME TAX COMPUTATION

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to a simplified optional method of computing state income tax liability; to amend and reenact subsection 21 of section 57-38-01 and section 57-38-30 of the North Dakota Century Code, relating to the updating of the definition of federal taxable income for individuals, estates, trusts, and corporations, and to corporation income tax rates; 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:

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.

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 seven 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.

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 initiated measure No. 6 as approved by the voters in the November 1980 general election.

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. 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 2. AMENDMENT. Subsection 21 of section 57-38-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21. "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, as amended to and including December 31, ~~1978, provided, however, that these terms shall mean the United States Internal Revenue Code of 1954, as amended to and including December 31, 1976, for purposes of determining under this chapter the income tax return filing requirements, deductions for capital gains, allowances of deductions for personal exemptions, low income allowance, and standard deduction for individuals, estates, and trusts, and provided further that the provisions of section 515 of the Revenue Act of 1978 [Pub. L. 95-600, 92 Stat. 2884] postponing the carryover basis rules of sections 1014(d), 1016(a), and 1023 of the United States Internal Revenue Code of 1954, as amended, for property acquired from decedents dying after December 31, 1976, to property acquired from decedents dying after December 31, 1979, are hereby retroactively incorporated for the purposes of this chapter, and any further postponement, modification, or repeal of these provisions by the Congress of the United States shall be applicable for the purposes of this chapter~~ 1980.

SECTION 3. AMENDMENT. Section 57-38-30 of the 1979 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 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 following rates:

1. For the first three thousand dollars of taxable income, at the rate of ~~three~~ two percent.

2. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of ~~four~~ three percent.

3. On all taxable income above eight thousand dollars and not in excess of ~~fifteen~~ twenty thousand dollars, at the rate of ~~five~~ four percent.

4. On all taxable income above ~~fifteen~~ twenty thousand dollars, and not in excess of ~~twenty-five~~ thirty thousand dollars, at the rate of ~~six~~ five percent.

5. On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of six percent.

6. On all taxable income above ~~twenty-five~~ fifty thousand dollars, at the rate of ~~eight-and-one-half~~ seven percent.

SECTION 4. EFFECTIVE DATE. The provisions of this Act shall be effective for all taxable years beginning on or after January 1, 1981.

Approved April 8, 1981

CHAPTER 595

HOUSE BILL NO. 1181
(Committee on Finance and Taxation)
(At the request of the Tax Department)

INCOME TAX INFORMATION ON MAGNETIC TAPE

AN ACT to amend and reenact section 57-38-42 of the North Dakota Century Code, relating to the submission of information reports on magnetic tapes, a notification requirement, and the content of information reports; and to provide for an effective date.

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

SECTION 1. AMENDMENT. Section 57-38-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-42. INFORMATION AT THE SOURCE. Information as to income shall be furnished at the source in the manner following:

1. Every individual, partnership, corporation, joint stock company, or association, or insurance company, a resident of, or having a place of business in, this state, in whatever capacity acting, including lessees and mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any state institution, or of any political subdivision within the state, having control, receipt, custody, disposal, or payment of interest, other than interest coupons payable to bearer, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, amounting to six hundred dollars or over in salaries or wages, and ten dollars or over of dividends or interest if an information return for such amount is also required to be filed for federal income tax purposes, and six hundred dollars or over in other payments mentioned in this chapter, ~~whether~~ paid ~~or payable~~ during any year to any taxpayer, shall make a complete return thereof to the tax commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by the tax commissioner;

2. Every partnership, having a place of business in this state, shall make a return, stating specifically the items of its gross income and the deductions allowed by this chapter, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual;

3. All information returns required under subsection 1 of this section shall be made on the basis of a calendar year for payments made ~~or accrued~~ 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. All partnership returns required under subsection 2 of this section 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;

4. Each information return required under subsection 1 of this section and each partnership return required under subsection 2 of this section shall be signed and shall contain or be verified by a written declaration that it is made under the penalties of perjury~~.~~; and

5. Each information return required under subsection 1 shall be deemed to be filed with the tax commissioner if the person required to make the return has filed an information report on magnetic tape with the United States internal revenue service. All such persons which have received permission from the United States internal revenue service to file on magnetic tape must notify the tax commissioner, by letter, within thirty days of obtaining such permission. This subsection is conditioned on the existence of an agreement between the state of North Dakota and the United States internal revenue service to participate in combined federal-state information reporting.

SECTION 2. EFFECTIVE DATE. The provisions of this Act shall be effective for all calendar years beginning on or after January 1, 1981.

Approved March 5, 1981

CHAPTER 596

HOUSE BILL NO. 1187
(Committee on Judiciary)
(At the request of the Tax Department)

INCOME TAX VIOLATION PENALTY

AN ACT to amend and reenact subsection 3 of section 57-38-45 of the North Dakota Century Code, relating to classification of a misdemeanor for income tax violation.

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

SECTION 1. AMENDMENT. Subsection 3 of section 57-38-45 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Any person or any officer or employee of any partnership who, with intent to evade any requirement of this chapter, shall fail to pay any tax, or to make, sign, or verify any return, or to supply any information required by law, or under the provisions of this chapter, or who with like intent shall make, render, sign, or verify any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction. ,He also shall be guilty of a class A misdemeanor~~,--and-shall-be-punished-by a-fine-of-not--more--than--one--thousand--dollars,--or--by imprisonment--for--not-more-than-one-year,-or-by-both-such fine-and-imprisonment~~.

Approved March 5, 1981

CHAPTER 597

HOUSE BILL NO. 1615
(Timm, Unhjem)

ESTATE TAX FEDERALIZATION AND INCOME AVERAGING

AN ACT to create and enact a new section to chapter 57-38.2 of the North Dakota Century Code, relating to qualified plan income averaging for income tax purposes; to amend and reenact subsection 8 of section 57-37.1-01, and sections 57-38.2-02 and 57-38.2-04 of the North Dakota Century Code, relating to updating the federalization of the state estate tax, qualified plan income averaging, and rules and regulations for the administration of income averaging; and providing an effective date.

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 1979 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 to and including December 31, ~~1978~~ 1980.

SECTION 2. A new section to chapter 57-38.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

QUALIFIED PLAN INCOME AVERAGING - COMPUTATION - ELECTION. If the taxpayer receives a lump sum distribution from a qualified pension, profit sharing, stock bonus, or annuity plan during the computation year and elects to have the separate tax on lump sum distributions apply for federal income tax purposes, the amount of tax imposed by section 57-38-29 for the computation year which is attributable to such distribution shall, at the election of the taxpayer, be an amount equal to the amount of the initial separate tax for such computation year multiplied by a fraction, the numerator of which is the ordinary income portion of the lump sum distribution for the computation year and the denominator of which is the total taxable amount of the distribution for the computation year. The initial separate tax for any computation year is an amount equal to ten times the tax which would be imposed by section

57-38-29 if the taxable income was an amount equal to one thousand dollars plus one-tenth of the excess of the total taxable amount of the lump sum distribution for the computation year over the minimum distribution allowance allowed for federal income tax purposes. If the distribution, or any part thereof, is an annuity contract, the amount of tax so computed shall be reduced by that portion of the tax which is attributable to an annuity contract, but in no event shall the tax so computed be reduced below zero. Lump sum distributions received by the taxpayer during prior computation years shall be disregarded in computing the amount of tax imposed pursuant to this section. No amount which is not an annuity contract may be treated as a lump sum distribution unless the taxpayer elects for the computation year to have all such amounts received during such year so treated at the time and in the manner prescribed by the tax commissioner. Not more than one election may be made with respect to any taxpayer after such taxpayer has attained fifty-nine and one-half years of age. No election may be made by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to a taxpayer to two or more trusts, the election shall be made by the personal representative of the taxpayer.

SECTION 3. AMENDMENT. Section 57-38.2-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38.2-02. ELIGIBILITY FOR INCOME AVERAGING AND QUALIFIED PLAN INCOME AVERAGING. A taxpayer who was a resident of North Dakota throughout the computation year and throughout the base period and who averages his income for federal income tax purposes pursuant to subchapter Q of the Internal Revenue Code of 1954, as amended, may average his income as provided in this chapter for state income tax purposes. In addition, a taxpayer who was a resident of North Dakota throughout the computation year and who receives a lump sum distribution during that year from a qualified pension, profit sharing, stock bonus, or annuity plan under section 401 of the Internal Revenue Code of 1954, as amended, and elects to have the separate tax on lump sum distributions apply for federal income tax purposes, may average his income attributable to such distribution as provided in this chapter for state income tax purposes.

SECTION 4. AMENDMENT. Section 57-38.2-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38.2-04. RULES AND REGULATIONS. The tax commissioner may prescribe rules and regulations for the administration of this chapter which shall be, except as otherwise required by this chapter, based upon the regulations prescribed for the administration of subchapter D and subchapter Q of the Internal Revenue Code of 1954, as amended.

SECTION 5. EFFECTIVE DATE. The provisions of section 1 of this Act shall be effective for the estate of any decedent whose death occurs on or after January 1, 1981, and the provisions of the remainder of this Act shall be effective for all taxable years beginning on or after January 1, 1981.

Approved March 20, 1981

CHAPTER 598

SENATE BILL NO. 2056
(Legislative Council)
(Interim Finance and Taxation Committee)

WATER SALES TAX EXEMPTION

AN ACT to create and enact 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 exempting sales of water from the sales and use taxes; and to amend and reenact subsections 2, 3, and 5 of section 57-39.2-01, subdivision b of subsection 1 of section 57-39.2-02.1, section 57-39.2-04.1, subsection 2 of section 57-39.2-18, subdivision a of subsection 6 of section 57-40.2-01, and section 57-40.2-04.1 of the North Dakota Century Code, relating to exempting water from the sales and use taxes.

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

* SECTION 1. AMENDMENT. Subsections 2, 3, and 5 of section 57-39.2-01 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration, and includes the furnishing or service of steam, gas, ~~electricity, water,~~ 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 subscriptions to magazines and other periodicals regardless of whether or not such magazines or periodicals are to be delivered in the future and regardless of whether or not they are in existence at the time of the sale of any subscription; provided that the words "magazines and other periodicals" as used herein shall not include newspapers nor shall they include 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.

* NOTE: Subsection 2 of section 57-39.2-01 was also amended by section 1 of Senate Bill No. 2223, chapter 599, and subsection 5 of section 57-39.2-01 was also amended by House Bill No. 1575, chapter 600.

3. "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, ~~electricity, water,~~ 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 outside of North Dakota shall not be considered a taxable sale. 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 last day on which payments may be made without penalty as provided in section 57-39.2-12.

5. "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, ~~electricity, water~~ 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 any person engaged in operating or managing a publicly owned facility; 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, ~~electricity, water,~~ 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.

* SECTION 2. AMENDMENT. Subdivision b of subsection 1 of section 57-39.2-02.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

b. The furnishing or service of steam, gas, ~~water,~~ or communication services.

SECTION 3. A new subsection to section 57-39.2-04 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from all sales of water.

SECTION 4. AMENDMENT. Section 57-39.2-04.1 of the 1979 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 including candy and confectionary products, chewing gum, coffee and coffee substitutes, tea, cocoa and cocoa products, and carbonated beverages when purchased by consumers for consumption off the premises where purchased, shall be exempt from the sales tax imposed by chapter 57-39.2. "Food" and "food products" as used herein shall not include any alcoholic beverages

* NOTE: Subsection 1 of section 57-39.2-02.1 was also amended by section 2 of Senate Bill No. 2223, chapter 599, and by section 1 of Senate Bill No. 2379, chapter 602, and section 57-39.2-02.1 was also amended by section 1 of Senate Bill No. 2193, chapter 601.

or mixed drinks made therefrom, ~~bottled--water,~~ or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

SECTION 5. AMENDMENT. Subsection 2 of section 57-39.2-18 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Any person who shall sell tangible personal property, tickets or admissions to places of amusement, and athletic events, or steam, gas, ~~water,---electricity,~~ and communication service at retail in this state after his permit shall have been revoked, or without procuring a permit within sixty days after the effective date of this chapter, as provided in section 57-39.2-14, or who shall violate the provisions of section 57-39.2-09, and the officers of any corporation who shall so act, shall be guilty of a class A misdemeanor.

* SECTION 6. AMENDMENT. Subdivision a of subsection 6 of section 57-40.2-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

a. Tangible goods, wares, and merchandise, and gas, ~~electricity,-and-water,~~ when furnished or delivered to consumers or users within this state.

SECTION 7. A new subsection to section 57-40.2-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from all sales of water.

SECTION 8. AMENDMENT. Section 57-40.2-04.1 of the 1979 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 including candy and confectionary products, chewing gum, coffee and coffee substitutes, tea, cocoa and cocoa products, and carbonated beverages 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, ~~bottled--water,~~ or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

Approved March 19, 1981

* NOTE: Subsection 6 of section 57-40.2-01 was also amended by section 3 of Senate Bill No. 2223, chapter 599.

CHAPTER 599

SENATE BILL NO. 2223
(Olin)

MAGAZINE SUBSCRIPTION SALES TAX EXEMPTION

AN ACT to amend and reenact subsections 2 and 6 of section 57-39.2-01, subsection 1 of section 57-39.2-02.1, and subsections 6 and 9 of section 57-40.2-01 of the North Dakota Century Code, relating to the exemption from the use and sales taxes of subscriptions, or sales of subscriptions, to magazines and other periodicals.

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

* SECTION 1. AMENDMENT. Subsections 2 and 6 of section 57-39.2-01 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means ~~whatsoever~~ whatever, for a consideration, and includes the furnishing or service of steam, gas, electricity, water, 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 ~~subscriptions--to~~ magazines and other periodicals ~~regardless-of-whether-or-not-such-magazines-or-periodicals are--to--be--delivered--in--the--future--and-regardless-of whether-or-not-they-are-in-existence-at-the--time--of--the sale--of--any--subscription,-provided-that~~. Provided, the words "magazines and other periodicals" as used ~~herein shall~~ in this subsection do not include newspapers nor ~~shall-they--include~~ 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.

6. "Gross receipts" means the total amount of sales of retailers, valued in money, whether received in money or otherwise~~,--provided,--however,-that~~. Provided, discounts

* NOTE: Subsection 2 of section 57-39.2-01 was also amended by section 1 of Senate Bill No. 2056, chapter 598.

for any purposes allowed and taken on sales ~~shall~~ are not ~~be~~ included, nor ~~shall~~ is the sale price of property returned by customers when the full sale price ~~thereof~~ is refunded either in cash or by credit. Provided further, ~~however, that~~ 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 ~~shall~~ are not ~~be regarded as~~ gross receipts. Provided further, ~~however, that~~ on all sales of retailers, valued in money, when ~~such~~ the sales are made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum ~~thereunder~~ is to be extended over a period longer than sixty days from the date of sale ~~thereof~~ that only ~~such~~ the portion of the sale amount ~~thereof~~ 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. "Gross receipts" ~~shall~~ also ~~mean~~ 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 ~~such~~ tangible personal property the transfer of title to which has not been subjected to a retail sales tax in this state. ~~"Gross receipts" shall also mean, with respect to subscriptions to magazines and other periodicals, the amount of consideration, valued in money, whether received in money or otherwise, received from the sale of such subscriptions regardless of whether or not such magazines or periodicals are to be delivered in the future and regardless of whether or not they are in existence at the time of the sale of any subscription.~~ 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 1 of section 57-39.2-02.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of farm machinery and irrigation equipment used exclusively for agricultural purposes, and except as otherwise expressly provided in this chapter, there is ~~hereby~~ imposed a tax of three percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as ~~hereinafter~~ provided in this section, within the state of North Dakota of the following to consumers or users:

* NOTE: Subsection 1 of section 57-39.2-02.1 was also amended by section 2 of Senate Bill No. 2056, chapter 598, and by section 1 of Senate Bill No. 2379, chapter 602, and section 57-39.2-02.1 was amended by section 1 of Senate Bill No. 2193, chapter 601.

a. Tangible personal property, consisting of goods, wares, or merchandise, except farm machinery and irrigation equipment used exclusively for agricultural purposes.

b. The furnishing or service of steam, gas, water, or communication services.

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~~,----including subscriptions thereto~~.

e. The leasing or renting of hotel, motel, or tourist court accommodations for periods of less than thirty consecutive calendar days or one month.

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 ~~the provisions of~~ chapter 57-40.2.

* SECTION 3. AMENDMENT. Subsections 6 and 9 of section 57-40.2-01 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

6. "Tangible personal property" means:

a. Tangible goods, wares, and merchandise, and gas, electricity, and water, 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 ~~subscriptions to~~ magazines or other periodicals ~~regardless of whether or not such magazines or periodicals are to be delivered in the future and regardless of whether or not they are in existence at the time of the sale of any subscriptions, provided that.~~ Provided, the words "magazines and other periodicals" as used ~~herein shall~~ in this paragraph do not include newspapers nor ~~shall they include~~ 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.

* NOTE: Subdivision a of subsection 6 of section 57-40.2-01 was also amended by section 6 of Senate Bill No. 2056, chapter 598.

d. The severance of sand or gravel from the soil.

9. "Purchased at retail" ~~shall include~~ includes, but shall not be limited to:

a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.

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 ~~subscriptions to~~ magazines or other periodicals ~~regardless of whether or not such magazines or periodicals are to be delivered in the future and regardless of whether or not they are in existence at the time of the sale of any subscriptions, provided that.~~ Provided, the words "magazines and other periodicals" as used ~~herein shall~~ in this paragraph do not include newspapers nor ~~shall they include~~ 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.

e. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use or consumption.

f. The purchase of an item of tangible personal property by 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, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax ~~thereon~~ to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.

Approved March 6, 1981

CHAPTER 600

HOUSE BILL NO. 1575
(Timm, D. Olson)

"RETAILER" DEFINED

AN ACT to amend and reenact subsection 5 of section 57-39.2-01 of the North Dakota Century Code, relating to definition of retailer.

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

* SECTION 1. AMENDMENT. Subsection 5 of section 57-39.2-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "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, electricity, water, 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 any person engaged in operating or managing a publicly owned facility~~; 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, electricity, water, 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.

Approved March 5, 1981

* NOTE: Subsection 5 of section 57-39.2-01 was also amended by section 1 of Senate Bill No. 2056, chapter 598.

CHAPTER 601

SENATE BILL NO. 2193
(Tierney, Dykshoorn, Lodoen, Olin, Redlin)

MOBILE HOME SALES TAX

AN ACT to create and enact 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 an exemption from the sales tax and use tax for sales of mobile homes upon which the sales tax or use tax has previously been imposed; and to amend and reenact section 57-39.2-02.1, subsection 2 of section 57-39.2-08.2, and section 57-40.2-02.1 of the North Dakota Century Code, relating to the sales tax imposed, sales tax to be added to purchase price and be a debt, and use tax imposed.

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

* SECTION 1. AMENDMENT. Section 57-39.2-02.1 of the 1979 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 and irrigation equipment used exclusively for agricultural purposes, and except as otherwise expressly provided in this chapter, there is hereby imposed a tax of three percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as hereinafter 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 and irrigation equipment used exclusively for agricultural purposes.

   b. The furnishing or service of steam, gas, water, or communication services.

* NOTE: Subdivision b of subsection 1 of section 57-39.2-02.1 was also amended by section 2 of Senate Bill No. 2056, chapter 598, and subsection 1 of section 57-39.2-02.1 was amended by section 2 of Senate Bill No. 2223, chapter 599, and by section 1 of Senate Bill No. 2379, chapter 602.

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, including subscriptions thereto.

e. The leasing or renting of hotel, motel, or tourist court accommodations for periods of less than thirty consecutive calendar days or one month.

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 the provisions of chapter 57-40.2.

2. There is hereby imposed a tax of two 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 section 2 of this Act, and of farm machinery 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.

SECTION 2. A new subsection to section 57-39.2-04 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the sale of a mobile home which has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a retailer in a sale at retail and upon which the North Dakota sales tax has previously been imposed.

SECTION 3. AMENDMENT. Subsection 2 of section 57-39.2-08.2 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. On retail sales of mobile homes used for residential or business purposes, except as provided in section 2 of this Act, and of farm machinery 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 two percent of such price or charge.

SECTION 4. AMENDMENT. Section 57-40.2-02.1 of the 1979 Supplement to 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 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 three 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 three 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 section 5 of this Act, and of farm machinery and irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of two percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in section 2 of this Act, 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 and irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of two percent of the fair market value of such mobile homes used for residential or business purposes and of such farm machinery and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.

SECTION 5. A new subsection to section 57-40.2-04 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the sale of a mobile home which has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a retailer in a sale at retail and upon which the North Dakota use tax has previously been imposed.

Approved March 19, 1981

CHAPTER 602

SENATE BILL NO. 2379
(Wright)

AGRICULTURAL PRODUCT STEAM OR ELECTRICITY SALES TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to sales tax exemption of gross receipts from the sale of byproducts resulting from the processing of agricultural products and used in the manufacture or generation of steam or electricity; and to amend and reenact subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code, relating to sales tax imposed on the furnishing or service of steam used for processing agricultural products.

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 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of farm machinery and irrigation equipment used exclusively for agricultural purposes, and except as otherwise expressly provided in this chapter, there is hereby imposed a tax of three percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as hereinafter 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 farm machinery and irrigation equipment used exclusively for agricultural purposes.

   b. The furnishing or service of steam <u>other than steam used for processing agricultural products</u>, gas, water, or communication services.

   c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts

* NOTE: Subdivision b of subsection 1 of section 57-39.2-02.1 was also amended by section 2 of Senate Bill No. 2056, chapter 598, subsection 1 of section 57-39.2-02.1 was also amended by section 2 of Senate Bill No. 2223, chapter 599, and section 57-39.2-02.1 was also amended by section 1 of Senate Bill No. 2193, chapter 601.

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, including subscriptions thereto.

e. The leasing or renting of hotel, motel, or tourist court accommodations for periods of less than thirty consecutive calendar days or one month.

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 the provisions of chapter 57-40.2.

SECTION 2. A new subsection to section 57-39.2-04 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the sale of byproducts, arising from the processing of agricultural products, for use in the manufacture or generation of steam or electricity.

Approved March 11, 1981

CHAPTER 603

HOUSE BILL NO. 1216
(Conmy)

SALES AND USE TAX MONEY SALE EXEMPTION

AN ACT to create and enact new subsections to sections 57-39.2-04 and 57-40.2-04 of the North Dakota Century Code to provide exemptions from sales and use taxes for the sale of money.

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 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the sale of money including all legal tender coins and currency.

SECTION 2. A new subsection to section 57-40.2-04 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the sale of money including all legal tender coins and currency.

Approved March 2, 1981

CHAPTER 604

HOUSE BILL NO. 1120
(Unhjem)

NONPROFIT VOLUNTARY HEALTH ASSOCIATION SALES TAX EXEMPTION

AN ACT to create and enact 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 exempting sales to certain nonprofit voluntary health associations from sales and use taxes.

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 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from sales to nonprofit voluntary health associations which are exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a voluntary health association is an organization recognized by the internal revenue service, the national health council, the state tax commissioner, and the North Dakota secretary of state as a nonprofit organization that is exempt under section 501(c)(3) of the United States Internal Revenue Code and meets the following requirements: It has been organized and operated exclusively in providing services for the purposes of preventing and alleviating human illness and injury. Methods used to obtain these goals would include education, research, community service and direct patient services, income being derived solely from private donations with some exceptions of a minimal membership fee. Its members are not limited to only individuals, who themselves are licensed or otherwise legally authorized to render the same professional services as the organization. The disbursement of funds within a volunteer health association is to be controlled by a board of directors who work voluntarily and without pay.

SECTION 2. A new subsection to section 57-40.2-04 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from sales to nonprofit voluntary health associations which are exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a voluntary health association is an organization recognized by the internal revenue service, the national health council, the state tax commissioner, and the North Dakota secretary of state as a nonprofit organization that is exempt under section 501(c)(3) of the United States Internal Revenue Code and meets the following requirements: It has been organized and operated exclusively in providing services for the purposes of preventing and alleviating human illness and injury. Methods used to obtain these goals would include education, research, community service and direct patient services, income being derived solely from private donations with some exceptions of a minimal membership fee. Its members are not limited to only individuals, who themselves are licensed or otherwise legally authorized to render the same professional services as the organization. The disbursement of funds within a volunteer health association is to be controlled by a board of directors who work voluntarily and without pay.

Approved March 5, 1981

CHAPTER 605

SENATE BILL NO. 2282
(Nething, Goodman)

DIABETIC AND BLADDER DYSFUNCTION SUPPLIES SALES TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-39.2-04 and a new subdivision to subsection 26 of section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for diabetic and bladder dysfunction supplies.

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 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from all sales of insulin in all its forms dispensed pursuant to the direction of a licensed physician, all sales of glucose usable for treatment of insulin reactions, all sales of urine and blood testing kits and materials, and all sales of insulin measuring and injecting devices, including insulin syringes and hypodermic needles.

SECTION 2. A new subdivision to subsection 26 of section 57-39.2-04 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Supplies, equipment, and devices to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinent pads and pants, and other items used for the care and management of bladder dysfunction.

Approved March 19, 1981

CHAPTER 606

SENATE BILL NO. 2294
(Cussons)

"PURCHASE PRICE" DEFINED

AN ACT to amend and reenact subsection 9 of section 57-40.3-01 of the North Dakota Century Code, relating to the definition of "purchase price".

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

SECTION 1. AMENDMENT. Subsection 9 of section 57-40.3-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise, provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or chapter 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed in an amount not to exceed the total amount the purchaser has been compensated by an insurance company for said loss. The purchaser must provide the motor vehicle registrar with a notarized statement from the insurance company verifying the fact that the original vehicle 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 title for the replacement vehicle. In instances in which a licensed motor vehicle dealer places into his service a new vehicle for the purpose of renting, leasing, or dealership utility

service, the reasonable value of the vehicle replaced shall be included as trade-in value if the new vehicle is properly registered and licensed. "Purchase price" in those instances where the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration, shall also include the average value of similar motor vehicles, established by standards and guides as determined by the motor vehicle registrar. "Purchase price" in those instances where a motor vehicle is manufactured by a person who registers it under the laws of this state, shall mean the manufactured cost of such motor vehicle and manufactured cost shall mean 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 motor vehicle, manufactured costs shall mean the reasonable value of the completed motor vehicle.

Approved March 18, 1981

CHAPTER 607

HOUSE BILL NO. 1475
(DuBord, Kelly)

MOTOR VEHICLE EXCISE TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-40.3-04 of the North Dakota Century Code, providing an exemption from the motor vehicle excise tax for motor vehicles of nonprofit schools.

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

SECTION 1. A new subsection to section 57-40.3-04 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Motor vehicles acquired by any parochial or private nonprofit school to be used for the transportation of students, provided that to qualify a school must normally maintain a regular faculty and curriculum and must have a regularly organized body of students in attendance, and provided that the vehicles are not to be used for commercial activities.

Approved March 5, 1981

CHAPTER 608

HOUSE BILL NO. 1299
(Kingsbury)

MOTOR VEHICLE EXCISE TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-40.3-07 of the North Dakota Century Code, exempting certain vehicles from payment of the motor vehicle excise tax in order to transfer title.

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

SECTION 1. A new subsection to section 57-40.3-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

For vehicles which have been previously licensed and are transferred between a member of a general or limited partnership and the partnership at the time the partnership is established or terminated, or between a stockholder of a corporation and the corporation at the time the corporation is organized or liquidated.

Approved March 2, 1981

CHAPTER 609

SENATE BILL NO. 2156
(Committee on Finance and Taxation)
(At the request of the Tax Department)

MOTOR VEHICLE EXCISE TAX PENALTY

AN ACT to amend and reenact section 57-40.3-11 of the North Dakota Century Code, relating to motor vehicle excise tax penalties.

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

SECTION 1. AMENDMENT. Section 57-40.3-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.3-11. PENALTIES.

1. Any person who shall violate any of the provisions of this chapter shall be guilty of a class B misdemeanor.

2. Any person who shall submit a false or fraudulent "Motor Vehicle Purchaser's Certificate" shall be subject to a penalty of five percent of the true amount of the tax which was due or five dollars, whichever is greater, plus one percent of such tax for each month or fraction thereof subsequent to the month in which the false or fraudulent "Motor Vehicle Purchaser's Certificate" was furnished to the motor vehicle registrar. Such penalty shall be paid to either the tax commissioner or the motor vehicle registrar and disposed of pursuant to the provisions of subsection 3 of section 57-40.3-10. The tax commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of such penalty and interest. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter.

3. Whenever a person, including any motor vehicle dealer, has collected from a person acquiring a motor vehicle, a motor vehicle excise tax in excess of the amount prescribed or due under this chapter, and if the person does not refund the excessive tax collected to the person who remitted it, the person who collected the tax shall pay it to the tax commissioner in the quarterly period in which the excessive collection occurred. The penalty and interest provisions of this section shall apply beginning at the termination of each reporting period.

Approved March 5, 1981

CHAPTER 610

HOUSE BILL NO. 1456
(Freborg)

MOTOR VEHICLE FUEL TAX REFUND

AN ACT to amend and reenact section 57-50-03 of the North Dakota Century Code, relating to refunds for motor vehicle fuel purchases.

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

SECTION 1. AMENDMENT. Section 57-50-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-50-03. CLAIM FOR REFUND - LIMITATION ON FILING. A refund claim must be filed, for all motor vehicle fuel purchases during a calendar year, on or after January first and before July first of the year next following, or the claim for refund shall be barred unless the tax commissioner grants an extension of time for cause. However, any claim for refund may be filed in the calendar year of motor vehicle fuel purchase when:

1. The business is being discontinued;

2. No further purchases subject to fuel tax refund will be made in the remainder of the calendar year; or

3. The claim for refund exceeds one thousand dollars.

No claim for refund shall be made or approved unless the amount of the claim is in excess of ~~ten~~ five dollars.

Approved March 3, 1981

CHAPTER 611

HOUSE BILL NO. 1529
(Murphy, R. Anderson, Hughes, Wald, Whalen)

OIL AND GAS PRODUCTION TAX APPORTIONMENT

AN ACT to amend and reenact section 57-51-15 of the North Dakota Century Code to provide for distribution of the oil and gas gross production tax; and to repeal section 57-51-08 of the North Dakota Century Code, relating to adjustments to the gross production tax rate by the state board of equalization.

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

SECTION 1. AMENDMENT. Section 57-51-15 of 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, to wit:

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 credit it to the general fund.

2. The first ~~two--hundred--thousand~~ one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 of this section 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 ~~two-hundred--thousand~~ one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 of this section 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 of this section above ~~four--hundred--thousand~~ 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 two hundred thousand dollars for the first year of the 1981-83 biennium and no more than three million eight hundred thousand dollars the second year of that biennium.

b. Counties having a population of over three thousand but less than six thousand shall receive no more than three million five hundred thousand dollars the first year of the 1981-83 biennium and no more than four million dollars the second year of that biennium.

c. Counties having a population of six thousand or more shall receive no more than four million dollars the first year of the 1981-83 biennium and no more than four million five hundred thousand dollars the second year of that biennium.

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~~ Forty-five percent of all revenues as may by the ~~legislature~~ legislative assembly be allocated to any county hereunder shall be credited by the county treasurer to the county ~~road--and--bridge~~ general fund~~,--provided, however,--that--the--board--of-county-commissioners-may-by resolution-transfer,-use-or--irrevocably--pledge--so--much thereof--and--for-such-period-as-it-may-deem-necessary-and in-the-best-public-interest-for-the-purpose-of-conducting, undertaking--and--participating--in-underground-or-surface water----surveys----and----investigations,----development, construction,--reconstruction--and--maintenance--of-works, dams--and--projects--for--the--control,--distribution--and beneficial--utilization--of--water--resources. Forty-five~~ 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. ~~Fifteen~~ 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 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 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.

SECTION 2. REPEAL. Section 57-51-08 of the North Dakota Century Code is hereby repealed.

Approved April 6, 1981

CHAPTER 612

HOUSE BILL NO. 1651
(Strinden)
(Approved by the Committee on Delayed Bills)

OIL EXTRACTION TAX DEFINITIONS AND REPORTS

AN ACT to create and enact a new section to initiated measure No. 6 as approved at the general election held on November 4, 1980, relating to computation of the average daily production of a well on a property basis; and to amend and reenact subsection 2 of section 3, and section 4 of initiated measure No. 6 as approved at the general election held on November 4, 1980, relating to the exemption of production from stripper well property and the definition of "stripper well property", the definition of "qualified maximum total production" of oil as used in the definition of "average daily production", the definition of "property", and calculation of production on a monthly basis; 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 3 of initiated measure No. 6 as approved at the general election held on November 4, 1980, is hereby amended and reenacted to read as follows:

2. The activity of extracting from the earth any oil from a stripper well property.

SECTION 2. AMENDMENT. Section 4 of initiated measure No. 6 as approved at the general election held on November 4, 1980, is hereby amended and reenacted to read as follows:

SECTION 4. 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. "Oil" ~~shall mean~~ means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas ~~by means of a separator, or by other nonmechanical methods,~~ on the lease incidental to the production of the gas.

2. "Stripper well property" ~~shall mean an oil producing well~~ means a "property" whose average daily production of oil ~~is ten barrels or less during the calendar quarter year period for which the exemption in subsection 2 of section 3 of this Act is claimed~~, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day 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.

3. "Average daily production" of a well ~~shall mean~~ means the qualified maximum total production of oil from the well during a calendar ~~quarter year~~ month period divided by the number of calendar days in that period; and "qualified maximum total production" of a well ~~shall mean~~ means that the well must have been maintained at the maximum ~~possible rate of production during the period in accordance with recognized conservation practices and not significantly curtailed by reason of mechanical failure or other disruption of production~~ efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.

4. "Royalty owner" ~~shall mean~~ 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. "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 may 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 as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

SECTION 3. A new section to initiated measure No. 6 as approved at the general election held on November 4, 1980, is hereby created and enacted to read as follows:

AUTHORITY OF TAX COMMISSIONER TO ACCEPT PRODUCTION REPORTS COMPUTED ON A PROPERTY BASIS. For good cause shown, upon application to the tax commissioner, any person required to file a producer's or purchaser's report may be allowed to compute the average daily production of a well on the basis of the average daily

production of the property on which the well is located. However, no well with an average daily production of more than one hundred barrels a day may be included in a property for purposes of determining that property's average daily production; all such wells must be reported on an individual basis.

SECTION 4. EFFECTIVE DATE. This Act shall become effective as of January 1, 1981.

Approved March 31, 1981

CHAPTER 613

SENATE BILL NO. 2338
(Senators Olin, Goodman, Redlin)
(Representatives Haugland, R. Hausauer, Kloubec)

RESOURCES TRUST FUND

AN ACT to amend and reenact section 1 and subsection 2 of section 7 of initiated measure No. 6 as enacted by the people of the state of North Dakota, to provide a statement of legislative intent concerning water development and providing for creation of a resources trust fund; providing an appropriation and transfer; and declaring an emergency.

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

SECTION 1. AMENDMENT. Section 1 of initiated measure No. 6 as adopted at the general election in 1980 is hereby amended and reenacted to read as follows:

SECTION 1. INTENT. It is the intent of the electors of the state of North Dakota and the legislative assembly to increase the funding of educational opportunities for students in the elementary and secondary schools in North Dakota, to provide funds for Grafton state school, to provide for water development and utilization and energy conservation and development programs, and to equalize the tax structure and revenue sources of the state by enactment of an excise tax to be known as the "oil extraction tax" and enactment of an income tax credit and a credit for the county's twenty-one mill property tax levy for schools.

The legislative assembly has determined that many areas within the state of North Dakota do not have adequate water supplies for municipal, domestic, livestock, light industrial, and other uses. However, adequate water supplies are essential for the social and economic stability of municipalities and rural areas. It is, therefore, declared to be in the best interest of the people of the state of North Dakota to establish a resources trust fund to be used to construct, or assist in the construction of, multiple use water supply facilities. The legislative assembly also recognizes that appropriate planning to meet current and long-range water needs for the benefit of all of the citizens of the state of North Dakota is a matter of concern and high priority. The legislative assembly further intends that revenues, generated by use of any facilities

constructed, in whole or in part, with financing from the resources trust fund, shall be deposited in the resources trust fund.

SECTION 2. AMENDMENT. Subsection 2 of section 7 of initiated measure No. 6 as adopted by the people at the general election in 1980 is hereby amended and reenacted to read as follows:

2. Ten percent shall be allocated and credited to a special trust fund, to be known as the resources trust fund, to be established in the state treasury and shall be deposited and invested as are other state funds to earn the maximum amount permitted by law~~;--provided--that~~ which income shall be deposited in the resources trust fund. Provided, the first fifteen million dollars allocated and credited to ~~this--special~~ the resources trust fund shall be appropriated by the legislative assembly for Grafton state school for the remodeling or reconstruction and equipping of existing buildings and other facilities, for the construction and equipping of new buildings and other facilities, and for providing additional staffing for that institution, as shall be provided by the legislative assembly. ~~The--principal--of--this--special--trust--fund--shall--not--be--used--for--any--other--purpose;--but--the--income--therefrom--shall--be--administered--by--the--state--industrial--commission--pursuant--to--appropriations--made--by--the--legislative--assembly--for--the--following;~~ The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and shall be available to:

   a. The state water conservation commission for planning for and construction of water supply facilities; and

   b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith. ~~Any--income--earned--by--the--special--trust--fund--that--is--not--appropriated--by--the--legislative--assembly--or--if--appropriated--but---not--expended--or--loaned--by--the--state--industrial--commission--by--the--end--of--a--fiscal--biennium--shall--be--transferred--to--the--state's--general--fund.~~

SECTION 3. APPROPRIATION.

1. There is hereby appropriated from any moneys in the general fund the sum of $983,000, or so much thereof as may be necessary, to the state water conservation commission for the biennium beginning July 1, 1981, and

ending June 30, 1983. This appropriation is not subject to the provisions of section 54-27-10.

2. The moneys appropriated by this section shall be used by the state water conservation commission to contract for preliminary designs for a water supply facility for supplementation of the water resources of Dickinson and the area of North Dakota south and west of the Missouri River with water supplies from the Missouri River for multiple purposes including domestic, rural water district, and municipal uses. The plan shall utilize a pipeline delivery system. The preliminary designs shall be submitted to the legislative council, or its designee, on or before October 1, 1982.

3. The state water commission may use all or any part of the moneys herein appropriated to match any federal funds available for such purposes.

4. The first nine hundred eighty-three thousand dollars allocated and credited to the resources trust fund, following the collection and transfer of fifteen million dollars as provided for in section 2 of this Act, shall be transferred by the state treasurer to the general fund.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 30, 1981

CHAPTER 614

SENATE BILL NO. 2185
(Committee on Finance and Taxation)
(At the request of the Tax Department)

"SPECIAL FUEL" DEFINED

AN ACT to amend and reenact subsection 4 of section 57-52-03, section 57-52-04, and subsection 3 of section 57-53-01 of the North Dakota Century Code, relating to the taxation of agriculturally derived fuels.

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

SECTION 1. AMENDMENT. Subsection 4 of section 57-52-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and shall include all gases and liquids which meet the specifications as determined by the state laboratories department pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state laboratories department to be heating oil pursuant to the provisions of section 19-10-10, and agriculturally derived alcohol if used in a pure state or if blended with another agriculturally derived liquid, except that it does not include either motor vehicle fuels as defined in section 57-54-03, or antifreeze as defined by section 19-16.1-02.

SECTION 2. AMENDMENT. Section 57-52-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-52-04. TAX IMPOSED - EXEMPTIONS. There is hereby levied and imposed an excise tax of eight cents per gallon [3.79 liters] 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 shall be exempt from the tax imposed by this chapter, provided that the sale

or delivery of special fuel for use in a motor vehicle shall not be exempt. Provided, however, the tax imposed by this section on agriculturally derived alcohol if used in a pure state or if blended with another agriculturally derived liquid shall be four cents per gallon. Said tax shall attach at the time of sale, delivery, or transfer of title of such special fuel to a special fuel user. Such tax shall be collected from the special fuel user by the special fuel dealer and paid over to the state tax commissioner as hereinafter provided. Except as prohibited by section 57-50-05.1, the tax imposed herein shall be refundable when used for nonhighway purposes, and the provisions and procedures of chapter 57-50 relating to the refund of motor fuel taxes shall apply to the tax imposed by this chapter, provided that the amount refunded for any special fuel shall not include the amount of tax imposed by section 57-53-02 on the sale of that fuel.

SECTION 3. AMENDMENT. Subsection 3 of section 57-53-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and shall include all gases and liquids which meet the specifications as determined by the state laboratories department pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state laboratories department to be heating oil pursuant to the provisions of section 19-10-10, and agriculturally derived alcohol if used in a pure state or if blended with another agriculturally derived liquid, except that it does not include either motor vehicle fuel defined in section 57-54-03, or antifreeze as defined by section 19-16.1-02.

Approved March 11, 1981

CHAPTER 615

HOUSE BILL NO. 1424
(Conmy)

SPECIAL FUELS TAX ON BLENDED FUEL

AN Act to provide a four-cent per gallon tax on diesel fuel blended with recovered oil.

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

SECTION 1. TEMPORARY TAX ON CERTAIN BLENDED FUELS. Notwithstanding section 57-52-04, from July 1, 1981, through June 30, 1983, the tax imposed on fuel consisting of a blend of diesel fuel and not less than twenty percent recovered oil shall be four cents per gallon.

Approved March 31, 1981

CHAPTER 616

SENATE BILL NO. 2182
(Committee on Finance and Taxation)
(At the request of the Tax Department)

FUEL DEALER'S BOND AND METHANOL TAX RATE

AN ACT to amend and reenact sections 57-52-06, 57-54-05, and 57-54-08 of the North Dakota Century Code, relating to the special and motor fuels tax bonding requirements, and the imposition of the motor fuel tax.

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

SECTION 1. AMENDMENT. Section 57-52-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-52-06. SPECIAL FUEL DEALER'S BOND.

1. Except as hereinafter provided no special fuel dealer's license shall be issued to any person or continued in force unless such person has furnished a surety bond in such form and amount as the state tax commissioner shall require, but not less than the amount of five hundred dollars, to secure his compliance with this chapter and the payment of all taxes, interest, and penalties due or to become due hereunder.

2. The state tax commissioner may, at his discretion, waive the filing of a bond if, upon investigation, he finds such bond may be waived without impairing or jeopardizing the revenue collections of this state, or in lieu of such bond, securities, including letters of credit, approved by the tax commissioner in such amounts as he may prescribe, may be deposited with him, which securities shall be kept in the custody of the tax commissioner and may be sold by him at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax, penalties or interest due. All moneys deposited as security with the tax commissioner under the provisions of this subsection shall be paid by the tax commissioner to the state treasurer and shall be credited by the treasurer 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 tax commissioner shall certify that information to the director of accounts and purchases who shall transmit the money to the tax commissioner who shall apply the money deposited by the person so much thereof as is necessary to satisfy the tax, penalty, and interest due. The tax commissioner when in his judgment it is no longer necessary to require the deposit to be maintained by the person, shall certify that information to the director of accounts and purchases who shall pay the unused money to the person entitled thereto.

SECTION 2. AMENDMENT. Section 57-54-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-54-05. FORM AND CONTENTS OF APPLICATION FOR DEALER'S LICENSE - FEE - BOND. To procure a license as a dealer in motor vehicle fuel, an applicant shall file with the state tax commissioner an application upon a form prescribed and furnished by the state tax commissioner. Such application shall contain:

1. The name under which the applicant intends to transact business~~;~~.

2. If a partnership, the name and address of each of the several persons constituting the firm~~;~~.

3. If a domestic corporation, the corporate name, the date of incorporation, and the names of the directors and corporate officers~~;~~.

4. If a foreign corporation, the corporate name, the state where and the time when incorporated, the name of the resident agent, the location of each place of business, and the date on which such business was established~~;--and~~.

5. Any other information the state tax commissioner may require. Such application shall be signed and verified by the owner of the business, if an individual, partnership, or unincorporated association, and by any authorized officer, if a corporation. At the time of applying for a license, the applicant shall pay to the state tax commissioner as a license fee the sum of two dollars. Such fee shall be paid into the state treasury and credited to the general fund.

6. The state tax commissioner, if he deems it necessary, may require a dealer, as a condition precedent to the issuance of a license, to furnish a bond guaranteeing the payment of the motor fuel tax collected by the dealer in an amount

not less than one thousand dollars. Such bond shall be subject to approval by the state tax commissioner.

7. In lieu of such bond, securities, including letters of credit, approved by the tax commissioner in such amounts as he may prescribe, may be deposited with him, which securities shall be kept in the custody of the tax commissioner and may be sold by him at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax, penalties or interest due. All moneys deposited as security with the tax commissioner under the provisions of this subsection shall be paid by the tax commissioner to the state treasurer and shall be credited by the treasurer into a special fund to be known as the "motor vehicle fuel 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 tax commissioner shall certify that information to the director of accounts and purchases who shall transmit the money to the tax commissioner who shall apply the money deposited by the person or so much thereof as is necessary to satisfy the tax, penalty, and interest due. The tax commissioner, when in his judgment it is no longer necessary to require the deposit to be maintained by the person, shall certify that information to the director of accounts and purchases who shall pay the unused money to the person entitled thereto.

SECTION 3. AMENDMENT. Section 57-54-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-54-08. TAX IMPOSED ON MOTOR VEHICLE FUELS - TAX REDUCED FOR AGRICULTURALLY DERIVED ALCOHOL-BLENDED FUELS. There is hereby imposed a tax of eight cents per gallon [3.79 liters] on all motor vehicle fuel sold or used in this state. Provided, however, the tax imposed by this section on gasoline sold which contains a minimum ten percent blend of an agricultural ethyl alcohol or methanol whose purity is at least ninety-nine percent alcohol shall be four cents per gallon [3.79 liters]. The tax imposed by this section shall be collected by the dealer from the consumer on all sales. Sales of fuel in the original package may be made to a licensed dealer, and he shall have the option of collecting the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer shall be liable for the tax thereon.

Approved March 5, 1981

CHAPTER 617

SENATE BILL NO. 2178
(Committee on Finance and Taxation)
(At the request of the Tax Department)

COAL CONVERSION FACILITY PRIVILEGE TAX

AN ACT to create and enact a new section to chapter 57-60, relating to refunds of overpayments; and to amend and reenact sections 57-60-04, 57-60-05, 57-60-08, and 57-60-11 of the North Dakota Century Code, relating to payment, assessment, and refund of taxes for coal conversion facilities and to hearings and appeals in connection therewith.

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

SECTION 1. AMENDMENT. Section 57-60-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-04. PAYMENT OF TAXES ~~ON~~ FOR PLANTS OTHER THAN ELECTRICAL GENERATING PLANTS - WHEN TAXES DUE - WHEN DELINQUENT.

1. The taxes imposed by this chapter on operators of coal conversion facilities other than electrical generating plants shall be levied by the tax commissioner on or before April fifteenth of each year. Each operator of a coal conversion facility subject to the taxes imposed by subsections 1 and 3 of section 57-60-02 shall annually on or before April first file a report with the commissioner in such form and containing such information as the commissioner may prescribe and demand. Such report shall state the total amount of gross receipts derived and synthetic natural gas produced by such coal conversion facility during the preceding calendar year. On or before May first of each year, the commissioner shall notify in writing each operator of a coal conversion facility subject to the taxes imposed by subsections 1 and 3 of section 57-60-02 of the amount of tax imposed. Any person aggrieved by the amount of tax levied ~~against any facility~~ by the commissioner may make application in writing within fifteen days of notification to the commissioner for an abatement hearing which shall be granted not later than fifteen days after the receipt of the application. The

commissioner may grant or reject in whole or in part any plea for abatement, and upon conclusion of the hearing shall proceed to make a final levy against the applicant.

2. The taxes levied under subsections 1 and 3 of section 57-60-02 shall become due and payable to the commissioner on the fifteenth day of June in the year in which such taxes are levied. Such taxes shall become delinquent on the first day of July following, and, if not paid on or before such date, shall be subject to a penalty as provided in section 57-60-09.

SECTION 2. AMENDMENT. Section 57-60-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-05. PAYMENT OF TAXES ON ELECTRICAL GENERATING PLANTS - WHEN TAXES DUE - WHEN DELINQUENT. The taxes imposed by this chapter on operators of electrical generating plants shall be due within thirty days after the end of each calendar quarter, and, if not received by the thirtieth day, shall become delinquent and shall be collected as herein provided. The commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax, and when such a request is granted, the tax shall not be delinquent until the extended period has expired. The tax commissioner shall require a report to be filed quarterly by each person subject to the taxes imposed by subsection 2 of section 57-60-02, in such form as the commissioner shall prescribe, to provide such information as the commissioner deems necessary for the proper administration of this chapter.

SECTION 3. AMENDMENT. Section 57-60-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-08. COMMISSIONER TO COMPUTE TAX ON INCORRECT ~~RETURNS~~ OR OMITTED REPORTS.

1. The commissioner shall have the power and authority to ascertain and determine whether or not any report or remittances filed with him are correct, and if the person filing such report has made an untrue or incorrect report or remittance or has failed to make the required report, the commissioner shall ascertain the correct amount of taxes due, and give immediate written notice to the person filing the incorrect ~~return~~ report or remittance or who failed to file the required report. Any person receiving notice from the commissioner that he has filed an incorrect ~~return~~ report or remittance or failed to file the required report shall remit the tax assessed by the commissioner within fifteen days of such notice unless within fifteen days of the notice such person makes application in writing to the commissioner for a hearing

under chapter 28-32 before the commissioner. The tax shall become delinquent if within fifteen days of the notice it is not paid or an application for a hearing is not made. ~~Any person aggrieved by a decision of the tax commissioner may make application in writing within fifteen days of notification for a hearing which shall be granted not later than fifteen days after receipt of the application. The commissioner may accept or reject, in whole or in part, the contentions of the applicant at the hearing, and upon conclusion of the hearing shall proceed to make a final determination of taxes due. Such taxes~~ Taxes assessed by decision of the commissioner pursuant to chapter 28-32 shall, if not paid, become delinquent five days after the ~~conclusion of the hearing~~ time for appeal from the commissioner's decision has expired, except ~~in such cases where a person shall appeal such assessment~~ that if an appeal from the commissioner's decision is taken to the district court of Burleigh County, ~~in which case they~~ such taxes, if not paid, shall become delinquent five days following final judicial determination.

2. If a person has filed an incorrect report or has failed to file a report as required by this chapter, the commissioner shall have six years from the date that the report was first due within which to give the notice provided in subsection 1 of taxes due, except that where false or fraudulent information is given in a report or where the failure to file a report is due to the fraudulent intent or the willful attempt of the taxpayer in any manner to evade the tax, no time limitation for giving the notice of taxes due shall apply.

SECTION 4. AMENDMENT. Section 57-60-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-11. APPEAL FROM DECISION OF TAX COMMISSIONER. Any person aggrieved because of any action or decision of the commissioner under the provisions of this chapter may ~~appeal therefrom~~ within fifteen days of written notification thereof from the commissioner make application in writing to the commissioner for a hearing to be governed by the provisions of chapter 28-32 and may appeal the commissioner's decision following such hearing to the district court of Burleigh County as provided in chapter 28-32.

SECTION 5. A new section to chapter 57-60 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

REFUND OF OVERPAYMENTS. If it shall appear that as a result of a mistake an overpayment of a tax, penalty, or interest was made which was not due under the provisions of this chapter, then such amount shall be credited against any amount due under this chapter from the person who made the erroneous payment or shall be refunded

to such person, provided that the person entitled to the overpayment makes a written claim for it to the commissioner within six years after the date the overpayment was received by the commissioner. If a refund is authorized by the commissioner, he shall certify the amount of the refund, the reason for it, and the name of the person entitled to it to the department of accounts and purchases which shall thereupon draw a warrant for such amount on the funds to which the overpayment was credited.

Approved March 9, 1981

CHAPTER 618

SENATE BILL NO. 2239
(Senators Sorum, Bakewell, Wright)
(Representatives O. Hanson, Nagel, Houmann)

COAL SEVERANCE TAX EXEMPTION FOR SPACE HEATING

AN ACT to create and enact a new section to chapter 57-61 of the North Dakota Century Code to provide an exemption for coal used for space heating purposes and for coal used by the state and political subdivisions.

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

SECTION 1. A new section to chapter 57-61 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

SEVERANCE TAX EXEMPTION FOR COAL USED FOR SPACE HEATING PURPOSES AND BY THE STATE AND POLITICAL SUBDIVISIONS. No severance tax shall be imposed on coal used primarily for heating buildings in this state, including the heating of buildings with steam created by the burning of coal, nor shall any severance tax be imposed on coal used by the state or any political subdivision of the state. The coal mine owner or operator shall require the person purchasing the coal for heating of buildings, for resale to consumers for heating of buildings, or for use by the state or any political subdivision of the state to certify the amount of the coal purchased which will be used for heating purposes or by the state or any political subdivision. Coal used by a person, other than the state or a political subdivision of the state, who purchases the coal primarily for a purpose other than the heating of buildings or for the generation of electricity for multiple uses is not exempt from the severance tax.

Approved March 26, 1981

CHAPTER 619

SENATE BILL NO. 2180
(Committee on Finance and Taxation)
(At the request of the Tax Department)

COAL SEVERANCE TAX ASSESSMENT, PAYMENT, AND REFUND

AN ACT to create and enact a new section to chapter 57-61 of the North Dakota Century Code, relating to refunds of overpayments; and to amend and reenact sections 57-61-04, 57-61-05, 57-61-07, and 57-61-08 of the North Dakota Century Code, relating to returns, payments, assessment, and refund of taxes for coal severance tax purposes, and hearings and appeals in connection therewith.

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

SECTION 1. AMENDMENT. Section 57-61-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-61-04. TAX COMMISSIONER TO COMPUTE TAX ON INCORRECT OR OMITTED RETURNS.

1. The state tax commissioner shall have the power and authority to ascertain and determine whether or not any ~~report~~ return or remittances filed with him are correct, and if the owner or operator has made an untrue or incorrect ~~report~~ return or remittance or has failed to make the required return, the commissioner shall ascertain the correct amount of taxes due, and give immediate notice to the owner or operator filing the incorrect return or remittance or who failed to file the required return. Any coal mine operator or owner receiving notice from the tax commissioner that he has filed an incorrect return or remittance or failed to file the required return shall remit the tax assessed by the commissioner within fifteen days of such notice unless within fifteen days of the notice such person makes application in writing to the commissioner for a hearing under chapter 28-32 before the commissioner. The tax shall become delinquent if within fifteen days of the notice it is not paid or an application for a hearing is not made. ~~Any owner or operator aggrieved by a decision of the tax commissioner~~

~~may--make--application--in--writing-within-fifteen-days-of notification-for-a-hearing--which--shall--be--granted--not later--than-fifteen-days-after-receipt-of-the-application. The-tax-commissioner-may-grant-or-reject,-in-whole--or--in part,--the--contentions--of-the-owner-or-operator-and-upon conclusion-of-the-hearing-shall-proceed-to--make--a--final determination--of-taxes-due.--Such-taxes~~ Taxes assessed by decision of the commissioner pursuant to chapter 28-32 shall, if not paid, become delinquent five days after the ~~conclusion--of--the--hearing~~ time for appeal from the commissioner's decision has expired, except ~~in-such-cases where-an-owner-or-operator-shall--appeal--such--assessment~~ that if an appeal from the commissioner's decision is taken to the district court of Burleigh County, ~~in--which case--they~~ such taxes if not paid shall become delinquent five days following final judicial determination.

2. If an owner or operator has filed an incorrect return or has failed to file a return as required by this chapter, the commissioner shall have six years from the date that the return was first due within which to give the notice provided in subsection 1 of taxes due, except that where false or fraudulent information is given in a return or where the failure to file a return is due to the fraudulent intent or the willful attempt of the owner or operator in any manner to evade the tax, no time limitation for giving the notice of taxes due shall apply.

* SECTION 2. AMENDMENT. Section 57-61-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-61-05. PENALTY ON DELINQUENCY - FAILURE TO FILE ~~REPORTS~~ RETURNS. Where the severance tax provided for in this chapter shall become delinquent, it shall, as a penalty for such delinquency, bear interest at the rate of eight percent per annum. If the quarterly ~~report~~ return is not filed within thirty days after the end of any quarter and taxes due paid, the tax commissioner shall notify the delinquent owner or operator of such delinquency, and if such ~~report~~ return and remittance are not filed within an additional fifteen days, the tax commissioner shall notify the public service commission, which shall forthwith suspend such owner's or operator's license or permit until such time as payment is received, or the issues settled to the satisfaction of the tax commissioner.

SECTION 3. AMENDMENT. Section 57-61-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-61-07. APPEAL FROM DECISION OF TAX COMMISSIONER. Any person aggrieved because of any action or decision of the tax commissioner under the provisions of sections 57-61-01 through 57-61-08 may ~~appeal~~ within fifteen days of written notification thereof from the commissioner make application in writing to the

* NOTE: Section 57-61-05 was also amended by section 9 of House Bill No. 1198, chapter 583.

commissioner for a hearing to be governed by the provisions of chapter 28-32 and may appeal the commissioner's decision following such hearing to the district court of Burleigh County as provided in chapter 28-32.

SECTION 4. AMENDMENT. Section 57-61-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-61-08. RULES AND REGULATIONS - BOND. The tax commissioner is hereby authorized and empowered to prescribe and promulgate all necessary rules and regulations for the purpose of making and filing of all ~~reports~~ returns required hereunder and otherwise necessary to the enforcement of sections 57-61-01 through 57-61-08, and may, at his option and discretion, require a sufficient bond from any coal mine operator or owner charged with the making and filing of ~~reports~~ returns and the payment of the taxes herein imposed, and said bond shall run to the state of North Dakota and shall be conditioned upon the making and filing of ~~reports~~ returns as required by law or regulation, and for the prompt payment, by the principal therein, of all taxes justly due the state by virtue of the provisions of sections 57-61-01 through 57-61-08.

SECTION 5. A new section to chapter 57-61 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

REFUND OF OVERPAYMENTS. If it shall appear that as a result of a mistake an overpayment of a tax, penalty, or interest was made which was not due under the provisions of this chapter, then such amount shall be credited against any amount due under the provisions of this chapter from the person who made the erroneous payment or shall be refunded to such person, provided that the person entitled to the overpayment makes a written claim for it to the state tax commissioner within six years after the date the overpayment was received by the commissioner. If a refund is authorized by the tax commissioner, he shall certify the amount of the refund, the reason for it, and the name of the person entitled to it to the department of accounts and purchases which shall thereupon draw a warrant for such amount on the funds to which the overpayment was credited.

Approved March 5, 1981

CHAPTER 620

HOUSE BILL NO. 1457
(Freborg)

COAL DEVELOPMENT FUND DEPOSIT AND ALLOCATION

AN ACT to amend and reenact section 57-61-10 and subsection 3 of section 57-62-02 of the North Dakota Century Code, relating to payments of coal severance tax revenues to the coal development fund and to the distribution of revenues within counties on a timely basis.

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

SECTION 1. AMENDMENT. Section 57-61-10 of the 1979 Supplement to 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 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 2. AMENDMENT. Subsection 3 of section 57-62-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Twenty 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 in each county bears to the total number of tons [metric tons] of coal severed in the state during such quarterly period. Such allocations shall be apportioned by the county treasurer within fifteen days from the date the moneys are received from the state treasurer as follows:

* NOTE: Subsection 3 of section 57-62-02 was also amended by section 1 of House Bill No. 1512, chapter 623.

a. If the tipple of a 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 subsection 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 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 according to this subsection shall be allocated as follows:

(1) Thirty percent shall be paid by the county treasurer of the coal-producing county to the incorporated cities of that 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 a 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 county treasurer of the coal-producing county 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 a 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 a 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 county director of tax equalization of the coal-producing county to certify to the treasurer of the same county 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 a currently active coal mining operation and their assessed valuations.

(3) Thirty percent shall be apportioned by the county treasurer of the coal-producing county to school districts within that 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 county 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 county treasurer of the coal-producing county 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 school children from the coal-producing county combined with all the school children certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tipple of a currently active coal mining operation in the coal-producing county.

Approved March 11, 1981

CHAPTER 621

HOUSE BILL NO. 1502
(Representatives Goetz, Timm)
(Senators R. Christensen, Wenstrom)

ENERGY DEVELOPMENT IMPACT OFFICE

AN ACT to amend and reenact section 57-62-01, subsections 1 and 2 of section 57-62-02, sections 57-62-03, 57-62-04, 57-62-05, and 57-62-06 of the North Dakota Century Code, providing for an energy development impact office and changing the name and powers of the coal development impact office.

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

SECTION 1. AMENDMENT. Section 57-62-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-01. DEFINITIONS. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Coal development" means the mining of coal and industries directly related to the processing of coal, including, but not limited to: the generation of electricity from coal or coal products, coal gasification, coal liquefaction, and the manufacture of fertilizer from coal.

2. "Impacted city" means a city which demonstrates actual or anticipated extraordinary expenditures caused by coal or oil and gas development and the growth incidental thereto.

3. "Impacted county" means a county which demonstrates actual or anticipated extraordinary expenditures caused by coal or oil and gas development and the growth incidental thereto.

4. "Impacted school district" means a public school district which demonstrates actual or anticipated extraordinary expenditures caused by coal or oil and gas development and the growth incidental thereto.

5. "Impacted taxing district" means a taxing district as defined in subsection 7 which demonstrates actual or

anticipated extraordinary expenditures caused by coal or oil and gas development and the growth incidental thereto.

6. "Oil and gas development" means the exploration for and production of oil and gas and industries directly relating to the refining or processing of the oil or gas.

7. "Taxing district" means any political subdivision, other than those included in subsections 2 through 4, empowered by law to levy taxes.

* SECTION 2. AMENDMENT. Subsections 1 and 2 of section 57-62-02 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Thirty-five percent shall be credited to a special fund in the state treasury for distribution through grants by the ~~coal~~ 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 ~~credited to a special~~ deposited in a permanent trust fund in the state treasury ~~to~~, to be known as the coal development trust fund, pursuant to article X, section 21 of the Constitution of the State of North Dakota. Those funds held in trust and administered by the board of university and school lands on the effective date of this Act 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 to be 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 invest such funds as are not loaned 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 such trust 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 3. AMENDMENT. Section 57-62-03 of the 1979 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 development impacted counties, cities, and school districts

* NOTE: Subsection 2 of section 57-62-02 was also amended by section 1 of Senate Bill No. 2190, chapter 622.

from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. 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 ~~coal~~ 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 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. The terms of the loan 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 amount withheld by the state treasurer as payment of interest shall be deposited in the general fund and the amount withheld by the state treasurer as 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 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. 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 4. AMENDMENT. Section 57-62-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-04. ~~COAL~~ ENERGY DEVELOPMENT IMPACT OFFICE - APPOINTMENT OF DIRECTOR. There is hereby created ~~a coal~~ an energy development impact office, the director of which shall be appointed by and serve at the pleasure of the board of university and school lands. The director's appointment shall be confirmed by the senate. The director shall have knowledge of state and local government and shall have experience or training in the fields of taxation and accounting. The salary of the director shall be set by the board of university and school lands within the limits of legislative appropriations. The director may employ such other persons as may be necessary and may fix their compensation within the appropriation made for such purpose. The board of university and school lands shall fill any vacancy in the position of director in the same manner as listed above and, in addition, shall serve as an appeals board under rules promulgated by the board of university and school lands to reconsider grant applications for aid under this chapter which have been denied by the director. All action by the board of university and school lands, including appointment of a director, shall be by majority vote.

SECTION 5. AMENDMENT. Section 57-62-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-05. POWERS AND DUTIES OF ~~COAL~~ ENERGY DEVELOPMENT IMPACT DIRECTOR. The ~~coal~~ energy development impact director shall:

1. Develop a plan for the assistance, through financial grants for services and facilities, of counties, cities, school districts, and other political subdivisions in a coal development ~~impact area~~ and oil and gas development impact areas.

2. Establish procedures and provide proper forms to political subdivisions for use in making application for funds for impact assistance as provided in this chapter.

3. Make grants to counties, cities, school districts, and other taxing districts as provided in this chapter and within the appropriations made for such purposes. In determining the amount of impact grants for which political subdivisions are eligible, the amount of revenue to which such political subdivisions will be entitled from taxes upon the real property of coal and oil and gas development plants and from other tax or fund distribution formulas provided by law shall be considered.

SECTION 6. AMENDMENT. Section 57-62-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-06. LEGISLATIVE INTENT AND GUIDELINES ON IMPACT GRANTS. The legislative assembly intends that the moneys appropriated to, and distributed by, the ~~coal~~ energy development impact office for

grants are to be used by grantees to meet initial impacts affecting basic governmental services, and directly necessitated by coal development and oil and gas development impact. As used in this section, "basic governmental services" do not include activities relating to marriage or guidance counseling, services or programs to alleviate other sociological impacts, or services or facilities to meet secondary impacts. All grant applications and presentations to the ~~coal~~ energy development impact office shall be made by an appointed or elected government official.

SECTION 7. LEGISLATIVE INTENT. It is the intent of the legislative assembly that any moneys appropriated to carry out the provisions of this Act be expended by the energy development impact office solely for grants to taxing districts for oil and gas development impact, and that these funds not be commingled with coal development impact moneys.

Approved March 31, 1981

CHAPTER 622

SENATE BILL NO. 2190
(Committee on Finance and Taxation)
(At the request of the Coal Development Impact Office)

COAL SEVERANCE TAX TRUST FUND

AN ACT to amend and reenact subsection 2 of section 57-62-02 of the North Dakota Century Code, relating to allocation of moneys in the coal development funds; and to declare an emergency.

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 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Fifteen percent shall be ~~credited--to~~ deposited in a ~~special~~ permanent trust fund in the state treasury ~~to~~ pursuant to article X, section 21 of the Constitution of the State of North Dakota. Those funds held in trust and administered by the board of university and school lands on the effective date of this Act 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 ~~to--be~~ and administered by the board of university and school lands for loans to 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 ~~such~~ the trust shall be used first to replace uncollectable 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.

* NOTE: Subsection 2 of section 57-62-02 was also amended by section 2 of House Bill No. 1502, chapter 621.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval and shall apply to all funds deposited in the coal development fund and apportioned by the state treasurer on or after January 1, 1981.

CHAPTER 623

HOUSE BILL NO. 1512
(Representatives Martin, Knudson)
(Senator Quail)

COAL SEVERANCE TAX ALLOCATION DEFINITIONS

AN ACT to amend and reenact subsection 3 of section 57-62-02 of the North Dakota Century Code, relating to the allocation and distribution of coal severance tax moneys distributed to counties; 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 57-62-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Twenty 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 ~~in~~ at each ~~county~~ mining operation bears to the total number of tons [metric tons] of coal severed in the state during such quarterly period. Such allocations shall be apportioned as follows:

   a. If the tipple of ~~a~~ 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 ~~subsection~~ 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.

* NOTE: Subsection 3 of section 57-62-02 was also amended by section 2 of House Bill No. 1457, chapter 620.

(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 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) of this subdivision, as follows:

(1) Thirty percent shall be paid by the county treasurer of the coal-producing county to the incorporated cities of that 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 a 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 county treasurer of the coal-producing county 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 a 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 a 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 county director of tax equalization of the coal-producing county to certify to the treasurer of the same county 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 a the currently active coal mining operation and their assessed valuations.

(3) Thirty percent shall be apportioned by the county treasurer of the coal-producing county to school districts within that 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 county 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 county treasurer of the coal-producing county 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 school children from the coal-producing county combined with all the school children certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tipple of a 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 more than one hundred fifty thousand tons [metric tons] of coal in a coal-producing county during the quarterly period.

(b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [metric tons] of coal are mined in the 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 [metric tons] of coal are mined in the 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 [metric tons] of coal are mined in the quarterly period.

(e) In computing each amount to be paid as provided in paragraph (1), (2), or (3) of this subdivision for coal severance tax revenue from coal mined during a quarterly period, the treasurer of the coal-producing county 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 period.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 31, 1981

WAREHOUSING AND DEPOSITS

CHAPTER 624

HOUSE BILL NO. 1543
(Nicholas)

WAREHOUSE LICENSE FEES, STORAGE RATES, AND CONTRACTS

AN ACT to amend and reenact sections 60-02-07, 60-02-17, and 64-01-05 of the North Dakota Century Code, relating to license fees for public warehouses, storage rates for grain, and the number of pounds per bushel of sunflowers.

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

SECTION 1. AMENDMENT. Section 60-02-07 of the 1979 Supplement to 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 to expire on the first day of August of each year for each public warehouse in operation in this state. No license so issued shall describe more than one 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 license fee which must accompany the application shall be ~~twenty~~ one hundred dollars for a warehouse of a bushel capacity of ~~one~~ two hundred ~~fifty~~ thousand [~~5285.86~~ 7047.8 cubic meters] or less, ~~thirty~~ two hundred dollars for a warehouse of a bushel capacity of ~~one~~ two hundred ~~fifty~~ thousand and one to and including ~~three~~ five hundred thousand [~~5285.89~~ 7047.83 to and including ~~10571.72~~ 17619.54 cubic meters], ~~forty--dollars--for--a warehouse--of-a-bushel-capacity-of-three-hundred-thousand-and-one-to and-including-four--hundred--thousand--[10571.76--to--and--including 14095.63--cubic--meters],--fifty-dollars-for-a-warehouse-of-a-bushel capacity-of-four-hundred-thousand-and--one--to--and--including--five hundred--thousand-[14095.66-to-and-including-17619.54-cubic-meters],~~ and ~~sixty~~ two hundred fifty dollars for a warehouse of a bushel capacity of five hundred thousand and one [17619.57 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 cash slips, scale tickets, storage tickets, and checks of but one series are issued for the grain stored 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 2. AMENDMENT. Section 60-02-17 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-17. WAREHOUSE AND STORAGE CONTRACT - STORAGE RATES - TERMINAL DELIVERY. A warehouse receipt shall contain, either on its face or reverse side, the following warehouse and storage contract:

"This grain is received, insured, and stored subject to the following charges: ~~one-fifteenth~~ one-tenth of one cent per net bushel [35.24 liters] per day, except for dry edible beans which shall be subject to a daily storage rate fixed at the time of delivery no greater than one-half of one cent per net hundredweight [45.36 kilograms] per day, provided, however, that no storage shall be charged for grain so stored for fifteen days from date of delivery if such grain is sold within such fifteen-day period; however, if such grain is not sold within the fifteen days, storage charges shall commence from the date a warehouse receipt was issued. All grain received for storage shall be subject to a charge of seven cents per net bushel [35.24 liters], except for flax which shall be subject to a charge of seven cents per gross bushel [35.24 liters]~~,~~ and dry edible beans which shall be subject to a charge of ten cents per net hundredweight [45.36 kilograms]. Grain purchased by the warehouseman shall be exempt from the receiving and redelivery charges. Upon surrender of this receipt and payment or tender of a delivery charge per gross bushel [35.24 liters] of five cents on flax, three dollars per net hundredweight [45.36 kilograms] on dry edible beans, and five cents per net bushel [35.24 liters] on all other grains and all other stated lawful charges accrued up to the time of ~~said~~ surrender of this receipt, the above amount, kind, and grade of grain will be delivered to the person named above or ~~his~~ the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, ~~on his~~ upon demand, shall be delivered back to ~~him~~ the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of the above charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at ~~such~~ the terminal point. Nothing in this receipt ~~shall be construed to require~~ requires the delivery of the identical

grain specified herein, but an equal amount of grain of the same kind and grade shall be delivered ~~to him~~."

SECTION 3. AMENDMENT. Section 64-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-01-05. STANDARD WEIGHT OF BUSHEL. In contracts for the sale or storage of any of the following articles, the term "bushel" shall mean the number of pounds avoirdupois herein stated:

1. Alfalfa, sixty pounds;
2. Apples, fifty pounds;
3. Apples, dried, twenty-eight pounds;
4. Barley, forty-eight pounds;
5. Beans, sixty pounds;
6. Beans, white runner pole, fifty pounds;
7. Beans, broad windsor, forty-seven pounds;
8. Beans, lima, fifty-five pounds;
9. Blue grass seed, fourteen pounds;
10. Bran, twenty pounds;
11. Beets, sixty pounds;
12. Buckwheat, forty-two pounds;
13. Broom corn seed, thirty pounds;
14. Bromus inermis, fourteen pounds;
15. Corn, shelled, fifty-six pounds;
16. Corn, sweet, forty-eight pounds;
17. Corn, in the ear, seventy pounds;
18. Clover seed, sixty pounds;
19. Coal, stone, eighty pounds;
20. Chestnuts, fifty pounds;
21. Cucumbers, forty-eight pounds;
22. Carrots, forty-five pounds;

23. Cranberries, thirty-six pounds;

24. Flaxseed, fifty-six pounds;

25. Hempseed, fifty pounds;

26. Hickory nuts, fifty pounds;

27. Hungarian grass seed, forty-eight pounds;

28. Lime, eighty pounds;

29. Millet, fifty pounds;

30. Oats, thirty-two pounds;

31. Onions, fifty-two pounds;

32. Onions, bottom sets, thirty-two pounds;

33. Onions, top sets, twenty-eight pounds;

34. Orchard grass seed, fourteen pounds;

35. Potatoes, sweet, forty-six pounds;

36. Potatoes, Irish, sixty pounds;

37. Peas, sixty pounds;

38. Peanuts, twenty-two pounds;

39. Peaches, dried, twenty-eight pounds;

40. Pears, forty-five pounds;

41. Parsnips, forty-two pounds;

42. Plastering hair, unwashed, eight pounds;

43. Plastering hair, washed, four pounds;

44. Rye, fifty-six pounds;

45. Rapeseed, fifty pounds;

46. Rutabagas, fifty-two pounds;

47. Rhubarb, fifty pounds;

48. Salt, eighty pounds;

49. Speltz, forty pounds;

50. Sorghum seed, fifty-seven pounds;

51. Sunflowers, twenty-five pounds;

52. Turnips, sixty pounds;

~~52.~~ 53. Timothy seed, forty-five pounds;

~~53.~~ 54. Tomatoes, fifty pounds;

~~54.~~ 55. Wheat, sixty pounds;

~~55.~~ 56. Walnuts, fifty pounds.

Approved March 18, 1981

CHAPTER 625

SENATE BILL NO. 2129
(Committee on Industry, Business, and Labor)
(At the request of the Public Service Commission)

PUBLIC WAREHOUSE SURETY BOND DURATION

AN ACT to amend and reenact section 60-02-09 of the North Dakota Century Code, relating to the duration of surety bonds of public warehouses.

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

SECTION 1. AMENDMENT. Section 60-02-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-09. BOND FILED BY TRACK BUYER OR PUBLIC WAREHOUSEMAN. Before any license is issued to any public warehouseman or track buyer under this chapter, the applicant for such license shall file a bond with the commission which shall:

1. Be in a sum not less than five thousand dollars for any one warehouse~~;~~.

2. ~~Cover the period of the license;~~ 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 an endorsement with the commission evidencing that the bond continues in effect.

3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in such warehouse~~;~~.

4. Be conditioned:

   a. For the faithful performance of his duties as public warehouseman or track buyer~~;~~.

   b. For compliance with the provisions of law and the rules and regulations of the commission relating to

the storage and purchase of grain by such warehouseman or track buyer~~;~~.

5. Specify the location of each public warehouse intended to be covered by such bond~~;~~.

6. Be, at all times, in a sufficient sum to protect the holders of outstanding storage receipts and cash tickets or checks~~;--and~~.

7. Not accrue to the benefit of any person entering into deferred payments contracts or other credit arrangements with a track buyer or public warehouseman.

8. In no event shall the aggregate liability of the surety under a bond accumulate for each successive license period during which such bond is in force but shall be limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The commission may require such increases in the amount of any bond, from time to time, as it may deem necessary for the protection of the holders of storage receipts and cash tickets or checks. The surety on such a bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept a bond executed by personal sureties in lieu of a surety bond when, in its judgment, such personal surety bond properly will protect the holders of storage receipts and cash tickets or checks. One bond only need be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, or corporation, and such bond shall be construed to cover such elevators, mills, or warehouses, as a whole and not a specific amount for each.

Approved March 6, 1981

WATERS

CHAPTER 626

HOUSE BILL NO. 1159
(Kloubec)

WATER CONSERVATION COMMISSION MEMBERSHIP

AN ACT to amend and reenact section 61-02-04 of the North Dakota Century Code to expand the membership of the state water conservation commission.

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

SECTION 1. AMENDMENT. Section 61-02-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-04. STATE WATER CONSERVATION COMMISSION - MEMBERS - TERMS - QUALIFICATIONS. The state water conservation commission shall consist of the governor, commissioner of agriculture, and ~~five~~ seven other members to be appointed by the governor who shall take into account reasonable geographic considerations in making such appointments. The governor may appoint a representative to serve in his stead at such meetings as he may be unable to attend. The ~~five~~ seven appointive members of the commission shall be appointed for a term of six years each with their terms of office so arranged that ~~one term~~ two terms and not more than ~~two~~ three terms shall expire on the first day of July of each odd-numbered year. Each appointive member shall be a qualified elector of the state and shall be subject to removal by judicial procedure. In case of a vacancy, the vacancy shall be filled by appointment by the governor. Before entering upon the discharge of his official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers. The state water conservation commission may also be known and referred to as the "State Water Commission".

Approved March 16, 1981

CHAPTER 627

HOUSE BILL NO. 1540
(Vander Vorst, Berg, Jacobsen, Marsden, A. Olson)

WATER PROJECT INTERIM FINANCING NOTES

AN ACT to create and enact thirteen new sections to chapter 61-02 of the North Dakota Century Code, relating to the state water commission's authority to borrow money and issue interim notes to provide tax-exempt construction period financing for works and projects authorized in chapter 61-02; and to amend and reenact section 61-02-09 of the North Dakota Century Code, relating to the state water commission.

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

SECTION 1. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

BORROWING ON INTERIM NOTES - EXPENSES PAID AND LOANS MADE FROM PROCEEDS - ISSUANCE OF NOTES. The commission, pursuant to appropriate resolution, and in order to carry out the business of developing the water resources of this state as provided in this chapter, may borrow money and issue interim financing notes (the terms "interim notes" or "notes" may, unless the context demands otherwise, be used in this Act in lieu of the term "interim financing notes") in evidence thereof in order to provide owners with tax-exempt construction period financing. Such construction period financing may include the costs of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance.

SECTION 2. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM NOTES GUARANTEED BY UNITED STATES AGENCY OR INSTRUMENTALITY - LIMITATIONS. In addition to its other powers, the commission may enter into interim financing and loan agreements with any owner or owners to loan the proceeds of the commission's interim notes to any owner or owners for works or projects authorized by this chapter anywhere within this state and to adopt the necessary resolution therefor, without regard to the limitations, provisions, or requirements of any other law, except those of this chapter.

Before any such agreement can be entered into, an agency or instrumentality of the United States government, including, but not limited to, the farmers home administration or the old west regional commission, or any agency of this state, including but not limited to, the Bank of North Dakota, must have committed itself to make a grant or loan to such owner or owners. Under this section the commission may only provide interim financing less than or equal to the federal or state grant or loan commitment on each project and may not apply the proceeds of such interim notes and financing to any purpose other than expenses allowed by section 1 of this Act and the project or works for which the loan agreement is made. Interim notes authorized by this Act shall not be considered revenue bonds under section 61-02-46, and the proceeds of any such notes shall not be part of any commission fund as enumerated in section 61-02-64, and need not be deposited in the state treasury.

SECTION 3. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM FINANCING - PROPER AUTHORITY REQUIRED. Before entering into any loan agreement under section 2 of this Act, the commission shall be satisfied by opinion of the attorney general, by an examination of relevant charters, resolutions, minutes, and other documents, or by other sufficient means that the owner or owners receiving such interim financing has the authority and power to construct the project or works, borrow these funds, and enter into the loan agreement. The commission shall also be so satisfied that all procedures, resolutions, and other things necessary to exercise such authority and power have been followed or properly performed.

SECTION 4. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM FINANCING - INDEPENDENT REVIEW OF FEASIBILITY OF PROJECT. Before issuing any interim notes pursuant to section 1 of this Act, the commission shall conduct a review of the feasibility of the project or works to ensure that projected water consumption, operating costs, construction costs, revenues, and other statistics are reliable and that the project will be able to pay its expenses. The commission shall state the findings of its review in a motion entered in the minutes of its proceedings.

SECTION 5. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM FINANCING - PROCEEDS PLEDGED AS SECURITY - ASSIGNMENT TO STATE WATER COMMISSION OF RIGHTS TO PROCEEDS. Any interim financing agreement pursuant to section 2 of this Act shall provide that the owner or owners receiving the proceeds of such interim financing shall pledge and dedicate the proceeds of its loan or grant from the United States or the state as security for the interim notes issued pursuant to the loan agreement. In addition, the execution of any interim financing agreement under section 2 of this Act shall constitute an assignment to the commission of the

right to receive the proceeds of the federal or state loan or grant so far as is necessary to secure the interim notes issued pursuant to the agreement and in preference to any other obligation whatsoever of the owner or owners receiving the interim financing. It shall not be necessary for the financing agreement, trust indentures, or any other document relating to the interim financing agreement to be filed or recorded in order for the assignment to the commission to be perfected.

SECTION 6. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

TERMS OF INTERIM NOTES - EXTENSION OF MATURITY DATES. Any resolution authorizing the issuance of interim notes shall specify the principal amount, rate of interest and maturity date, but not to exceed three years from date of issue, and such other terms as may be specified in such resolutions. The time of payment of any such notes may be extended for a period of not exceeding two years from the maturity date thereof.

SECTION 7. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

PLEDGE OF REVENUES TO SECURE INTERIM FINANCING NOTES. All interim financing notes and the interest thereon must be secured by a pledge of, and be payable from, any grant or loan to be made by an agency or instrumentality of the United States government or the state of North Dakota, as specified in section 2 of this Act, and in connection with such project or works.

SECTION 8. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

ADDITIONAL COVENANTS AND CONDITIONS TO SECURE INTERIM FINANCING NOTES. The commission, in order to further secure the payment of the interim financing notes, is authorized and empowered to make any other or additional covenants, terms and conditions, and to do and perform such acts as may be necessary, convenient, or desirable in order to secure payment of its interim financing notes, and to make the interim financing notes more acceptable to lenders. Exercise of authority pursuant to this section shall be consistent with the provisions of this chapter.

SECTION 9. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

REGISTRATION OF INTERIM FINANCING NOTES - INTEREST PAYMENT - REDEMPTION PRIOR TO MATURITY. The commission may provide for the registration of interim financing notes in the name of the owner either as to principal alone, or as to both principal and interest, on such terms and conditions as the commission may determine by the resolution authorizing their issue. Interest on the notes may be made payable semiannually, annually, or at maturity, however, the first interest payment period may be less than six months. The

notes may be made redeemable, prior to maturity, at the option of the commission, in the manner and upon the terms fixed by the resolution authorizing their issuance.

SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

EXECUTION AND ATTESTATION OF INTERIM FINANCING NOTES - SALE. The interim financing notes shall be executed by the chairman or the vice chairman of the commission and shall be attested by the signature of the state engineer. The signature of the chairman or vice chairman, and the state engineer, and any other signatures on appurtenant coupons, may be facsimiles. The notes shall be sold at private or public sale in such manner, at such rate of interest, and at such price as the commission shall by resolution determine.

SECTION 11. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

BOND PROVISIONS APPLICABLE TO INTERIM FINANCING. The provisions of sections 61-02-49, 61-02-50, sections 61-02-59 through 61-02-62, inclusive, and section 61-02-65, relating to bonds shall also apply to notes issued pursuant to section 1 of this Act.

SECTION 12. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM FINANCING NOTES NOT A STATE OBLIGATION - PAYMENT RESTRICTED TO REVENUES - NOTES NOT A LIEN. Interim financing notes issued by the commission under this chapter shall not be in any way a debt or liability of this state and shall not constitute a loan of the credit of this state or create any debt or debts, liability or liabilities on behalf of this state, or be or constitute a pledge of the faith and credit of this state, but all such notes shall be payable solely from funds pledged or available for their payment as authorized in this chapter. Such notes shall not constitute a charge, lien nor encumbrance, legal or equitable, upon any property of the commission, other than funds received pursuant to an interim financing agreement.

Each note issued under this chapter shall recite in substance that the note, including interest thereon, is payable solely from a loan or grant to be made by an agency or instrumentality of the United States government, or North Dakota, and that the note does not constitute a debt of the commission within the meaning of any constitutional or statutory limit.

SECTION 13. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM NOTES AS LEGAL INVESTMENTS AND SECURITY. Notwithstanding any restrictions contained in any other law, this state and all public officers, boards and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any notes issued by the state water commission pursuant to this chapter, and such notes shall be authorized security for any and all public deposits.

SECTION 14. AMENDMENT. Section 61-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-09. COMMISSION A PUBLIC CORPORATION - AGENCY OF STATE. The commission shall be a public corporation with all of the powers and authority possessed by such a corporation in the performance of its duties. The commission may sue and be sued, plead and be impleaded, and contract and be contracted with, in its corporate name. The commission in the exercise of all its powers and in the performance of all of its duties shall be ~~deemed to be an agency of~~ the state of North Dakota functioning in its sovereign and governmental capacity.

Approved March 16, 1981

CHAPTER 628

HOUSE BILL NO. 1099
(Committee on Natural Resources)
(At the request of the Water Conservation Commission)

APPEALS FROM WATER COMMISSION OR STATE ENGINEER ACTION

AN ACT to create and enact a new section to chapter 61-02 and a new section to chapter 61-03 of the North Dakota Century Code, relating to appeals from decisions of the state water conservation commission and the state engineer.

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

SECTION 1. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

HEARING - APPEALS FROM DECISION OF STATE WATER CONSERVATION COMMISSION. Except as more specifically provided in this title, any person aggrieved because of any action or decision of the commission under the provisions of this title shall have the right to a hearing by the commission and shall have the right to appeal from the decision of the commission on such hearing, all in accordance with the provisions of chapter 28-32.

SECTION 2. A new section to chapter 61-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

HEARING - APPEALS FROM DECISION OF STATE ENGINEER. Except as more specifically provided in this title, any person aggrieved because of any action or decision of the state engineer under the provisions of this title shall have the right to a hearing by the state engineer and shall have the right to appeal from the decision of the state engineer on such hearing, all in accordance with the provisions of chapter 28-32.

Approved March 2, 1981

CHAPTER 629

HOUSE BILL NO. 1106
(Committee on Natural Resources)
(At the request of the Water Conservation Commission)

WATER USE, DEFINITIONS, AND FEES

AN ACT to amend and reenact subsections 3 and 8 of section 61-04-01.1, sections 61-04-02 and 61-04-04.1 of the North Dakota Century Code, relating to definitions, permits for beneficial use of water, and water permit application fees.

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

SECTION 1. AMENDMENT. Subsections 3 and 8 of section 61-04-01.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Domestic use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including, but not limited to heating, drinking, washing, sanitary and culinary uses; irrigation of land not exceeding one acre in area for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, ~~whether~~ when the water is supplied by the individual~~,-a-municipal government,-or-by-a--privately--owned--public--utility--or other-agency~~ or family unit.

8. "Municipal or public use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by unincorporated communities, subdivision developments, rural water systems, and other entities, whether supplied by the government or by a privately owned public utility or other agency~~,~~ or entity, for primarily domestic purposes, as defined herein.

SECTION 2. AMENDMENT. Section 61-04-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-02. PERMIT FOR BENEFICIAL USE OF WATER REQUIRED. Any person, before commencing any construction for the purpose of appropriating waters of the state or before taking waters of the state from any constructed works, shall first secure a water permit from the state engineer unless such construction or taking from such constructed works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law. However, immediately upon completing any constructed works for domestic or livestock purposes or for fish, wildlife, and other recreational uses the water user shall notify the state engineer of the location and acre-feet [1233.48 cubic meters] capacity of such constructed works, dams, or dugouts. Regardless of proposed use, however, all water users shall secure a water permit prior to constructing an impoundment capable of retaining more than twelve and one-half acre-feet [15,418.52 cubic meters] of water or the construction of a well from which more than twelve and one-half acre-feet of water per year will be appropriated. ~~Although no water permit shall be~~ In those cases where a permit is not required of a landowner or his lessee to appropriate less than twelve and one-half acre-feet of water from any source for domestic or livestock purposes or for fish, wildlife, and other recreational uses, those appropriators may apply for water permits in order to clearly establish a priority date; the state engineer may provide by regulation for the waiver of any fee or hearing for such applications. An applicant for a water permit to irrigate need not be the owner of the land to be irrigated.

SECTION 3. AMENDMENT. Section 61-04-04.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-04.1. APPLICATION FEES. The following fees shall accompany an application and shall be paid by the state engineer into the general fund of the state treasury:

1. For municipal or public use in municipalities or other entities of 2500 population or over according to the latest federal census----------$250
2. For municipal or public use in municipalities or other entities of less than 2500 population according to the latest federal census----------$150
3. For irrigation----------$100
4. For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet or less ----------$150
5. For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet ----------$500
6. For recreation, livestock, or fish and wildlife----------$ 50
7. For commercial recreation ----------$100

Approved March 3, 1981

CHAPTER 630

SENATE BILL NO. 2301
(Senators Iszler, Dotzenrod, Moore)
(Representative Metz)

WATER PERMIT APPLICATION LIMITATION

AN ACT to create and enact a new section to chapter 61-04 of the North Dakota Century Code, relating to time limitations concerning water permit applications.

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

SECTION 1. A new section to chapter 61-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

TIME LIMITATIONS CONCERNING APPLICATIONS. An individual may not apply for a permit or permits for irrigation which, if approved, would enable the individual, at any one time, to hold a conditional permit or permits for more than seven hundred twenty acre-feet of water which has not been applied to beneficial use. Applications submitted in violation of this section shall not be assigned a priority date and shall be returned to the applicant by the state engineer. This section shall not apply to applications for water permits from the Missouri River or to applications submitted by irrigation districts organized pursuant to title 61. For the purposes of this section, an individual means any person, including his or her spouse, and dependents thereof within the meaning of the Internal Revenue Code (26 U.S.C. 152).

Approved March 31, 1981

CHAPTER 631

HOUSE BILL NO. 1372
(Representative Strinden)
(Senator Streibel)

WEATHER MODIFICATION ACTIVITY RESPONSIBILITY

AN ACT to place responsibility for administration of weather modification activities under the direction and supervision of the state water commission; to repeal chapter 2-07 of the North Dakota Century Code, relating to the weather modification board, a division of the aeronautics commission; and to provide a penalty.

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

SECTION 1. EXTENDED STATE OWNERSHIP OF WATER SOVEREIGNTY OVER MOISTURE. In order that the state may share to the fullest extent in the benefits already gained through fundamental research and investigation on new and improved means for predicting, influencing, and controlling the weather, for the best interest, general welfare, health, and safety of all the people of the state, and to provide proper safeguards in applying the measures for use in connection therewith in order to protect life and property, it is deemed necessary and hereby declared that the state of North Dakota claims its sovereign right to use the moisture contained in the clouds and atmosphere within the state boundaries. All water derived as a result of weather modification operations shall be considered a part of North Dakota's basic water supply and all statutes, rules, and regulations applying to natural precipitation shall also apply to precipitation resulting from cloud seeding.

SECTION 2. DECLARATION OF POLICY AND PURPOSE. The legislative assembly finds that weather modification affects the public health, safety, and welfare, and that, properly conducted, weather modification operations can improve water quality and quantity, reduce losses from weather hazards, and provide economic benefits for the people of the state. Therefore, in the public interest, weather modification shall be subject to regulation and control, and research and development shall be encouraged. To minimize possible adverse effects, weather modification operations shall be carried on with proper safeguards, and accurate information shall be recorded concerning such operations and the benefits obtained therefrom by the people of the state.

SECTION 3. DEFINITIONS. As used herein, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota weather modification board which, in the exercise of the powers granted herein, shall have all of the powers of an administrative agency as defined in chapter 28-32.

2. "Controller" refers to any licensee duly authorized in this state to engage in weather modification activities.

3. "Hail suppression" refers to the activation of any process which will reduce, modify, suppress, eliminate, or soften hail formed in clouds or storms.

4. "Increasing precipitation" refers to the activation of any process which will actually result in greater amounts of moisture reaching the ground in any area from a cloud or cloud system than would have occurred naturally.

5. "Initiating precipitation" refers to the process of causing precipitation from clouds that could not otherwise have occurred naturally or inducing precipitation significantly earlier than would have occurred naturally.

6. "Operation" means the performance of any weather modification activity undertaken for the purpose of producing or attempting to produce any form of modifying effect upon the weather within a limited geographical area or within a limited period of time.

7. "Research and development" means exploration, field experimentation, and extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production of models, devices, equipment, materials, and processes.

8. "Weather modification" means and extends to the control, alteration, and amelioration of weather elements including man-caused changes in the natural precipitation process, hail suppression or modification and alteration of other weather phenomena including clouds, temperature, wind direction and velocity, and the initiating, increasing, decreasing, and otherwise modifying by artificial methods of precipitation in the form of rain, snow, hail, mist, or fog through cloud seeding, electrification, or by other means to provide immediate practical benefits.

SECTION 4. NORTH DAKOTA WEATHER MODIFICATION BOARD - CREATED - MEMBERSHIPS. There is hereby created a North Dakota weather modification board which shall be a division of the state water commission. The board shall be composed of the director of the state aeronautics commission, a representative of the environmental

section of the state department of health, the state engineer, and one additional board member from each of seven districts established by section 5 of this Act. The governor shall initially appoint one board member for each of the seven districts from a list of three candidates given to him by weather modification authorities in each district and:

1. When the term of office of any board member from any district is about to expire.

2. When a vacancy has occurred, or is about to occur, in the term of office of a board member from any district for any reason other than expiration of term of office.

Beginning on July 1, 1983, the term of office for the board shall be arranged so that not less than three nor more than four terms shall expire on the first day of July of each odd-numbered year. Therefore, board members appointed on July 1, 1983, from districts II, IV, and VI shall serve for two-year terms, and board members appointed on July 1, 1983, from districts I, III, V, and VII, shall serve for four-year terms. Thereafter, board members from each district shall serve for a four-year term of office except in the event the governor shall appoint a member for an unexpired term, in which case the member shall serve only for the unexpired portion of the term. In the event any district fails to furnish a list to the governor, or if there are no weather modification authorities under this Act within a district, then the governor shall appoint a board member of his choice residing within such district.

SECTION 5. WEATHER MODIFICATION BOARD - DISTRICTS CREATED. Members of the weather modification board shall be appointed from districts containing the following counties:

District I - Burke, Divide, McKenzie, Mountrail, and Williams;
District II - Bottineau, McHenry, McLean, Renville, Sheridan, and Ward;
District III - Benson, Cavalier, Eddy, Foster, Griggs, Nelson, Pierce, Ramsey, Rolette, Steele, Towner, and Wells;
District IV - Cass, Grand Forks, Pembina, Richland, Traill, and Walsh;
District V - Barnes, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Sargent, and Stutsman;
District VI - Burleigh, Emmons, Grant, Mercer, Morton, Oliver, and Sioux;
District VII - Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope, and Stark.

SECTION 6. DIRECTION AND SUPERVISION BY STATE WATER COMMISSION - INDEPENDENT FUNCTIONS RETAINED BY BOARD. The powers, functions, and duties of the North Dakota weather modification board shall be administered under the direction and supervision of the North Dakota state water commission. The board shall retain the

quasi-judicial, quasi-legislative, advisory, budgetary, rulemaking, and other functions vested in it, which shall be exercised in accordance with policy and guidelines for weather modification activities as established by the state water commission.

SECTION 7. WEATHER MODIFICATION BOARD - OFFICERS - COMPENSATION. All members of the weather modification board, with the exception of the chairman, shall be voting members. The board shall elect annually from its membership a chairman, vice chairman, and secretary. A majority of the members shall constitute a quorum for the purpose of conducting the business of the board. Board members who are not full-time salaried employees of this state shall receive compensation in the amount provided in subsection 1 of section 54-35-10, and shall be reimbursed for their mileage and expenses in the amounts provided by sections 44-08-04 and 54-06-09. All other members of the board shall be reimbursed for necessary travel and other expenses incurred in the performance of the business of the board in the amounts provided in section 44-08-04 and 54-06-09.

SECTION 8. POWERS AND DUTIES OF WEATHER MODIFICATION BOARD. The board may exercise the following powers and shall have the following duties:

1. The board shall appoint an executive director to serve at its discretion, and perform such duties as assigned by the board.

2. The board shall authorize the employment of whatever staff it deems necessary to carry out the provisions of this Act. The executive director shall hire the staff, subject to the approval of the board.

3. The board shall adopt rules concerning qualifications, procedures and conditions for issuance, revocation, suspension, and modification of licenses and permits; standards and instructions governing weather modification operations, including monitoring and evaluation; recordkeeping and reporting, and the board shall establish procedures and forms for such recordkeeping and reporting. The board may adopt all other rules necessary to the administration of this Act. The provisions of chapter 28-32 shall apply to this Act, and rules of the board shall be published in the North Dakota Administrative Code.

4. The board may contract with any person, association, partnership, or corporation, with the federal government, and with any county or groups of counties, as provided in section 20 of this Act, to carry out weather modification operations and shall, in connection with regulated weather modification operations, carry on monitoring and evaluation activities.

5. The board may order any person who is conducting weather modification operations in violation of this Act, or any rules adopted pursuant to it, to cease and desist from such operations and the order shall be enforceable in any court of competent jurisdiction within this state.

6. The board may cooperate and contract with any private person or any local, state, or national commission, organization, or agency engaged in activities similar to the work of the board and may make contracts and agreements to carry out programs consistent with the purpose and intent of this Act. The board may also, in accordance with law, request and accept any grants of funds or services from any such commission, organization, person, or agency, and expend such funds or use such services to carry out the provisions of this Act.

7. The board shall administer and enforce the provisions of this Act and do all things reasonably necessary to effectuate the purposes of this Act.

SECTION 9. WEATHER MODIFICATION BOARD TO ESTABLISH RESEARCH AND DEVELOPMENT PROGRAM. The board shall establish a program of weather modification research and development in this state. The board shall supervise and coordinate all research and development activities in the state or research and development activities outside of the state participated in or conducted by any state institution or state or county agency.

SECTION 10. REPORT TO GOVERNOR. The board shall prepare and transmit a biennial report to the governor describing the research and development activities conducted during the biennium, and the outcome thereof, and other related work and activities. The report shall be submitted in accordance with sections 54-06-03 and 54-06-04.

SECTION 11. LICENSE AND PERMIT REQUIRED. Except as provided in section 12 of this Act, no person may engage in weather modification activities without both a professional weather modification license issued under section 14 of this Act and a weather modification permit issued under section 16 of this Act. Licenses shall expire on December thirty-first of the year of issuance.

SECTION 12. EXEMPTIONS. The board may provide by rule for exemption of the following activities from the license and permit requirements of section 11 of this Act:

1. Research and development conducted by the state, political subdivisions of the state, colleges and universities of the state, agencies of the federal government, or bona fide research corporations.

2. Weather modification operations of an emergency nature taken against fire, frost, or fog.

Exempted activities shall be conducted so as not to unduly interfere with weather modification operations conducted under a permit issued in accordance with this Act.

SECTION 13. OPERATOR DEEMED TO BE DOING BUSINESS WITHIN STATE - RESIDENT AGENT. A person shall be deemed doing business within this state when engaged in weather modification operations within the boundaries of this state, and shall, if not already qualified to do business within this state under chapter 10-22, prior to conducting such operations, file with the secretary of state an authorization designating an agent for the service of process.

SECTION 14. ISSUANCE OF LICENSE - FEE. The board shall provide, by rule, the procedure and criteria for the issuance of a license. The board, in accordance with its rules, shall issue a weather modification license to each applicant who:

1. Pays a license fee of fifty dollars.

2. Demonstrates competence to engage in weather modification operations, to the satisfaction of the board.

3. Designates an agent for the service of process pursuant to section 13 of this Act or chapter 10-22.

Each license issued by the board shall be nontransferable and shall expire on December thirty-first of the year of issuance. A license shall be revocable for cause at any time prior to such date if, after holding a hearing upon due notice, the board shall determine that cause for revocation exists. License fees collected by the board shall be paid into the general fund in the state treasury.

SECTION 15. REVOCATION OR SUSPENSION OF LICENSE. The board may suspend or revoke a license for any of the following reasons:

1. Incompetency.

2. Dishonest practice.

3. False or fraudulent representations made in obtaining a license or permit under this Act.

4. Failure to comply with any provisions of this Act, or any rules adopted by the board pursuant to this Act.

SECTION 16. PERMIT REQUIRED - ISSUANCE OF PERMIT - FEE.

1. A weather modification permit shall be required for each geographical area, as set out in the operational plan required by subdivision b of this subsection, in which a person intends to conduct weather modification operations.

Each permit issued by the board shall expire on December thirty-first of the year of issuance. A person applying for a weather modification operational permit shall file an application with the board, in such form as the board shall prescribe, which application shall be accompanied by an application fee of twenty-five dollars and contain such information as the board, by rule, may require, and in addition, each applicant for a permit shall:

a. Furnish proof of financial responsibility as provided by section 19 of this Act.

b. Set forth a complete operational plan for the proposed operation which shall include a specific statement of its nature and object, a map of the proposed operating area which specifies the primary target area for the proposed operation and shows the area that is reasonably expected to be affected by such operation, a statement of the approximate time during which the operation is to be conducted, a list of the materials and methods to be used in conducting the operation, and such other detailed information as may be needed to describe the operation.

2. The board may issue the permit if it determines that:

a. The applicant holds a valid weather modification license issued under this Act.

b. The applicant has furnished satisfactory proof of financial responsibility in accordance with section 19 of this Act.

c. The applicant has paid the required application fee.

d. The operation:

(1) Is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of this state, advance scientific knowledge, or otherwise carry out the purposes of this Act.

(2) Is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, welfare, or the environment.

(3) Will not adversely affect another operation for which a permit has been issued.

e. The applicant has North Dakota workmen's compensation insurance coverage for all employees working in North Dakota.

f. The applicant has furnished a performance bond as required by section 34 of this Act.

g. The applicant has complied with such other requirements for the issuance of permits as may be required by the rules and regulations of the board.

h. The applicant has furnished a bid bond in accordance with section 35 of this Act.

i. The applicant has registered, with the North Dakota aeronautics commission, any aircraft and pilots intended to be used in connection with the operation.

To carry out the objectives and purposes of this Act, the board may condition and limit permits as to primary target areas, time of the operation, materials, equipment, and methods to be used in conducting the operation, emergency shutdown procedure, emergency assistance, and such other operational requirements as may be established by the board.

3. The board shall issue only one permit at a time for operations in any geographical area if two or more operations conducted in such an area according to permit limitations might adversely interfere with one another.

4. All permit fees collected by the board shall be paid into the general fund of the state treasury.

SECTION 17. HEARINGS. The board shall give public notice, in the official county newspaper or newspapers in the area of the state reasonably expected to be affected by operations conducted under a permit, that it is considering an application for such permit, and, if objection to the issuance of the permit is received by the board within twenty days, the board may hold a public hearing for the purpose of obtaining information from the public concerning the effects of issuing the permit. The board may also hold such hearings upon its own motion.

SECTION 18. REVOCATION, SUSPENSION, OR MODIFICATION OF PERMIT. The board may suspend or revoke a permit if it appears that the permittee no longer has the qualifications necessary for the issuance of an original permit or has violated any provision of this Act, or any of the rules and adopted under it.

The board may revise the conditions and limits of a permit if:

1. The permittee is given notice and a reasonable opportunity for a hearing, to be held in accordance with chapter 28-32.

2. It appears to the board that a modification of the conditions and limits of a permit is necessary to protect the public's health, safety, welfare, or the environment.

If it appears to the board that an emergency situation exists or is impending which could endanger the public's health, safety, welfare, or the environment, the board may, without prior notice or hearing, immediately modify the conditions or limits of a permit, or order temporary suspension of a permit. The issuance of such an order shall include notice of a hearing to be held within ten days thereafter on the question of permanently modifying the conditions and limits or continuing the suspension of the permit. Failure to comply with an order temporarily suspending an operation or modifying the conditions and limits of a permit shall be grounds for immediate revocation of the license and permit of the person controlling or engaged in the operation.

SECTION 19. PROOF OF FINANCIAL RESPONSIBILITY. Proof of financial responsibility is made by showing to the satisfaction of the board that the permittee has the ability to respond in damages to liability which might reasonably result from the operation for which the permit is sought. Such proof of financial responsibility may be shown by:

1. Presentation to the board of proof of a prepaid noncancellable insurance policy against such liability, in an amount approved by the board.

2. Filing with the board a corporate surety bond, cash, or negotiable securities in an amount approved by the board.

SECTION 20. BOARD MAY CREATE OPERATING DISTRICTS - REPRESENTATION OF NONCONTRACTING COUNTIES. The board shall have the authority to place any county contracting with the state for weather modification operations, in such an operational district as the board shall deem necessary to best provide such county with the benefits of weather modification. In determining the boundaries of such operating districts, the board shall consider the patterns of crops within the state, climatic patterns, and the limitations of aircraft and other technical equipment. The board may assign any county which has not created a weather modification authority under this Act to an operating district solely for the purpose of representation on the operations committee of such district.

SECTION 21. DISTRICT OPERATIONS ADVISORY COMMITTEES CREATED - DUTIES.

1. There shall be a district operations advisory committee in each operations district created in accordance with section 20 for this Act. Each committee shall be composed of one commissioner of the weather modification authority from each county within such district and one member of the board of county commissioners from the county or counties assigned to the district in accordance with

section 20 of this Act. Each advisory committee shall, upon majority vote, with the concurrence of the board, prescribe rules and bylaws necessary to govern its procedures and meetings. Each committee shall evaluate weather modification operations within its respective district and make recommendations and proposals to the board concerning such operations.

2. The weather modification authority of any county authorized to contract for weather modification operations under this Act and not assigned to an operations district, shall assume the functions of the district operations committee and shall have and may exercise the powers and duties assigned to the operations committees by this Act and by the rules of the board of weather modification.

SECTION 22. WEATHER MODIFICATION AUTHORITY MAY SUSPEND OPERATIONS. Other provisions of this Act notwithstanding, the weather modification authority in any county authorized to contract for weather modification operations under this Act may suspend the county and state weather modification operation within that county.

SECTION 23. WEATHER MODIFICATION AUTHORITY CREATED BY PETITION. A weather modification authority shall be created by resolution and five commissioners appointed thereto for ten-year terms of office, by the board of county commissioners. A board of county commissioners shall not adopt a resolution creating an authority until it has received a valid petition signed by at least fifty-one percent of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding general election. The board of county commissioners shall appoint five residents of the county as weather modification authority commissioners from those names set forth in the petition and designated by the petitioners to be appointed weather modification authority commissioners. In the event any one of the five candidates named in the petition to be appointed weather modification authority commissioner is unable or refuses for any reason to accept appointment as commissioner, or is disqualified by not meeting residence requirements, as an elector in the county, the board of county commissioners shall name its own appointee for a ten-year term of office in place of any disqualified candidate selected by the petitioners. If any weather modification authority commissioner submits his resignation in writing to the board of county commissioners or becomes unable or disqualified for any reason, after accepting office, the board of county commissioners shall name its appointee as a commissioner to the weather modification authority. All vacancies occurring otherwise than by expiration of term of office shall be filled for the unexpired term.

Any weather modification authority created pursuant to this section shall expire ten years after the date of the initial appointment of the commissioners thereto. Any unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall be transferred

into the county general fund by the officers of the weather modification authority on or before the ten-year termination date provided by this section. However, all unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall remain in the name of the weather modification authority if the board of county commissioners of such county by resolution creates a weather modification authority and all its powers in accordance with section 27 of this Act.

Nothing in this section shall prevent continuation or reinstatement of a weather modification authority, provided the authority is renewed for another ten years by petition of the qualified electors in the same manner as the initial weather modification authority was created by petition of qualified electors as provided for in this Act.

In the event more than one petition is filed with the board of county commissioners on or about the same time, the petition with the highest percentage of the qualified county electors voting for the office of governor at the last preceding general election shall be selected by the board of county commissioners. However, the petition with the highest percentage must have the signatures of at least forty percent of the qualified electors in the county and the sum total of all qualified electors signing all petitions filed must equal at least sixty percent of the qualified electors in the county. In no case shall the name of the same elector appear on two or more petitions, but in such event, the name shall be stricken from both petitions.

SECTION 24. PETITION CONTENTS. The petition for the creation of a weather modification authority, and for appointment of commissioners shall contain:

1. A title with the heading: "Petition for Creation of (insert name of county) Weather Modification Authority".

2. The following paragraph: We, the undersigned qualified electors of (name of county), state of North Dakota, by this initiated petition request that the (name of county) board of county commissioners of said county create by resolution a (name of county) weather modification authority and appoint the following five qualified electors of the county to a ten-year term of office as commissioners for the (name of county) weather modification authority:

   (Here insert the name and address of each proposed commissioner for the (name of county) weather modification authority.)

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 two mills upon the net 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 section 26 of this Act, for five-year periods in accordance with section 27 of this Act.

4. A heading: "Committee for Petitioners", followed by this statement: The following electors of (name of county), state of North Dakota, are authorized to represent and act for us, and shall constitute the "Committee for the Petitioners" in the matter of this petition and all acts subsequent thereto.

5. Petition details: All signatures to such petition shall be numbered, and dated by month, day, and year. The name shall be written with residence address and post-office address including the county of residence followed by state of North Dakota.

6. An affidavit to be attached to each petition and sworn to under oath before a notary public by the person circulating each petition attesting to the fact that he circulated the petition and that each of the signatures to said petition is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector in the county in which the petition was circulated.

7. The petition must state the mills to be levied by the county for the purposes of this Act.

SECTION 25. COMMISSIONERS - COMPENSATION - MEETINGS - OFFICERS. A commissioner of a weather modification authority shall receive no compensation for his services, but shall be entitled to the necessary expense, as defined in section 44-08-04, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of appointment shall be filed with the weather modification authority.

The powers of each weather modification authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting the business of the authority and exercising its powers and for all other purposes. A majority of the commissioners shall constitute a quorum, but action may not be taken by the authority except by an affirmative vote of not less than a majority of all the commissioners.

A chairman, vice chairman, and treasurer shall be elected from among the commissioners. A weather modification authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. For such legal services as it may require, an authority may call upon the state's attorney of the county. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

Minutes shall be kept by the secretary of official meetings and shall include all official business such as contracts authorized and all authorizations for payment of weather modification authority funds to persons, organizations, companies, and corporations. All disbursements shall be approved by a majority of all the commissioners of an authority. Disbursements authorized by the authority for the payment of employee salaries, bills, contracts, services, fees, expenses, and all other obligations, shall be made by check signed by the chairman and the treasurer of the authority. Official policies shall also be entered into the minutes. An annual report shall be compiled with complete disclosure of funds expended for contracts, services, fees, salaries, and all other reimbursements, a copy of which shall be filed with the county auditor. The annual report shall be presented at a public meeting called for such purpose.

SECTION 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 two mills upon the net 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 Act.

SECTION 27. CREATION OF WEATHER MODIFICATION AUTHORITY AND ITS POWERS BY RESOLUTION. When a weather modification authority is about to expire, the board of county commissioners of any such county may by resolution authorize the creation of such weather modification authority and all its powers, including the power to certify a tax levy as provided by section 26 of this Act, for

additional five-year periods provided, the resolution authorizing the creation of such weather modification authority is adopted by the board of county commissioners before the expiration date prescribed in the preceding resolution for its termination. Upon passing such resolution for the creation of the authority, the board of county commissioners shall appoint five weather modification authority commissioners to five-year terms of office, subsequently filling vacancies in the manner prescribed by section 23 of this Act. The board of county commissioners may remove any weather modification commissioner from office whenever it appears, by competent evidence and after hearing, that the commissioner has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual drunkenness or gross incompetency.

SECTION 28. PROCEDURE FOR ABOLISHMENT OF WEATHER MODIFICATION AUTHORITY AND ALL ITS POWERS BY RECALL INITIATED PETITION. After fifty-one percent of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, shall petition the board of county commissioners of their county to recall the commissioners of a weather modification authority as created by section 23 of this Act and to abolish the county weather modification authority, the board of county commissioners shall adopt a resolution recalling all commissioners of such weather modification authority and abolishing their appointed office and the weather modification authority, until such time as a weather modification authority is created by petition in accordance with section 23 of this Act. Before adopting such a resolution, the county commissioners must find that the petition meets the requirements as to the number of qualified electors as required in this Act. If the board of county commissioners adopts a resolution recalling all commissioners of a weather modification authority and abolishing the authority, all unexpended funds remaining in the name of the authority, after all proper bills and expenses have been paid, shall be transferred to the county general fund by the weather modification authority commissioners on the effective date of the resolution. In the event there are outstanding valid bills unpaid after that date, the board of county commissioners is hereby authorized to pay such obligations from moneys in the county general fund. A recall petition shall have a title with the heading: "Recall Petition for the Abolishment of (insert name of county) Weather Modification Authority". The recall petition shall incorporate a paragraph stating its purpose in clear language and shall comply with all requirements prescribed in subsections 4, 5, and 6 of section 24 of this Act, relating to petition contents, committee for petitioners, petition details, affidavits, and persons circulating such petitions.

SECTION 29. CREATION OF WEATHER MODIFICATION AUTHORITY BY ELECTION. When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, requesting an election upon the establishment of a weather modification authority is presented to the board of county commissioners, not later than forty-five days prior to the next

countywide election, the board of county commissioners shall submit the question to the electors of the county at the next countywide election. Upon approval by a majority of the votes cast, the board of county commissioners shall, by resolution, establish a weather modification authority as described in section 23 of this Act with all powers set out in this Act, including the power to certify a tax levy as provided by section 26 of this Act.

SECTION 30. ABOLISHMENT OF WEATHER MODIFICATION AUTHORITY BY ELECTION. When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for governor in the last preceding gubernatorial election, requesting an election upon the abolishment of a weather modification authority as created in sections 27 and 29 of this Act is presented to the board of county commissioners, not later than forty-five days prior to the next countywide election, the board of county commissioners shall submit the question to the electors of the county at the next countywide election. Upon approval by a majority of the votes cast, the board of county commissioners shall abolish the weather modification authority as of December thirty-first following the election. All unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall be deposited in the general fund of the county.

SECTION 31. CREATION OF WEATHER MODIFICATION AUTHORITY BY VOTE AFTER RESOLUTION OF COUNTY COMMISSIONERS. The board of county commissioners of any county may, by resolution after a public hearing, submit the question of the creation of a weather modification authority to the electors of the county at the next countywide election. Upon approval by a majority of the votes cast, the board of county commissioners shall pass a resolution creating a weather modification authority, as described in section 23 of this Act. Such an authority shall have all powers provided by this Act, including the authority to levy a tax as provided by section 26 of this Act.

SECTION 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 Act. 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 intitial 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 Act. However, the appropriation shall not exceed an amount equal to what funds would be raised by a two-mill levy upon the net taxable valuation of the property in the county.

SECTION 33. BIDS REQUIRED - WHEN. Whenever the board of weather modification shall undertake to contract with any licensed controller in an amount in excess of ten thousand dollars in any one

year, the board shall advertise for proposals for such weather modification activities and in its proceedings with respect to bids therefor, shall substantially follow the manner and form required by the laws of this state for the purchase of supplies by the department of accounts and purchases. The board shall enter into no contract or agreement for weather modification services except with a controller, holding the permit as required by this Act, except for the purpose of gathering technical information, and making studies or surveys.

SECTION 34. PERFORMANCE BOND REQUIRED. Before the board shall contract with any controller, it shall require the controller to furnish a surety bond for the faithful performance of the contract in such amount as determined by the board, conditioned that the licensee and his agents will in all respects faithfully perform all weather modification contracts undertaken with the board and will comply with all provisions of this Act and the contract entered into by the board and the licensee.

SECTION 35. BID BOND REQUIRED. All bids submitted to the board of weather modification for operations conducted under this Act shall be accompanied by a separate envelope containing a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety company authorized to do business in this state as a guaranty that the bidder will enter into the contract if it is awarded to him.

SECTION 36. STATE IMMUNITY. Nothing in this Act shall be construed to impose or accept any liability or responsibility on the part of this state or any of its agencies, or any state officials or state employees or weather modification authorities for any injury caused by weather modification operations by any person or licensed controller as defined in this Act.

SECTION 37. LIABILITY OF CONTROLLER.

1. An operation conducted under the license and permit requirements of this Act is not an ultrahazardous or abnormally dangerous activity which makes the permittee subject to liability without fault.

2. Dissemination of materials and substances into the atmosphere by a permittee acting within the conditions and limits of his permit shall not constitute trespass.

3. Except as provided in this section and in section 36 of this Act, nothing in this chapter shall prevent any person adversely affected by a weather modification operation from recovering damages resulting from negligent or intentionally harmful conduct by a permittee.

4. The fact that a person holds a license or was issued a permit under this Act, or that he has complied with the rules adopted by the board pursuant to this Act, is not

admissible as a defense in any legal action which may be brought against him.

SECTION 38. WEATHER MODIFICATION BOARD MAY RECEIVE AND EXPEND FUNDS. The weather modification board is hereby authorized to receive and accept in the name of the state any and all funds which may be offered or become available from federal grants or appropriations, private gifts, donations or bequests, county funds, or funds from any other source, except license and permit fees, and to expend said funds for the expense of administering this Act, and, with the exception of county funds, for the encouragement of research and development in weather modification by any private person, the North Dakota state university, the university of North Dakota, or any other appropriate state, county, or public agency in this state either by direct grant, by contract, or by other means.

All federal grants, federal appropriations, private gifts, donations or bequests, county funds, or funds from any other source, except license and permit fees, received by the board shall be paid over to the state treasurer, who shall credit same to a special fund in the state treasury known as the "state weather modification fund". All proceeds deposited by the state treasurer in the state weather modification fund are hereby appropriated to the North Dakota weather modification board and shall, if expended, be disbursed by warrant-check prepared by the department of accounts and purchases upon vouchers submitted by the North Dakota weather modification board, and shall be used for the purpose of paying for the expense of administration of this Act and, with the exception of county funds, for the encouragement of research and development in weather modification by any private person, the North Dakota state university, the university of North Dakota, or any other appropriate state, county, or public agency by direct grant, by contract, or by other means.

SECTION 39. COUNTY APPROPRIATIONS - STATE TO PROVIDE FUNDS. Any county weather modification authority which has contracted with the board of weather modification for weather modification operations under this Act shall appropriate to the state weather modification fund such amount as is determined by the board of weather modification to be necessary to provide such county with weather modification operations. The board of weather modification may expend, from the state weather modification fund, such funds as it deems necessary to provide contracting counties with weather modification operations.

SECTION 40. STATE WATER COMMISSION - COMPENSATION - EXPENSES. Each member of the North Dakota state water commission shall receive the same compensation paid for other state water commission duties, for each day actually and necessarily engaged in the performance of official duties in connection with the administration of this Act. State water commission members and employees shall be reimbursed for actual and necessary expenses incurred in carrying out their official duties in the same manner and at the same rates as provided by law for state employees.

SECTION 41. PENALTY. Any person contracting for or conducting any weather modification activity without being licensed in accordance with the provisions of this Act, or otherwise violating the provisions of this Act, shall be guilty of a class B misdemeanor.

SECTION 42. REPEAL. Chapter 2-07 of the North Dakota Century Code is hereby repealed.

Approved March 11, 1981

CHAPTER 632

HOUSE BILL NO. 1077
(Legislative Council)
(Interim Natural Resources Committee)

WATER RESOURCE DISTRICTS

AN ACT to create and enact chapter 61-16.1 of the North Dakota Century Code, relating to the establishment of proposed water resource district boundaries by the state engineer; powers, duties, and responsibilities of the water resource board; revenue bonds; development of master plans; financing of water-related projects; procedures for construction of water resource projects; to amend and reenact sections 61-01-06, 61-16-05, 61-16-06, 61-16-07, 61-16-08, 61-16-09, 61-21-01, 61-21-11, and 61-21-41 of the North Dakota Century Code, relating to water management districts and watercourses and assessment drains; to repeal sections 61-01-22, 61-16-01, 61-16-10 through 61-16-51, 61-21-04, 61-21-05, 61-21-06, 61-21-07, 61-21-08, and 61-21-09 of the North Dakota Century Code, relating to drainage permits, powers and duties of water management districts, and of boards of drainage commissioners; to provide a penalty; and to provide a partial delayed effective date.

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

SECTION 1. Chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-16.1-01. LEGISLATIVE INTENT AND PURPOSE. The legislative assembly of North Dakota recognizes and declares that the general welfare and the protection of the lives, health, property, and the rights of all people of this state require that the management, conservation, protection, development and control of waters in this state, navigable or nonnavigable, surface or subsurface, the control of floods, the prevention of damage to property therefrom, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. To realize these objectives it is hereby declared to be the policy of the state to provide for the management, conservation, protection, development, and control of water resources and for the prevention of flood damage in the watersheds of this state and thereby to

protect and promote the health, safety, and general welfare of the people of this state.

The legislative assembly further recognizes the significant achievements that have been made in the management, conservation, protection, development, and control of our water and related land resources, and declares that the most efficient and economical method of accelerating these achievements is to establish water resource districts encompassing all of the geographic area of the state, and emphasizing hydrologic boundaries.

61-16.1-02. DEFINITIONS. In this chapter, unless the context or subject matter otherwise provides:

1. "Affected landowners" means landowners whose land is subject to special assessment or condemnation for a project.

2. "Assessment drain" means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage, and any artificial drain of any nature or description constructed for the purpose of drainage, including dikes and appurtenant works, which are financed in whole or in part by special assessment. This definition may include more than one watercourse or artificial channel constructed for the purpose of drainage when the watercourses or channels drain land within a practical drainage area.

3. "Commission" means the state water commission.

4. "Conservation" means planned management of water resources to prevent exploitation, destruction, neglect, or waste.

5. "District" means a water resource district.

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. "Project" means any undertaking for water conservation, flood control, water supply, water delivery, erosion control and watershed improvement, drainage of surface waters, collection, processing, and treatment of sewage, or discharge of sewage effluent, or any combination thereof, including incidental features of any such undertaking.

8. "Water resource board" means the water resource district's board of managers.

61-16.1-03. WATER RESOURCE DISTRICTS - BOUNDARIES. In furtherance of the policy set forth in section 61-16.1-01, the state engineer is hereby authorized and directed to establish proposed boundaries of water resource districts. The determinations of the state engineer shall be submitted to the legislative council, or an interim committee designated by the legislative council, for review. The proposed boundaries established by the state engineer, shall not be implemented without the enactment of appropriate enabling legislation by the forty-eighth legislative assembly. When establishing proposed boundaries the state engineer shall employ the following guidelines and criteria:

1. The primary objective shall be to establish boundaries which provide for effective coordination, planning, development, and general management of areas which have related water resource issues. To the extent that this primary objective will be accomplished, these areas shall be determined according to hydrologic patterns, utilizing recognized river basins of the state. However, existing boundaries of counties, townships, and other political subdivisions or taxing districts shall be followed wherever feasible and consistent with the primary objective of this section. Where appropriate and necessary for more efficient development and general management, two or more districts may be created within a river basin.

2. The state engineer shall prepare suggested boundaries, and shall send such suggested boundaries and associated material to each water management district and county auditor in the state. Not less than thirty days later, the state engineer shall arrange a meeting with the water management districts and county auditors in each area of the state to establish water resource district boundaries in accordance with this section. The state engineer shall then be required to hold extensive public hearings in each affected area. Notice of such public hearings shall be published at least once a week for the two consecutive weeks immediately preceding the hearing in the newspaper or newspapers of general circulation in each area, and for the same time period in the official county newspaper of each county encompassing or encompassed by, in whole or in part, the affected area. In determining and establishing the boundaries for districts, due recognition and emphasis shall be given to the wishes of the local people, the affected water management districts, and any affected county administrative officials, consistent with these guidelines and criteria.

3. Watershed boundaries shall follow approximate hydrologic patterns except where doing so would divide a section or a city, or would produce similar incongruities which might hinder the effective operation of the districts.

4. Districts shall be of sufficient size to provide adequate finances and administration for plans of improvement, and at the same time provide for optimum local representation.

61-16.1-04. MINUTES, BOOKS, AND RECORDS. The board shall keep accurate minutes of its meetings and accurate records and books of account, clearly setting out and reflecting the entire operation, management, and business of the district. These books and records shall be kept at the principal office of the district or at such other regularly maintained office or offices of the district as shall be designated by the board, with due regard to the convenience of the district, its customers, and residents. The books and records shall be open to public inspection during reasonable business hours.

61-16.1-05. BONDS OF TREASURER AND APPOINTIVE OFFICERS. The treasurer of a water resource district shall be bonded in the amount set by the water resource board but the bond shall not be less than one thousand dollars. Other district employees shall be bonded in any amount set by the board. Every officer or employee of whom a bond is required shall be deemed bonded with the state bonding fund upon notice of that appointment given to the state commissioner of insurance by the secretary of the district. Upon notification by the state bonding fund of the premium required, the district treasurer shall remit the same.

61-16.1-06. DISTRICT BUDGET - TAX LEVY - FINANCING BY SPECIAL ASSESSMENT. The fiscal year of the district shall begin July first and end June thirtieth. The board of managers shall estimate the expenses of the district before July first of each year. Estimates of district expenses may include costs of rights of way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects. The district budget may also include an amount necessary for future projects which are part of a master plan prepared and adopted pursuant to section 61-16.1-14. Upon completion and adoption of a budget covering necessary expenses, the board of managers shall send a copy of the budget to the county auditor of each county in the district. Each county auditor shall transmit the same to the board of county commissioners of his or her county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, the board shall, by resolution, levy and authorize and direct the county auditor to extend and spread upon the tax roll of the county or portion of the county in the district a tax of not to exceed four mills on each dollar of taxable valuation in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by such tax levy shall be available until expended, and if such tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the same may be accumulated. The acquisition of rights of way, easements, and the construction, operation, and maintenance of a project in a district may, in the discretion of the water resource board, be financed in

whole or in part by special assessments against property benefited by such project, or from revenues realized from general tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

61-16.1-07. DISTRICT MAY ISSUE WARRANTS IN ANTICIPATION OF TAXES LEVIED TO PAY CURRENT EXPENSES. After a water resource district has been established and organized and a water resource board has been appointed, the water resource board, for the purpose of paying current district expenses including per diem, compensation, and expenses of managers and wages or salaries of officers and employees, by resolution, may authorize and issue district warrants in anticipation of and pending collection and receipt of taxes levied. The warrants shall bear the rate of interest set by the board, which shall not exceed twelve percent per annum on those issues sold at private sale. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The district treasurer shall keep a register in which to enter each warrant issued, showing the date and amount of each warrant, the date of payment, and the amount paid in redemption thereof. All warrants shall be paid in order of their presentation for payment to the district treasurer. The warrants shall be drawn to the claimant or bearer in the same manner as a county warrant, and shall be signed by the chairman of the water resources board and countersigned by the treasurer of the district. The aggregate total amount of warrants issued in any year to pay current district expenses shall not exceed eighty percent of the district's tax levy for that year.

61-16.1-08. COUNTY TREASURER TO COLLECT AND REMIT TAXES TO DISTRICT TREASURER - INVESTMENT OF DISTRICT FUNDS - EXPENDITURE OF DISTRICT FUNDS. The treasurer of each county in which a water resource district, or a part of such district, is situated shall collect all district taxes and special assessments together with any penalty and interest thereon in the same manner as county taxes are collected, and shall, within twenty days after the close of each month, pay to the treasurer of the district those taxes and assessments collected during the preceding month, and shall notify the secretary of the district of the payment. The district treasurer shall on or before the twentieth day of each month report to each member of the board the amount of money in the district treasury, the amount of receipts in the preceding month, and items and amounts of expenditures. At each regular meeting of the board the treasurer shall submit to the board a statement of the district's finances.

Each district may invest any money in the district treasury, including money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district, in accordance with chapter 21-04.

Funds of the district shall be paid out or expended only upon the authorization or approval of the water resource board and by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or any other officer, employee, or agent of the district authorized by the treasurer to sign on behalf of the treasurer. The authorization shall be in writing and filed with the secretary of the district.

61-16.1-09. 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 board of managers of the district. 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.

61-16.1-10. POWERS OF WATER RESOURCE BOARD. Each water resource board shall have the power and authority to:

1. Sue and be sued in the name of the district.

2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby.

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, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, distribution, and use of water.

4. Procure the services of engineers and other technical experts, and employ an attorney or attorneys to assist, advise, and act for it in its proceedings.

5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation and management devices of every nature and water channels, and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district.

6. Maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within the district, and regulate streams, channels, or watercourses and the flow of water therein by changing, widening, deepening, or straightening the same, or otherwise improving the use and capacity thereof.

7. Regulate and control water for the prevention of floods and flood damages by deepening, widening, straightening, or diking the channels or floodplains of any stream or watercourse within the district, and construct reservoirs or other structures to impound and regulate such waters.

8. Make rules and regulations concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water included within the district.

9. Do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control, and regulation of the water resources of this state.

10. Construct, operate, and maintain recreational facilities, including beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles, and parking areas, and to establish and enforce rules and regulations for the use thereof.

11. Have, in addition to any powers provided in this chapter, the authority to construct an assessment drain in accordance with the procedures and provisions of chapter 61-21.

12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for its use and control both real and personal property and easements and rights of way within or without the limits of the district for all purposes authorized by law or necessary to the exercise of any other stated power.

13. Convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter.

14. Authorize and issue warrants to finance construction of water conservation and flood control projects, assess benefited property for part or all of the cost of such projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.

15. Borrow money within the limitations imposed by this chapter for projects herein authorized and pledge security for the repayment of such loans.

16. Order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert to remove from under, within, and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris and any artificial block which hinders or decreases the flow of water through such bridge or culvert.

17. Order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet [60.96 meters] of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, order, that, if such destruction is permitted, the party or parties responsible for the destruction must, when the board has determined that such destruction will cause excessive property damage from overflow flooding due to the erosion or blocking of the river channel, plant a shelterbelt which meets the specifications of the board. In the event the native woodland within such area has already been destroyed, the board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of such river channel where overflow flooding has caused extensive property damage. For purposes of this subsection, the words "riverbank" and "river channel" relate to rivers as defined in the United States geological survey base map of North Dakota, edition of 1963. The provisions of this subsection shall not be construed to limit, impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local entity to construct and maintain any flood control, irrigation, recreational, or municipal or industrial water supply project.

18. Petition any zoning authority established pursuant to chapters 11-33, 11-35, or 40-47 or section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when such zoning is required to regulate and enforce the placement erection, construction, reconstruction, repair, and use of buildings and structures to protect and promote

the health, safety, and general welfare of the public within a floodplain area. In the event such zoning authority fails to act or does not exist, the board may request the state water commission to assist it in a study to determine and delineate the floodplain area. Upon completion of such study, the board shall make suitable recommendations for the establishment of a floodplain zone to all zoning authorities and the governing bodies of all political subdivisions having jurisdiction within the floodplain area.

19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate, maintain, and repair sanitary and storm sewer systems, or combinations thereof, including sewage and water treatment plants, and regulate the quantity of sewage effluent discharged from municipal lagoons; and contract with the United States government, or any department or agency thereof, or any private or public corporation, the government of this state, or any department, agency, or political subdivision thereof, or any municipality or person with respect to any such systems.

20. Develop water supply systems, store and transport water, and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all works, facilities, improvements, and property necessary therefor.

21. Coordinate proposals for installation, modification, or construction of culverts and bridges in an effort to achieve appropriate sizing and maximum consistency of road openings. The state highway department, railroads, counties, and townships shall cooperate with the districts in this effort. Each district shall also consider the possibility of incorporating appropriate water control structures, where appropriate, as a part of such road openings.

61-16.1-11. RESPONSIBILITIES AND DUTIES OF WATER RESOURCE BOARD. Each water resource board shall have the following responsibilities and mandatory duties:

1. To meet jointly with other water resource boards within a common river basin at least twice each year at such times and places as may be mutually agreed upon for the purpose of reviewing and coordinating efforts for the maximum benefit of the entire river basin.

2. To cooperate with other water resource boards of a common river basin and provide mutual assistance to the maximum extent possible.

3. To enter into an agreement with all water resource districts of a river basin to address collectively and attempt to resolve significant water management problems of the river basin.

4. To encourage all landowners to retain water on the land to the maximum extent possible in accordance with sound water management policies, and to carry out to the maximum extent possible the water management policy that upstream landowners who have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing for proper management and control of surface waters.

5. In the planning of any surface water project which will have an impact downstream in the water resource district or another water resource district, to address and consider fully such impacts. A determination of whether to proceed with the construction of any such project shall be based on the following principles:

   a. Reasonable necessity of the project.

   b. Reasonable care to be taken to avoid unnecessary injury by fully considering all alternatives.

   c. Consideration of whether the utility or benefit accruing from the project reasonably outweighs the adverse impacts resulting from the project.

6. To require that appropriate easements be obtained in accordance with applicable state and federal law when projects will cause an adverse impact to lands of other landowners.

61-16.1-12. JOINT EXERCISE OF POWERS.

1. Two or more districts may, by agreement, jointly or cooperatively exercise any power which is authorized a board by title 61. The agreement shall state its purpose and the powers to be exercised, and shall provide for the method by which the power or powers shall be exercised. When the agreement provides for the use of a joint board, the joint board shall be representative of the boards which are parties to the agreement. Notwithstanding other provisions of law, the agreement may specify the number, composition, terms, or qualifications of the members of the joint board.

2. The districts which are parties to such an agreement may provide for disbursements from their individual budgets to carry out the purpose of the agreement. In addition, a joint board established pursuant to this section may adopt, by resolution, on or before July first of each year, a budget showing estimated expenses for the ensuing fiscal year and the proposed contributions of each member district as determined by the agreement. The boards of the member districts then shall levy by resolution, an ad valorem tax not to exceed two mills upon the real property within each district. The levy may be in excess of any other levy authorized for a district.

3. The proceeds of one-half of this levy shall be credited to the joint board's administrative fund and shall be used for regulatory activities and for the construction and maintenance of projects of common benefit to the member districts. The remainder shall be credited to the construction funds of the joint board and shall be used for the construction and maintenance of projects of common benefit to more than one district.

4. Funds may be paid to and disbursed by the joint board as agreed upon, but the method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by individual districts. Contracts let and purchases made under the agreements shall conform to the requirements applicable to contracts and purchases by individual districts. The joint board shall be accountable for all funds and reports of all receipts and disbursements to the state water commission in a manner prescribed by the commission.

5. The agreement may be continued for a definite term or until rescinded or terminated in accordance with its terms. The agreement shall provide for the disposition of any property required as the result of a joint or cooperative exercise of powers, and the return of any surplus moneys in proportion to contributions of the several contracting districts after the purpose of the agreement has been completed.

6. Residence requirements for holding office in a district shall not apply to any officer appointed to carry out any agreement.

7. This section does not dispense with procedural requirements of any other statute providing for the joint or cooperative exercise of any governmental power.

61-16.1-13. SCOPE OF BOARD'S EXTRATERRITORIAL CONTRACTUAL AUTHORITY - BOARD MAY ACQUIRE PROPERTY IN ADJOINING STATES AND PROVINCES. A water resource board shall have the right, power, and authority to enter into contracts or other arrangements for water

conservation, water supply, flood control, or other authorized projects with the United States government or any department thereof, with the Canadian government or any department thereof or any of its provinces or municipalities, with persons, railroads, or other corporations, with public corporations, and state governments of this or other states, with drainage, water resource, conservation, conservancy, or improvement districts, or other such districts in this or other states. Such contracts or arrangements can provide for cooperation or assistance in planning, constructing, maintaining, and operating such projects and in making investigations and reports thereon, and for the carrying out of any other provision of this chapter. A water resource board may purchase, lease, or acquire land or other property in adjoining states or provinces to secure outlets to construct and maintain dikes or dams, or for other purposes authorized by this chapter and may let contracts or spend money for securing such outlets or works in adjoining states or provinces. No water resource board of any water resource district shall have the right, power, or authority to connect boundary waters having different natural outlets by artificial means so that the waters of one may be discharged into the other.

61-16.1-14. MASTER PLANS.

1. Each water resource district shall prepare and adopt a master plan to include a statement of goals and objectives for each of the various water management activities in the district, such as drainage, flood control, water supply, and recreation. The master plan for each specific water management activity shall be reviewed and updated as often as deemed necessary by the district. A copy of the master plan as adopted and all revisions and updates shall be filed with the state engineer.

2. Each district shall also prepare and adopt a two-year priorities schedule which shall summarize planned district projects and financial needs of the district for at least the next two years. A copy of the priorities schedule shall be filed with the state engineer on or before May first of each even-numbered year.

3. The state engineer shall develop and make available to the districts guidelines regarding the format and general content of master plans, which shall be utilized by each district. The state engineer shall provide such assistance, within appropriate budget limitations, as may be necessary to help districts develop master plans and priority schedules.

4. The district shall give notice and hold public hearings on all proposed master plans. All comments on plans shall be reviewed by the district and alterations of the plans shall be made as are appropriate. Plans shall then be submitted to the state engineer by the district for review

and comment. Failure to reply within thirty days shall be conclusive that the plans have been endorsed by the state engineer.

5. No state funds shall be allocated or disbursed to a district, after July 1, 1985, unless that district has submitted a master plan pursuant to this section for the specific water management activity for which state funds were requested, and until the commission has determined that such funds are for projects and programs which are related to that water management activity and which are in conformance with the plans of the commission and the district.

61-16.1-15. PERMIT TO CONSTRUCT OR MODIFY DAM, DIKE, OR OTHER DEVICE REQUIRED - PENALTY. No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15418.52 cubic meters] of water shall be constructed within any water resource district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, shall be presented first to the state engineer. After receipt, the state engineer shall consider the application in such detail as he deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete his review of the application, and if he approves it, shall forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and any changes, conditions, or modifications of the state engineer, and if the same shall meet with the board's approval, the board shall forward the approved application to the applicant, and shall send a certification of its action to the state engineer. Any person constructing a dam, dike, or other device, which is capable of retaining twelve and one-half acre-feet [15418.52 cubic meters] of water, without first securing a permit to do so, as required by this section, shall be liable for all damages proximately caused by such dam, dike, or other device, and shall be guilty of a class B misdemeanor.

61-16.1-16. COMMISSION, STATE ENGINEER, AND WATER RESOURCE BOARD SHALL ENCOURAGE BOTH STRUCTURAL AND NONSTRUCTURAL ALTERNATIVES. The state water commission, state engineer, and the appropriate water resource board shall encourage both structural and nonstructural solutions to water management problems within the

district by federal and state agencies, private individuals, and public and private corporations, and shall lend their aid, counsel, and assistance to any such solutions. All structural alternatives, including dams, dikes, drains, and other works, whether constructed by public authorities or private persons, unless specifically exempted therefrom, shall be subject to all the provisions of this chapter.

61-16.1-17. DAMS OR OTHER DEVICES CONSTRUCTED WITHIN A DISTRICT SHALL COME UNDER CONTROL OF A WATER RESOURCE BOARD. All dams, dikes, and other water conservation and flood control works or devices constructed within any district, unless specifically exempted therefrom, shall, without affecting the state water commission's or the state engineer's authority relative to such works, automatically come under the jurisdiction of the water resource board for the district within which the dam, dike, work, or devices exists or is to be constructed. No changes or modification of any existing dams, dikes, or other works or devices shall be made without complying fully with the provisions of this chapter.

61-16.1-18. WHEN DAMS CONSTRUCTED BY FEDERAL AGENCY UNDER CONTROL OF WATER RESOURCE DISTRICT. Any dam, dike, or other water control device or flood control project constructed by or with the assistance of any federal agency but which is not maintained or operated by any federal agency shall become the responsibility of the water resource district where it is located. The water resource district may take any action concerning this dam, dike, or other water control device it deems feasible or necessary.

61-16.1-19. CONTRACTS FOR CONSTRUCTION OR MAINTENANCE OF PROJECT. If the cost of construction or maintenance of a project does not exceed fifteen thousand dollars, such work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of such construction or maintenance exceeds fifteen thousand dollars, the lowest and best bid shall be accepted. The water resource board shall give at least ten days' notice of the time and place where contract will be let. The notice shall be published at least once in a newspaper of general circulation in the district in which the work is to be carried on and shall be mailed to any prospective bidders known to the water resource board.

Any person receiving a contract for construction or maintenance of a project shall give a performance bond in an amount set by the water resource board, conditioned upon the proper performance of the contract within the time specified by such contract. The board shall reserve the right to reject any or all bids and may postpone the letting of contracts from time to time or to such other time and place as the board may publicly announce. Any contracts not let at the original contract letting may be let by the board at a later time after notice and in accordance with the provisions of this section. The competitive bid requirement of this section shall be waived, upon the determination of the water resource board that an emergency situation exists requiring the

prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

61-16.1-20. FINANCING PROJECT THROUGH REVENUE BONDS, GENERAL TAXES, OR SPECIAL ASSESSMENTS - APPORTIONMENT OF BENEFITS. A water resource board shall have the authority, either upon request or by its own motion, to acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project through issuance of improvement warrants or with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a combination of general ad valorem tax, special assessments, and revenue bonds. Whenever a water resource board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, such assessments shall be apportioned to and spread upon lands or premises benefited by the project in proportion to and in accordance with benefits accruing thereto. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or township which is benefited thereby. In determining assessments the water resource board shall carry out to the maximum extent possible the water management policy of this chapter that upstream landowners must share with downstream landowners the responsibility to provide for the proper management of surface waters.

61-16.1-21. FINANCING OF SPECIAL IMPROVEMENTS - PROCEDURE. When it is proposed to finance in whole or in part the construction of a project with funds raised through the collection of special assessments levied against lands and premises benefited by construction and maintenance of such project, the board shall examine the proposed project, and if in its opinion further proceedings are warranted, it shall adopt a resolution and declare that it is necessary to construct and maintain the project. The resolution shall briefly state the nature and purpose of the proposed project, and shall designate a registered engineer to assist the board. For the purpose of making examinations or surveys, the board or its employees, after written notice to each landowner, may enter upon any land on which the proposed project is located or any other lands necessary to gain access. The engineer shall prepare profiles, plans, and specifications of the proposed project and estimates of the total cost thereof. The estimate of costs prepared by the engineer shall include acquisition of right of way, and shall be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed project assessment district.

61-16.1-22. HEARING - NOTICE - CONTENTS. Upon the filing of the engineer's report provided for in section 61-16.1-21, and after satisfying the requirements of section 61-16.1-25, the board shall fix a date and place for public hearing on the proposed project.

Such place of hearing shall be in the vicinity of the proposed project and shall be convenient and accessible for the majority of the landowners subject to assessment for such project or whose property shall be subject to condemnation for the proposed project. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county or counties in which the project is or will be located the list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. Notice of such filing shall be included in the notice of hearing. Notices of the hearing shall contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing shall specify the general nature of the project as finally determined by the engineer and the board. The notice of hearing shall also specify when and where protests against such proposed project shall be filed and an assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in the newspaper or newspapers 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. The date set for such hearing shall not be less than twenty days after the first publication of the notice. A record of the hearing shall be made by the board, including a list of affected landowners present in person or by agent, and such record shall be preserved in the minutes of the meeting. Affected landowners, and the governing body of any county, township, or city to be assessed, shall be informed at the hearing of the probable total cost of the project and their individual share of such cost and the portion of their property, if any, to be condemned for such project.

61-16.1-23. 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 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 61-16.1-24, 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 61-16.1-25 and 61-16.1-26, 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. 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.

61-16.1-24. VOTING RIGHT OR POWERS OF LANDOWNERS. In order that there may be a fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed project, the voting rights of affected landowners on the question of establishing the project shall be as provided in this section. The landowner or landowners of tracts of land affected by the project shall have one vote for each dollar of assessment that his land is subject to or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed shall also have one vote for each dollar of assessment against such city, township, or city. It is the intent of this section to allow one vote for each dollar of assessment, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the votes shall be prorated among them in accordance with each owner's property interest. A written power of attorney shall authorize an agent to protest a project on behalf of any affected landowner or landowners.

61-16.1-25. ASSESSMENT OF COST OF PROJECT. Whenever the water resource board proposes to make any special assessment under the provisions of this chapter, the board, prior to the hearing required under section 61-16.1-22, shall inspect any and all lots and parcels of land, which may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be especially benefited by the construction of the work for which the assessment is made and shall assess the proportion of the total cost of acquiring right of way and constructing and maintaining such improvement in accordance with benefits received but not exceeding such benefits, against:

1. Any county, township, or city, in its corporate capacity, which may be benefited directly or indirectly thereby.

2. Any lot, piece, or parcel of land which is directly benefited by such improvement.

In determining benefits the board shall consider, among other factors, property values, degree of improvement of properties, productivity and the water management policy as expressed in section 61-16.1-20. Property belonging to the United States shall be exempt from such assessment, unless the United States has provided for the payment of any assessment which may be levied against its property for benefits received. Benefited property belonging to counties, cities, school districts, park districts, and townships shall not be exempt from such assessment and political subdivisions whose property is so assessed shall provide for the payment of such assessments, installments thereof, and interest thereon, by the levy of taxes according to law. Any county, township, or city assessed in its corporate capacity for benefits received shall provide for the payment of such assessments, installments thereof and interest thereon from its general fund or by levy of a general property tax against all the taxable property therein in accordance with law. No tax limitation provided by any statute of this state shall apply to tax levies made by any such political subdivision for the purpose of paying any special assessments made in accordance with the provisions of this chapter. There shall be attached to the list of assessments a certificate signed by a majority of the members of the board certifying that the same is a true and correct assessment of the benefit therein described to the best of their judgment and stating the several items of expense included in the assessment.

61-16.1-26. ASSESSMENT LIST TO BE PUBLISHED - NOTICE OF HEARING - ALTERATION OF ASSESSMENTS - CONFIRMATION OF ASSESSMENT LIST - FILING. After entering an order establishing the project, the board shall cause the assessment list to be published once each week for two successive 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 together with a notice of the time when, and place where, the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The date set for the hearing shall be not less than twenty days after the first publication of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which such assessments are made, or the part of such cost to be paid by special assessment. No assessment shall exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board shall then confirm the assessment list and the secretary shall attach to the list a certificate that the same is correct as confirmed by the board and thereupon shall file the list in the office of the secretary.

61-16.1-27. APPEAL TO STATE ENGINEER. After the hearing provided for in section 61-16.1-26, affected landowners, and any

political subdivision subject to assessment having not less than twenty-five percent of the possible votes, as determined by section 61-16.1-24, 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 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 the question of whether there is any benefit to the state engineer. 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.

61-16.1-28. WHEN ASSESSMENTS MAY BE MADE. After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be levied have been approved by the board, the board may direct special assessments to be levied for the payment of appropriate costs, and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as they have been ascertained. The certificate shall include the estimated construction cost under the terms of any contract, a reasonable allowance for cost of extra work which may be authorized under the plans and specifications, acquisition of right of way, engineering, fiscal agents' and attorneys' fees for any services in connection with the authorization and financing of the improvement, cost of publication of required notices, and printing of improvement warrants, cost necessarily paid for damages caused by such improvement, interest during the construction period, and all expenses incurred in making the improvement and levy of assessments.

In no event shall any contract or contracts be awarded which exceed, by twenty percent or more, the estimated cost of the project as presented to and approved by the affected landowners.

61-16.1-29. FINANCIAL REPORTS - LIABILITY FOR DEFICIENCIES. On the first Monday of each month the district treasurer shall report to the water resource board in writing the amount of money in the treasury, the receipts, if any, in the preceding month and the amount and items of expenditure during that month. The report shall be verified and filed with the secretary of the district. A verified copy of the report shall also be filed in the office of the

county auditor of each county in which the district lies and shall be open to public inspection.

During the month of June of each year the water resource board shall prepare a complete statement of the condition of the finances of the district and shall cause the same to be filed with the county auditor of each county in which the district lies on or before July first next following. Such statement shall show separately, and in detail, the condition and resources of each and every assessment fund for the payment of project warrants of the district, including the amount of any anticipated deficit and the apportionment thereof. At its July meeting next following the filing of the statement of condition of any district, the board of county commissioners shall examine the statement and make inquiry regarding same to determine whether or not the district has defaulted or may soon default on payment of its financial obligations as the same become due.

Whenever all special assessments collected for a project are insufficient to pay the special assessment warrants issued against such project, coming due within the following thirteen months, with interest, the board of county commissioners of each of the counties wherein the district lies shall advance to the district project warrant fund an amount sufficient to pay the deficiency attributable to benefited property in each county. If it appears to the board at any time that a deficiency exists or is likely to occur within one year in such project warrant fund for the payment of principal or interest due or to become due on such warrants, the board of county commissioners of each of the counties wherein the district lies, in order to forestall imminent deficiency in such fund or to promptly restore the ability of such fund to pay principal and interest punctually as the same become due, shall advance to such project fund the amount necessary to cover the anticipated deficiency attributable to benefited property in such county. In order to make such advances, the board of county commissioners of each of the counties shall levy a general tax upon the taxable property in the county, and may issue certificates of indebtedness against levies so made, or shall pay such advances from its general fund. Advances made by the county or counties shall be obligations of the district to be met out of any surplus in the district project warrant fund, and future district budgets and tax levies for the district after provision has been made for necessary current expenses. No tax limitation provided by any statute of this state shall apply to tax levies made by any county for the purpose of making any advances in accordance with the provisions of this section.

61-16.1-30. REASSESSMENT OF BENEFITS. The water resource board may at any time, or upon petition of any affected landowner or political subdivision which has been assessed after a project has been in existence for at least one year shall hold a hearing for the purpose of determining the benefits of such project to each tract of land affected. At least ten days' notice of the hearing shall be given by publication in the newspaper or newspapers having general circulation in the district and in the official county newspaper of each county in which the benefited lands are located and by mailing

notice thereof by ordinary mail to each owner of land affected by the project as determined by the records of the register of deeds or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to any reassessment of benefits carried out under this section. The board shall not be forced to make such reassessment more than once every ten years, nor shall any assessment or balance thereof supporting a project fund be reduced or impaired by reassessment or otherwise so long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest. Costs of maintenance shall be prorated in accordance with any plan for reassessment of benefits that has been adopted.

61-16.1-31. CORRECTION OF ERRORS AND MISTAKES IN SPECIAL ASSESSMENTS - REGULATIONS GOVERNING. If mathematical errors or other such mistakes occur in making any assessment resulting in a deficiency in that assessment, the board shall cause additional assessments to be made in a manner substantially complying with chapter 40-26 as it relates to special assessments.

61-16.1-32. CERTIFICATION OF ASSESSMENTS TO COUNTY AUDITOR. When a water resource board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments shall bear, which rate shall not exceed one and one-half percent above the warrant rate. Interest on unpaid special assessments shall commence on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which shall be due and payable not more than thirty years after date of the warrants to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces more than one county, to the county auditor of each county in which district lands subject to such special assessments are situated, the total amount assessed against such lands in that county and the proportion or percentage of such amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district shall also file with the county auditor of each county in which district lands lie a statement showing the cost of the project, the part thereof, if any, which will be paid out of the general taxes, and the part to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the water resource board shall prorate the costs of maintaining projects in the same proportion as were the original costs of construction or, in the event a reassessment of benefits has been adopted, the costs shall be prorated in accordance with the reassessment of benefits as authorized by section 61-16.1-41.

61-16.1-33. EXTENSION OF SPECIAL ASSESSMENTS ON TAX LISTS - COLLECTION - PAYMENT TO WATER RESOURCE DISTRICT. The county auditor

of each county shall extend the special assessments certified to the county auditor on the tax list of the district for the current year and such assessments, with interest and penalties, if any, shall be collected by the county treasurer as general taxes are collected and shall be paid to the treasurer of the district.

61-16.1-34. LIEN OF SPECIAL ASSESSMENT. A special assessment imposed by a water resource district, together with interest and penalties which accrue thereon, shall become a lien upon the property on which the assessment is levied from the time the assessment list is approved by the water resource board until the assessment is fully paid. Such liens shall have precedence over all other liens except general tax liens and shall not be divested by any judicial sale. No mistake in the description of the property covered by the special assessment lien or in the name of the owner of such property shall defeat the lien if the assessed property can be identified by the description in the assessment list. This chapter shall be considered notice to all subsequent encumbrancers of the priority of special assessments imposed under this chapter.

61-16.1-35. SALE OF PROPERTY WHEN GENERAL AND SPECIAL ASSESSMENT TAXES ARE DELINQUENT. Special assessments imposed under this chapter shall become due and delinquent and shall be subject to penalties and nonpayment at the same date and rates as first installments of real estate taxes. Real property shall be sold to enforce the collection of special assessments or installments of special assessments which have become delinquent at the same time and in the same manner as provided in title 57. The sale shall be made by the same officer making the sale as in the case of the sale of real property for general taxes. Delinquent general taxes and delinquent special assessments, or installments thereof, shall be advertised and sold together in one sum and one certificate shall be issued therefor.

If real estate is sold for both delinquent general taxes and delinquent special assessments or installments of special assessments and there shall be no bidders, the county auditor shall strike off the parcel of land to the county and one certificate of sale shall cover both general taxes and special assessments which are delinquent.

If there is no delinquent general property tax against a tract or parcel of land and it is sold for special assessments alone, the certificate of tax sale shall state that the sale was for special assessments and, if there is no private bidder the tax sale certificate and tax deed in such case shall be issued in the usual course of procedure.

61-16.1-36. COLLECTION OF TAX OR ASSESSMENT LEVIED NOT TO BE ENJOINED OR DECLARED VOID - EXCEPTIONS. The collection of any tax or assessment levied or ordered to be levied to pay for the location and construction of any project under the provisions of this chapter shall not be enjoined perpetually or absolutely declared void by reason of any of the following:

1. Any error of any officer or board in the location and establishment thereof.

2. Any error or informality appearing in the record of the proceedings by which any project was established.

3. A lack of any proper conveyance or condemnation of the right of way.

The court in which any proceeding is brought to reverse or declare void the proceedings by which any project has been established, or to enjoin the tax levied to pay therefor, on application of either party, shall order examination of the premises, or survey of the same, or both, as may be deemed necessary. The court, on a final hearing, shall enter an order which is just and equitable, and may order the tax or any part thereof to remain on the tax lists for collection, or if the tax were paid under protest, may order, if justice requires, the whole or any part thereof to be refunded. The costs of such proceedings shall be apportioned among the parties as justice may require.

61-16.1-37. WATER RESOURCE BOARD MAY APPORTION ASSESSMENTS FOR BENEFITS OF A PROJECT AGAINST A COUNTY OR CITY OR ANY TRACT OF LAND BENEFITED. Whenever a water resource board discovers or ascertains that the county, a township, or city therein, or that any tract, parcel, or piece of land is being benefited by a project and that the county or such township, municipality, tract, piece, or parcel of land was not included in the project area assessed for the cost of construction and maintenance of the project when established, the board shall commence proceedings for reassessment of lands originally assessed for the cost of establishing and constructing such project and shall apportion and assess the part of the balance remaining unpaid, if any, of the cost of such project, and the expense of maintenance, which such county, township, or city and each tract of land found benefited thereby should bear.

Before making such reassessment or reapportionment of benefits, the board shall hold a hearing for the purpose of determining the benefits of the project to the county, such township, or city and to each tract, piece or parcel of land being benefited. At least ten days' notice of the hearing shall be given by publication in the newspaper or newspapers having general circulation in the county and by mailing notice thereof to each owner of land assessed for the cost of construction and maintenance when the project was established, and by mailing such notice to the governing body of the county, township, municipality and to the owner, as determined by the records in the office of the register of deeds or county treasurer of each tract, piece, or parcel of land found to be benefited since the establishment of the project. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to the reassessment and assessment of benefits carried out under the provisions of this section.

61-16.1-38. WARRANTS - WHEN PAYABLE - AMOUNTS - INTEREST - INTEREST COUPONS. A water resource district may, at any time after entering into a contract for a project to be financed in whole or in part by special assessments, issue temporary and definitive warrants on the project fund, created for that purpose, in the manner and subject to the limitations prescribed in section 40-24-19. Where the warrants are issued to finance a sewer or water project, the net revenues derived from the imposition of service charges to be imposed and collected with respect thereto as provided in section 40-22-16 may be pledged to payment of those warrants, except that the first maturity date of any such warrant shall not be less than two years from the date of issuance. Warrants issued under this section shall be in such amounts as in the judgment of the district's board of commissioners will be necessary for the project. The warrants shall bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on warrant issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Coupons evidencing the interest for each year or half year, as the case may be, may be attached to the warrants. The warrants shall state upon their face the purpose for which they are issued and the project fund from which they are payable and shall be signed by the chairman of the water resource board and countersigned by the secretary of the district. The warrants shall be payable serially in such amounts as the board determines, extending over a period of not more than thirty years.

61-16.1-39. WARRANTS MAY BE USED IN MAKING PAYMENTS ON CONTRACT - WARRANTS PAYABLE OUT OF FUND ON WHICH DRAWN - MAY BE USED TO PAY SPECIAL ASSESSMENTS. Improvement warrants may be used in making payments on contracts for construction of the project for which the special assessment fund was created, or may be sold for cash at not less than ninety-eight percent of par and accrued interest, and the proceeds thereof, less accrued interest, shall be credited to the construction account of such fund and shall be used exclusively to pay such contracts and construction costs. Any balance remaining in any construction account after completion of a project shall be transferred to the sinking fund account of the assessment fund. The treasurer of the district shall pay special assessment warrants and any interest coupons attached thereto as they mature and are presented for payment out of the fund on which they are drawn and shall cancel the warrants and any coupons when paid.

61-16.1-40. REFUNDING SPECIAL ASSESSMENT WARRANTS - PURPOSES FOR WHICH SUCH WARRANTS MAY BE ISSUED - PAYMENT OF WARRANTS. Any district having outstanding special assessment warrants, payable in whole or in part out of collections from special assessments, which are past due or which are redeemable, either at the option of the district or with the consent of the warrant holders, may issue refunding special assessment warrants or bonds if there is not sufficient money in the project fund against which such warrants are drawn to pay the same. The issuance of refunding warrants or bonds

shall be authorized by resolution of the water resource board. The resolution shall describe the warrants to be refunded and the amount and maturity thereof. Refunding warrants may be issued for any of the following purposes:

1. Extend the maturities of warrants payable in whole or in part by special assessments.

2. Reduce the interest on such warrants.

3. Equalize the general property tax which the district may be, or may become, obligated to levy in order to cover deficiencies in the fund against which warrants were issued.

Refunding warrants or bonds shall bear such date, be in such date, be in such denominations, and shall mature serially within such time, not exceeding thirty years from date of issuance, as the water resource board shall determine. The average rate of interest on such warrants shall not exceed the average rate of interest on refunded warrants.

The treasurer of the district shall pay special assessment warrants, and the interest coupons attached thereto, as they mature and are presented for payment out of the fund against which they are drawn and shall cancel the warrants when paid.

Any deficiency in any fund created for the payment of district warrants payable in whole or in part out of collections of special assessment taxes shall be the general obligation of the water resource district.

61-16.1-41. APPEAL FROM DECISION OF WATER RESOURCE BOARD - UNDERTAKING - JURISDICTION. An appeal may be taken to the district court from any order or decision of the water resource board by any person aggrieved. An appellant shall file an undertaking in the sum of two hundred dollars with such sureties as may be approved by the clerk of the district court to which the appeal is taken. The undertaking shall be conditioned that the appellant will prosecute the appeal without delay and will pay all costs adjudged against the appellant in the district court. The undertaking shall be in favor of the water resource board as obligee, and may be sued on in the name of the obligee. The appeal shall be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is located.

61-16.1-42. APPEAL FROM DECISION OF WATER RESOURCE BOARD - HOW TO BE TAKEN. The appeal provided for in this chapter is taken by serving a written notice of appeal upon one of the members of the water resource board and upon the secretary of such board.

61-16.1-43. TIME FOR TAKING APPEAL FROM WATER RESOURCE BOARD DECISION. An appeal as authorized by sections 61-16.1-41 and

61-16.1-42 must be taken within thirty days after the decision has been entered by the secretary of the water resources board.

61-16.1-44. FILING APPEAL - DOCKETING AND HEARING APPEALS - FINAL JUDGMENT AND SENDING BACK. The appeal provided for in this chapter shall be tried at the next term of the district court after the appeal is taken. All appeals taken under this chapter shall be docketed as are other causes pending in the district court and the same shall be tried de novo. The district court may enter a final judgment, or may send the case back with directions on how to proceed.

61-16.1-45. ATTORNEY GENERAL TO ASSIST BOARDS - EMPLOYMENT OF COUNSEL. The attorney general shall render legal opinions or such other assistance to water resource boards as is required to be rendered to state officers by section 54-12-01. The water resource board, however, may employ other counsel to advise and represent it in such actions and appeals and in its proceedings.

61-16.1-46. PROCEEDINGS TO CONFIRM JUDICIALLY CONTRACTS, SPECIAL ASSESSMENTS AND OTHER ACTS. Any water resource board, before making any contract, or before levying special assessments, or issuing special assessment warrants, or before taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract, levying special assessments, issuing special assessment warrants, or leading up to any other special action, shall be judicially examined, approved, and confirmed. Such judicial proceedings shall comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

61-16.1-47. PENALTY FOR VIOLATION OF CHAPTER. Any person violating any of the provisions of this chapter shall, if no other criminal penalty is specifically provided, be guilty of a class B misdemeanor.

61-16.1-48. VALIDATING ORGANIZATION AND ACTS OF WATER MANAGEMENT DISTRICTS AND COUNTY DRAIN BOARDS. Nothing contained in this chapter shall be construed as impairing, invalidating or in any manner affecting the validity of acts or proceedings of water management districts or county drain boards which existed prior to the passage and approval of this chapter.

61-16.1-49. MAINTENANCE OF DRAINAGE PROJECTS. If it is desired to provide for maintenance of an assessment drain in whole or in part by means of special assessments, the levy in any year for such maintenance shall not exceed one dollar per acre [.40 hectare] on any agricultural lands benefited by the drain. 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 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 per acre [.40 hectare]. Nonagricultural property shall be assessed such sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment. In case the maximum levy of one dollar per acre [.40 hectare] for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, a water resource board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for five years.

61-16.1-50. DRAINS ALONG AND ACROSS PUBLIC ROADS AND RAILROADS. Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of such road. In instances where it is necessary to run a drain across a highway, the state highway department, the board of county commissioners, or the board of township supervisors, as the case may be, when notified by the water resource board to do so, shall make necessary openings through the road or highway at its own expense, and shall build and keep in repair all required culverts or bridges as provided under section 61-16.1-51. In instances where drains are laid along or within the rights of way of roads or highways, the drains shall be maintained and kept open by and at the expense of the water resource district concerned. A drain may be laid along any railroad when necessary, but not to the injury of the railroad, and when it is necessary to run a drain across the railroad, the railroad company, when notified by the water resource board to do so, shall make the necessary opening through such railroad, shall build the required bridges and culverts, and shall keep them in repair.

61-16.1-51. CONSTRUCTION OF BRIDGES AND CULVERTS - COSTS. The water resource board shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of such construction shall be charged as part of the cost of constructing the drain, and any such bridge, culvert, or passageway shall be maintained under the authority of the water resource board, and the necessary expense shall be deemed a part of the cost of maintenance. Whenever any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, the cost of constructing such bridge or culvert shall be shared in the following manner:

1. The state water commission may, if funds are available, participate in accordance with such rules and regulations as it may prescribe. The remaining cost shall be borne forty percent by the county and sixty percent by the water resource district which has created the need for such construction.

2. If, however, moneys have not been made available to the commission for participation in accordance with subsection 1, then forty percent of the cost of a bridge or culvert shall be paid by the county and sixty percent shall be charged as cost of the drain to the water resource district.

3. Where such bridges or culverts are constructed with federal financial participation, the costs exceeding the amount of the federal participation shall be borne by the water resource district and county according to the provisions of this section, as the case may be.

61-16.1-52. PETITION FOR A LATERAL DRAIN - BOND OF PETITIONERS.

1. For the purposes of this section, "lateral drain" means a drain constructed after the establishment of an original assessment drain or drainage system and which flows into such original drain or drainage system from outside the limits of the assessed area of the original drain, provided that a determination by a water resource board as to whether an existing or proposed drain is a lateral or a new drain shall be conclusive when entered upon the records of the board.

2. All property owners whose property would be affected by a lateral drain may jointly petition the board for the construction of such drain and shall deposit with the board a good and sufficient bond to be approved by the board, conditioned upon the petitioner or petitioners paying all costs of the proposed lateral drain. A petition for a lateral drain shall be sufficient if signed by one or more property owners whose property will be affected by the lateral drain. Whenever improvements of an original drain are made necessary by the construction of a lateral drain, the costs of such improvements to the original drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. In the event the board determines that improvements to the original drain are also beneficial to property served by the original drain, the board may assess that portion of the cost of the improvements it determines appropriate to property benefited by the original drain. Unless the petitioners agree to construct the lateral drain, the board, within ten days, may commence proceedings for the construction of the lateral drain according to the provisions of this chapter. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this chapter, except as provided in this section and with approval of the board. In all instances

involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by the petitioners. The petitioners shall pay into the district treasury the amount so determined, and shall then be allowed to connect such lateral ditches or drains with the original drain under the direction and superintendence of the board, but at their own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.

3. Where one or more of the property owners to be benefited by the construction of a lateral drain or ditch petitions the water resource district for the construction of a lateral drain or ditch, the water resource district shall then proceed in the same manner as is used for the establishment of a new drain and thereafter such lateral drain shall constitute a part of the original drain to which it is connected and the affected property shall be a part of such drainage district.

61-16.1-53. ESTABLISHING NEW DRAINS IN LOCATION OF INVALID OR ABANDONED DRAIN. If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board, for any reason whatsoever, the board may proceed under the provisions of sections 61-16.1-21 through 61-16.1-26 to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not properly maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended and work done under the invalid or abandoned proceedings and the extent to which the same contributes to the construction and completion of the new drain. The board shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.

61-16.1-54. DRAIN KEPT OPEN AND IN REPAIR BY BOARD. All assessment drains that have been constructed in any district, except township drains, shall be under the charge of the water resource board and it shall be the duty of the board to keep those drains open and in good repair. It shall be the mandatory duty of the board, within the limits of available funds, to clean out and repair any assessment drain when requested to do so by petition of the affected landowners having fifty percent or more of the possible votes, as determined according to section 61-16.1-24.

61-16.1-55. ASSESSMENT OF COSTS OF CLEANING AND REPAIRING DRAINS. The cost of cleaning out and repairing an assessment drain shall 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 61-16.1-30. 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 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.

61-16.1-56. DRAINS HAVING A COMMON OUTLET MAY BE CONSOLIDATED. Whenever one or more drains which have from time to time been constructed, empty into a drain that supplies the outlet for waters flowing in all such drains, such drains may by resolution or order of the water resource board, if the cost of construction of such drains has been paid, be consolidated into one drain or drainage system and shall be renumbered and may be renamed.

61-16.1-57. REMOVAL OF OBSTRUCTIONS TO DRAIN - NOTICE AND HEARING - APPEAL - INJUNCTION - DEFINITION. If the board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, 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 shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the obstruction, the opinion of the board as to its cause, and shall state that if the obstruction is not removed within such period as the board shall determine, but not less than thirty days, the board shall procure removal of the obstruction and assess the cost thereof, or such portion as the board shall determine appropriate, against the property of the landowner responsible. The notice shall 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 such 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 a landowner or tenant from maintaining an obstruction. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. 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 accordance with the proportionate responsibility of the landowners. Any landowner 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 61-16.1-41 through 61-16.1-44. A hearing as provided for in this section shall not be a prerequisite to such an appeal.

For the purposes of this section, "an obstruction to a drain" means any barrier to a watercourse, as defined by section 61-01-06, or any artificial drain, which materially affects the free flow of waters in such watercourse or drain.

61-16.1-58. CULVERT AND PIPE ARCH BIDS AND ACCEPTANCE. A board may advertise for bids to supply culverts and pipe arches and may accept one or more low bids. A board may utilize bids for such materials received by the county within which the board has jurisdiction and may accept one or more low bids. The board may then purchase materials from the accepted low bidder or bidders for a period of one year from the date of the original acceptance of the bids.

61-16.1-59. PERMIT TO DRAIN WATERS REQUIRED - PENALTY. Any person, before draining water from a pond, slough, or lake, or any series thereof, which drains an 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 pond, slough, or lake for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to him for final approval. A permit shall not be granted until an investigation discloses that the quantity of water which will be drained from the pond, slough, or lake, or any series thereof, will not flood or adversely affect downstream lands. In addition, consideration shall be given to the state water resources policy set forth in section 61-01-26. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board shall not issue a permit until flowage easements are obtained. Such flowage easements shall 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. The provisions of this section shall not be construed to 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.

Any person draining, or causing to be drained, water of a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, shall be liable for all damage sustained by any person caused by such draining, and shall be guilty of an infraction. When temporary ponding of water occurs due to spring runoff or heavy rains, an area not in excess of eighty acres [32.37 hectares] may be drained without first securing a permit.

61-16.1-60. CLOSING A NONCOMPLYING DRAIN - NOTICE AND HEARING - APPEAL - INJUNCTION. Upon receipt of a complaint of unauthorized drainage, the 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 title 61 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 shall also be sent to the tenant, if any. The notice shall 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 period 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 shall 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 shall be collected in the same manner as other assessments authorized by this chapter. 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 section 61-16.1-41 through 61-16.1-44. A hearing as provided for in this section shall not be a prerequisite to such an appeal.

61-16.1-61. REMOVAL OF A NONCOMPLYING DIKE OR DAM - NOTICE AND HEARING - APPEAL - INJUNCTION. Upon receipt of a complaint of unauthorized construction of a dike, dam or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15418.52 cubic meters] of water, has been established or constructed 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 shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the noncompliance and shall state that if the dike, dam, or other device is not removed within such period as the board shall determine, but not less than thirty days, the board shall cause the removal of the dike, dam, or

other device and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing upon the matter. Upon receipt of such 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 dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. 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 61-16.1-41 through 61-16.1-44. A hearing as provided for in this section shall not be prerequisite to such an appeal.

61-16.1-62. AUTHORIZATION TO ORGANIZE ASSOCIATION OF WATER RESOURCE DISTRICTS.

1. Water resource districts, organized and established pursuant to this chapter, are hereby authorized upon resolution of the water resource boards to organize and participate in an association of districts.

2. The association or associations authorized hereunder shall be organized pursuant to chapters 10-24 through 10-28.

61-16.1-63. WATER RESOURCE DISTRICTS - ASSUMPTION OF ASSETS AND LIABILITIES OF DRAIN BOARDS. Beginning on July 1, 1981, each water resource district shall assume all assets, liabilities, and obligations of any county drain board whose territory is included within the boundaries of the water resource district. When the jurisdiction of any county drain board is included within two or more water resource districts, the county auditor shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on the proportionate amount of taxable valuation included in each district, except that special assessment projects and funds, property interests, and physical assets attached to the land shall be assumed by the water resource district in which the project is located. Property interests and physical assets attached to the land shall be assumed by the district in which they are located. Prior to February 1, 1983, and for review by each affected water resource board, each water management district and county drain board shall have a certified public accountant prepare a final audit of its financial records, including all special assessment funds and obligations, assets, and other liabilities. All necessary actions to accomplish the transfer of assets and

obligations under this section shall be complete prior to January 1, 1982.

SECTION 2. AMENDMENT. Section 61-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-06. WATERCOURSE - DEFINITION. A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. It is not essential that the supply of water should be continuous or from a perennial living source. It is enough if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character. If requested by a water resource board, the state engineer shall determine if a watercourse is constituted.

SECTION 3. AMENDMENT. Section 61-16-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-05. WATER ~~MANAGEMENT~~ RESOURCE DISTRICTS - AREA TO BE INCLUDED. All land in North Dakota shall be within a water ~~management~~ resource district.

SECTION 4. AMENDMENT. Section 61-16-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-06. ORDER CREATING WATER ~~MANAGEMENT~~ RESOURCE DISTRICT. A certified copy of the order creating a water ~~management~~ resource district shall be filed with the county auditor of each county within the district. A like copy of the order shall be filed with the secretary of state. The secretary of state shall issue to the state water conservation commission his certificate, bearing the seal of the state, of the due organization of the district, and shall file a copy of the certificate and the commission's order creating the district. The secretary of state's certificate, or a copy authenticated by him, shall be prima facie evidence of the organization of the district. This new district shall be, and is hereby declared to be, a governmental agency, and a body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied to exercise such powers. The commission's order shall specify the name or number by which a district shall be known.

SECTION 5. AMENDMENT. Section 61-16-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-07. WATER RESOURCE BOARD ~~OF COMMISSIONERS~~ - APPOINTMENT AND NUMBER. When a water ~~management~~ resource district has been created, and the state water conservation commission has filed notice with the county auditor of a county where the district or a part thereof is situated, a water resource board ~~of district~~

~~commissioners~~ shall be appointed within ninety days, as provided herein. If the district's boundaries are confined to one county, the board of county commissioners shall appoint a ~~district~~ water resource board consisting of three or five ~~commissioners~~ managers. When a district includes two counties, the water resource board ~~of commissioners~~ shall consist of five ~~members~~ managers: three appointed by the board of county commissioners of the county having the larger aggregate taxable valuation of property, and two appointed by the board of county commissioners of the other county. If a district includes three counties, the water resource board ~~of commissioners~~ shall consist of five ~~members~~ managers: one appointed by the board of county commissioners having the lowest aggregate taxable valuation of property in the district, and two appointed by the board of county commissioners of each of the other two counties. If a district includes four or six counties, the water resource board ~~of commissioners~~ shall consist of two members from the county having the largest aggregate taxable valuation of property in the district, and one ~~member~~ manager from each of the other counties. If a district includes five or seven counties, the water resource board ~~of commissioners~~ shall consist of one ~~member~~ manager from each county. Appointments to the water resource board ~~of commissioners~~ shall be made by the boards of county commissioners of the respective counties.

SECTION 6. AMENDMENT. Section 61-16-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-08. ELIGIBILITY FOR APPOINTMENT TO BOARD - TERM OF OFFICE - REMOVAL - FILLING VACANCIES - COMPENSATION OF ~~COMMISSIONERS~~ MANAGERS. When a water ~~management~~ resource district has been created, any resident landowner in the district, except a county commissioner, shall be eligible, subject to the provisions of this section, for appointment to the water resource board ~~of commissioners~~ thereof. The terms of office of ~~commissioners~~ managers appointed to the first ~~district~~ water resource board shall be determined by lot and shall be as herein provided. If such ~~district~~ water resource board shall consist of three ~~commissioners~~ managers, one ~~commissioner~~ manager 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 from the first day of January next following the date of their appointment. After expiration of the first term to expire after January 1, ~~1980~~ 1982, at least one of the ~~commissioners~~ managers appointed to a three-member district board shall be from a flood prone area, if any, within the district. When a district board consists of five ~~commissioners~~ managers, two ~~commissioners~~ managers shall hold office for the term of two years, one for three years, one for four years, and one ~~commissioner~~ manager for a term of five years from the first day of January next following the date of their ~~appointment~~ respective appointments. After expiration of the first two terms to expire after January 1, ~~1980~~ 1982, at least two of the ~~commissioners~~ managers appointed to a five-member district board shall be from flood prone areas, if any, within the district. When a board shall consist of seven

~~commissioners~~ managers, two ~~commissioners~~ managers shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment. After expiration of the first three terms to expire after January 1, ~~1980~~ 1982, at least three of the ~~commissioners~~ managers appointed to a seven-member district board shall be from flood prone areas, if any, within the district. For the purposes of this section, a flood prone area is a floodplain area of a river subject to periodic and reoccurring flooding. When the term of office of a district ~~commissioner~~ manager has expired, his successor shall hold office for five years from the first day of January next following the date of his appointment. The term of office of a ~~commissioner~~ manager shall not terminate until his successor in office is appointed and qualified. In case the office of any district ~~commissioner~~ manager shall become vacant, the ~~commissioner~~ manager appointed to fill the vacancy shall serve the unexpired term of the ~~member--of--the-board~~ manager whose office became vacant.

Each member of the water resource board ~~of-commissioners~~ shall receive the sum of forty-five dollars per day while performing his duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.

A ~~commissioner~~ manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the ~~commissioner~~ manager subject to removal, at which hearing such ~~commissioner~~ manager must be apprised of and allowed ample opportunity to repudiate such evidence, that such ~~commissioner~~ manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 7. AMENDMENT. Section 61-16-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-09. OATH OF OFFICE - ORGANIZATION OF WATER RESOURCE BOARD ~~OF-COMMISSIONERS~~ - APPOINTMENT OF EMPLOYEES - MEETINGS. Upon receiving notice of his appointment as member of the water resource board ~~of-commissioners-of-a-water--conservation--and--flood--control district~~, such appointee shall take the oath of office prescribed for civil officers. Such oath shall be filed with the secretary of the board ~~after-organization-thereof-as-herein-provided~~. Notice of the appointment of a member or members of a water resource board ~~of commissioners~~ shall be mailed to the state water conservation commission. Such notice shall state the name and post-office address of each appointee and the date of his appointment.

~~The--commissioners--appointed,--after-establishment-of-a-water conservation-and-flood-control-district,-shall-meet-to-organize-at-a time--and--place-designated-by-the-state-engineer-and-shall-organize by-selecting--a--chairman--of--the--board--and--naming--a--temporary secretary--pending-appointment-of-a-permanent-secretary.~~ A majority of the ~~commissioners~~ managers shall constitute a quorum for the transaction of such business as may come before the board but any number may adjourn a meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer and such other employees as ~~shall-be-deemed~~ needed for the efficient conduct of the district's business and shall fix their compensation. The offices of secretary and treasurer may be held by the same person. Officers and employees shall hold office ~~during~~ at the pleasure of the board.

The board shall provide an office suitable for its use as a meeting place and for conducting the affairs of the district. It shall adopt such rules ~~or-regulations~~ for transacting the business of the district as it may deem necessary, including the time and place of holding regular meetings of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon written request of two members of the board. Notice of a special meeting shall be mailed to each member of the board at least five days before any such meeting, provided that a special meeting may be held whenever all members of the board are present or consent thereto in writing.

SECTION 8. AMENDMENT. Section 61-21-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-01. DEFINITIONS. In this chapter, unless the subject matter otherwise requires:

1. "Drain" ~~shall--include~~ means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and appurtenant works. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area as determined by the written petition called for in section 61-21-10 and the survey and examination called for in section 61-21-12.

2. "Board" ~~shall---mean~~ means the board of ~~drainage commissioners~~ managers of a water resource district.

3. "Cleaning out and repairing of drain" ~~shall-include~~ means deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition.

4. "Lateral drain" ~~shall mean~~ means a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain, provided that a determination by the board as to whether an existing or proposed drain is a lateral or a new drain within the meaning of this subsection shall be conclusive when entered upon the records of such board.

5. "Affected landowners" ~~shall mean~~ means landowners whose land is subject to assessment or condemnation.

SECTION 9. AMENDMENT. Section 61-21-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-11. BOND REQUIRED FROM PETITIONERS. The board may require the petitioners referred to in section 61-21-10 to file a bond with the petition in a sum sufficient to pay all expenses of surveys and of the drainage commissioners should the petition be later denied. However, in no event shall the petitioners be required to pay expenses of surveys and of the water resources board, and any other expenses that may be incurred, if the petition is later approved, but the drain is not constructed.

SECTION 10. AMENDMENT. Section 61-21-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-41. ESTABLISHING NEW DRAINS IN LOCATION OF INVALID OR ABANDONED DRAIN. If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board, for any reason whatsoever, the board may proceed under the provisions of this chapter to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended and work done under the invalid or abandoned proceedings and the extent to which the same contributes to the construction and completion of the new drain. The board shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.

* SECTION 11. REPEAL. Sections 61-16-10, 61-16-24, 61-16-25, 61-16-26, 61-16-27, 61-16-30, 61-16-31, 61-16-37, 61-16-38, 61-16-39, 61-16-40, and 61-16-43 of the North Dakota Century Code and sections 61-01-22, 61-16-01, 61-16-11, 61-16-11.1, 61-16-12, 61-16-13, 61-16-14, 61-16-15, 61-16-17, 61-16-18, 61-16-19,

* NOTE: Sections 61-16-13, 61-16-28, and 61-16-32 were amended by sections 29, 30, and 31 of Senate Bill No. 2122, chapter 269.

61-16-19.1, 61-16-21, 61-16-22, 61-16-23, 61-16-26.1, 61-16-28, 61-16-28.1, 61-16-29, 61-16-32, 61-16-33, 61-16-34, 61-16-34.1, 61-16-35, 61-16-36, 61-16-44, 61-16-46, 61-16-47, 61-16-48, 61-16-49, 61-16-50, and 61-16-51 of the 1979 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 12. REPEAL - EFFECTIVE DATE. Sections 61-21-05, 61-21-06, 61-21-07, 61-21-08, and 61-21-09 of the North Dakota Century Code and sections 61-21-03 and 61-21-04 of the 1979 Supplement to the North Dakota Century Code are hereby repealed. This section shall not take effect until January 1, 1982.

Approved March 26, 1981

CHAPTER 633

HOUSE BILL NO. 1076
(Legislative Council)
(Interim Natural Resources Committee)

FLOODPLAIN MANAGEMENT ACT OF 1981

AN ACT to provide the state engineer with the authority to assist communities in administering floodplain management activities under the national flood insurance program [42 U.S.C. 4001 et seq.]; to provide for enforcement; and to provide an appropriation.

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

SECTION 1. TITLE. This Act may be cited and shall be known as the North Dakota Floodplain Management Act of 1981.

SECTION 2. LEGISLATIVE INTENT AND PURPOSE. The legislative assembly finds and declares that a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state. The legislative assembly further finds that public interest necessitates that the floodplains of this state be developed in a manner which will alleviate loss of life and threat to health, and reduce private and public economic loss caused by flooding.

It is therefore the policy of this state and the purpose of this Act to guide development of the floodplains of this state in accordance with the enumerated legislative findings, to reduce flood damages through sound floodplain management, stressing nonstructural measures such as floodplain zoning and floodproofing, acquisition and relocation, and flood warning practices; and to ensure as far as practicable that the channels and those portions of the floodplains of watercourses which are the floodways are not inhabited and are kept free and clear of interference or obstructions which may cause any undue restriction of the capacity of the floodways.

It is also the policy of this state and purpose of this Act to provide state coordination and assistance to communities in

floodplain management activities, to encourage communities to adopt, administer, and enforce sound floodplain management ordinances, and to provide the state engineer with authority necessary to carry out and enforce a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state.

SECTION 3. DEFINITIONS. In this Act, unless the context or subject matter otherwise provides:

1. "Commission" means state water commission.

2. "District" means a water resource district, as defined in chapter 61-16.1.

3. "Flood fringe" means that portion of a floodplain outside of the floodway.

4. "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.

5. "State engineer" means the state engineer appointed pursuant to section 61-03-01, who is also the chief executive officer of the commission, or, for the purpose of this Act, his designee.

For the purposes of this Act, the state engineer shall, in addition to the definitions listed above, follow the definitions under the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations, which are hereby incorporated into and made a part of this Act by reference.

SECTION 4. DUTIES OF STATE ENGINEER. The state engineer shall:

1. Collect and distribute information relating to flooding and floodplain management.

2. Coordinate local, state, and federal floodplain management activities to the greatest extent possible, and encourage appropriate federal agencies to make their flood control planning data available to communities and districts for planning purposes, in order to allow adequate local participation in the planning process and in the selection of desirable alternatives.

3. Assist communities and districts in their floodplain management activities within the limits of available appropriations and personnel in cooperation with the office of disaster emergency services.

4. Do all other things, within lawful authority, which are necessary or desirable to manage the floodplains for uses compatible with the preservation of the capacity of the floodplain to carry and discharge the base flood. In cooperation with communities and districts, the state engineer shall conduct, whenever possible, periodic inspections to determine the effectiveness of local floodplain management programs, including an evaluation of the enforcement of and compliance with local floodplain management ordinances.

SECTION 5. DELINEATION OF FLOODPLAINS AND FLOODWAYS. The state engineer shall assist communities in preparing and obtaining data and other necessary information for the delineation of floodplains and floodways. When the state engineer determines that sufficient technical information is available for the delineation of floodplains and floodways on a watercourse, he shall then consult with the appropriate district and each affected community. The state engineer, the affected community, and the appropriate district shall consider flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as the district and community may consider appropriate. Upon obtaining and developing the necessary information for delineation of the floodplain and floodway, the state engineer and the affected community shall notify the appropriate federal agency and request that such material be used to delineate the floodplain and floodway under the national flood insurance program [42 U.S.C. 4001 et seq.]. The regulatory floodway must be able to carry the waters of the base flood without cumulatively increasing the water surface elevation of the base flood more than one foot at any point.

SECTION 6. FLOODPLAIN MANAGEMENT ORDINANCES.

1. Each community shall submit the floodplain management ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.] to the state engineer for review.

2. If the state engineer determines that there is a failure by a community to comply with the intent, purposes, and provisions of this Act and the minimum ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], the state engineer shall notify the appropriate federal agency and the community of his or her findings. The state engineer shall also notify the community of the state and federal penalties for such noncompliance and shall work with the community until such time as the state engineer determines that the community will or is complying.

SECTION 7. PERMISSIBLE FLOODWAY USES. Upon delineation of the floodway under the national flood insurance program, uses shall

be permitted within the floodway to the extent that they do not cause any increase in the elevation of the base flood.

SECTION 8. PROHIBITED USES WITHIN FLOODWAY. Upon delineation of the floodway under the national flood insurance program, the following uses shall be prohibited within any floodway:

1. A building for living purposes or place of assembly or permanent use by human beings.

2. The construction or permanent storage of an object subject to flotation or movement during flood level periods.

SECTION 9. PERMISSIBLE USES WITHIN FLOOD FRINGE. Upon delineation of the floodplain or floodway under the national flood insurance program, the following uses shall be permitted within the flood fringe to the extent that they are not prohibited by any other ordinance, regulation, or statute:

1. Any use permitted in the designated floodway pursuant to section 7.

2. Structures, including residential, commercial, and industrial structures, provided that:

   a. Such structures meet the standards either adopted by the community or under this Act, whichever are more restrictive.

   b. Residential structures are constructed on fill such that the lowest floor, including basements, is elevated to or above the base flood level.

   c. Commerical and industrial structures are either constructed on fill as specified in subdivision b or are adequately floodproofed up to an elevation no lower than the base flood level. Such floodproofing shall be in accordance with the standards either adopted by the community under the national flood insurance program or under this Act, whichever are more restrictive.

SECTION 10. ENFORCEMENT AND PENALTIES.

1. It is unlawful for any person to establish any use which is not in accordance with this Act within any floodplain without prior written approval of the affected community. Every use placed in the floodplain in violation of this Act or a floodplain management ordinance adopted under or in compliance with the provisions of this Act, or adopted under the national flood insurance program, is a public nuisance and the construction or installation thereof may be enjoined by an action brought by the state engineer or the appropriate community. The state engineer or

community may obtain a court order directing the removal or elimination of such public nuisance; or authorizing the state engineer or community to remove the public nuisance, or cause to be removed, at the expense of the owner. A person who violates any of the provisions of this Act is guilty of a class B misdemeanor.

2. This Act shall not apply to any construction or structures existing or for which a building permit has been issued in the floodplain prior to the adoption by the community of floodplain management ordinances under the national flood insurance program.

3. Any community which fails to adopt or enforce floodplain management ordinances as required under the national flood insurance program by this Act shall not be eligible to receive any flood disaster assistance, financial or otherwise, from this state pursuant to chapter 37-17.1 or any other state funds available under any other authority for flood relief.

SECTION 11. EXCEPTIONS. This Act shall not apply to the following actions or construction, as long as the flood carrying capacity within the altered or relocated portion of any watercourse is maintained, and the cumulative effect of any such action or construction will not increase the water surface elevation of the base flood more than one foot at any point:

1. Ring dikes around individual farmsteads which are not constructed with tie backs to existing roadways or dikes. For the purposes of this section, "ring dike" means an embankment constructed of earth or other suitable materials for purposes of enclosing a farmstead consisting of a farm dwelling and associated farm buildings.

2. Agricultural dikes along the Red River of the North and Bois de Sioux River which are constructed pursuant to and in accordance with any joint and cooperative agreements between North Dakota and Minnesota for the establishment of criteria for authorizing dikes and other flood control structures and measures on the Red River of the North and Bois de Sioux River.

Any exception to the national flood insurance program [42 U.S.C. 4001, et seq.] and implementing regulations granted by the appropriate federal agency to a community which is participating in the national flood insurance program shall be an approved exception pursuant to this section. Upon the effective date of this Act, the state engineer shall immediately apply to the appropriate federal agency for an exception for the uses specifically described in this section.

SECTION 12. AUTHORITY TO ENTER AND INVESTIGATE LANDS OR WATERS. The state engineer or any community must notify all

landowners prior to making any entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by this Act. An investigation of a nonconforming use or existing construction or structure shall be made by the state engineer either on his own initiative, on the written request of an owner of land abutting the watercourse involved, or on the written request of a community.

SECTION 13. STATE PROPERTY. Notwithstanding any other statutes or regulations, all state property and structures thereon shall be subject to the provisions of this Act and any ordinances adopted pursuant to this Act, or the national flood insurance program.

SECTION 14. FLOOD INSURANCE.

1. It is the policy of this state that all communities subject to excessive flooding shall participate in the national flood insurance program [Pub. L. 90-448] and acts amendatory thereof or supplementary thereto, so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance.

SECTION 15. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $117,000, or so much thereof as may be necessary, to the state engineer for the purpose of administering this Act for the biennium beginning July 1, 1981, and ending June 30, 1983.

Approved March 26, 1981

CHAPTER 634

SENATE BILL NO. 2130
(Committee on Natural Resources)
(At the request of the Health Department)

LAKE REHABILITATION GRANT PROGRAM

AN ACT to provide for a grant program for the protection and rehabilitation of lakes in North Dakota; and to provide an appropriation.

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

SECTION 1. DEFINITIONS. In this Act, unless the context otherwise requires, the term:

1. "Department" means the North Dakota state department of health.

2. "Eligible project cost" means costs under construction contracts, supervision of construction work; administration; materials and equipment acquired, consumed, or expended specifically for the project; and preparation of construction drawings, specifications, estimates, and construction contract documents.

3. "Lake protection and rehabilitation projects" means projects which are designed to reduce eutrophication of lakes through watershed or in-lake treatments, or both.

4. "Unit of government" means political subdivisions of the state or state agencies with responsibilities for public lake development and control.

SECTION 2. ELIGIBILITY AND PRIORITY. The department shall promulgate rules for determining the eligibility and priority rating of lakes for protection and rehabilitation projects. Criteria to be considered shall include but not be limited to the following:

1. Severity of the problem;

2. Impact on area recreation and fisheries;

3. The likely effectiveness of the plan; and

4. Ability of the applicant unit of government to implement the plan.

The department shall, pursuant to such rules, establish a priority list of lakes eligible for protection and rehabilitation.

SECTION 3. GRANTS. Grants shall be made only to units of government and only for eligible lakes at a sum not to exceed twenty-five percent of the eligible project cost when federal funding is available. No grants shall be made for studies to determine the necessity or feasibility of eligible projects.

SECTION 4. PUBLIC ACCESS. No funds appropriated in this Act may be used for lake protection and rehabilitation projects unless adequate public access to and use of the lake is assured.

SECTION 5. CONSERVATION DISTRICT PLAN. No application for state funds may be accepted unless assurance has been given in writing to the applicant by any affected soil conservation district that a plan for lake protection and rehabilitation which controls and identifies pollutants from point and nonpoint sources which come under the jurisdiction of the district has been approved by the district.

SECTION 6. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $300,000, or so much thereof as may be necessary, to the department for the purposes of this Act. Appropriated funds shall be available for four years after the effective date of the appropriation.

Approved March 31, 1981

CHAPTER 635

SENATE BILL NO. 2399
(Senators Erickson, Walsh, Wright)
(Representatives Dick, Berg, Hedstrom)

WATERBANK PROGRAM

AN ACT to provide for the creation of a state waterbank program and to empower the commissioner of agriculture to administer the Act; and to provide an appropriation.

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

SECTION 1. DECLARATION OF INTENT. The legislative assembly finds that it is in the public interest to preserve certain wetlands of the state and thereby to conserve surface waters, to reduce runoff, to provide for floodwater retention, to reduce stream sedimentation, to contribute to improved subsurface moisture and replenishment of aquifers, to enhance habitat for resident wildlife, to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning. Therefore, the commissioner of agriculture is authorized to adopt rules, pursuant to chapter 28-32, to implement this Act, including rules setting out the procedures and payment rates designed to effectuate the terms of this Act and the allocation of funds to those areas deemed most appropriate by the commissioner. This program is intended to supplement and complement the federal waterbank program and the payment rates established shall be at least comparable to federal rates.

SECTION 2. DEFINITIONS. In this Act, unless the context or subject matter otherwise provides:

1. "Commissioner" means the commissioner of agriculture.

2. "Wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner with the advice of the game and fish commissioner, in accordance with the United States fish and wildlife service circular No. 39 (1971 edition).

SECTION 3. WATERBANK AGREEMENTS. The commissioner shall have authority to enter into agreements with landowners for the conservation of wetlands. These agreements shall be entered into

for a period of five or ten years, with provision for renewal for additional five- or ten-year periods. The commissioner shall reexamine the payments rates at the beginning of the fifth year of any ten-year initial or renewal period and before the beginning of any renewal period, in the light of the current land and crop values, and make needed adjustments in rates for any initial or renewal period.

Wetlands eligible for inclusion in the waterbank program shall have all the following characteristics as determined by the commissioner:

1. Types 3, 4, or 5 as defined in the United States fish and wildlife circular No. 39 (1971 edition).

2. Drainage of the wetlands would be feasible and practical.

SECTION 4. DUTIES OF LANDOWNER. In the agreement between the commissioner and a landowner, the landowner shall agree:

1. To place in the program for the period of the agreement eligible wetland areas he designates, together with such adjacent areas as determined desirable by the commissioner. These wetlands and adjacent areas may include areas covered by a federal or state government easement which permits agricultural use, except for federal waterbank agreements pursuant to the federal waterbank program [16 U.S.C. 1301 et seq.; Pub. L. 91-559]. However, in the event that any eligible wetland and adjacent areas are covered by a separate federal or state government easement, the commissioner shall reduce payment rates as he deems appropriate.

2. Not to drain, burn, fill, or otherwise destroy the wetland character of such areas.

3. Not to use such areas for agricultural purposes, except as determined by the commissioner.

4. To effectuate a wetland conservation and development plan for his land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the commissioner pursuant to section 7 of this Act.

5. To forfeit all rights to further payments or grants under the agreement and to refund to the state all payments or grants received thereunder upon his violation of the agreement at any stage during the time he has control of the land subject to the agreement if the commissioner determines that such violation is of such a nature as to warrant termination of the agreement, or to make refunds or accept such payment adjustments as the commissioner may

deem appropriate if he determines that the violation by the owner does not warrant termination of the agreement.

6. Upon transfer of his right and interest in the lands subject to the agreement during the agreement period, to forfeit all rights to further payments or grants under the agreement and refund to the state all payments or grants received thereunder unless the transferee of any such land agrees with the commissioner to assume all obligations of the agreement.

7. Not to adopt any practice specified by the commissioner in the agreement as a practice which would tend to defeat the purposes of the agreement.

8. To additional provisions which the commissioner determines are desirable and includes in the agreement to effectuate the purposes of the program or to facilitate its administration.

The agreement of the landowner under this Act shall be made binding on any tenant or operator of the land covered by the agreement, and the agreement shall so provide.

SECTION 5. DUTIES OF COMMISSIONER. In return for the agreement of the landowner, the commissioner shall:

1. Make an annual payment to the landowner for the period of the agreement at the rate determined by the commissioner to be fair and reasonable in consideration of the obligations undertaken by the landowner.

2. For the purposes of this Act, provide advice on conservation and development practices on the wetlands and adjacent areas, and to bear such part of the average cost of establishing and maintaining such practices, as the commissioner determines to be appropriate. In making this determination, the commissioner shall consider, among other things, the rate of compensation necessary to encourage owners of wetlands to participate in the waterbank program.

3. To increase the rate or rates of annual payments as determined hereunder, by an amount determined by the commissioner to be appropriate, in relation to the benefit to the general public of the use of the wetland areas, together with designated adjacent areas, if the landowner agrees to permit, without other compensation, access to such acreage by the general public, during the agreement period, for hunting, trapping, fishing, and hiking, subject to applicable state law.

4. Agree that during a drought emergency up to one hundred percent of the grass cover that is part of a waterbank

contract may be released to the landowner for haying or grazing, if the portion not released is protected by an adequate fence, including a temporary electric fence that has been approved by the commissioner. The release date shall be determined by the commissioner with the approval of the state game and fish commissioner. The landowner shall have first option to hay or graze released land at a per-acre rate, established by the commissioner, which shall be deducted from the next waterbank payment. If the landowner does not qualify for emergency haying or grazing, the commissioner may conduct a lottery subject to the approval of the landowner, to award haying or grazing privileges to qualified applicants. If haying or grazing privileges are awarded to any person other than the landowner, the commissioner shall collect for the hay harvested and the landowner shall receive his full waterbank payment.

SECTION 6. RENEWAL OF AGREEMENT - TRANSFER OF LANDS. Any agreement may be renewed or extended at the end of the agreement period for an additional period of five or ten years by mutual agreement of the commissioner and the landowner, subject to any rate redetermination by the commissioner. If during the agreement period the landowner sells or otherwise divests himself of the ownership or right of occupancy of the land, the new landowner may continue such agreement under the same terms or conditions, or enter into a new agreement in accordance with the provisions of this section, including the provisions for renewal and adjustment of payment rates, or the new landowner may choose not to participate in the program.

SECTION 7. TERMINATION OF AGREEMENT. The commissioner may terminate any agreement by mutual agreement with the landowner if the commissioner determines that the termination would be in the public interest, and may agree to any modification of agreements he may determine to be desirable to further the purposes of the program or facilitate its administration.

SECTION 8. CONSERVATION AND DEVELOPMENT PRACTICES. For the purpose and implementation of wetland conservation and development plans as provided in sections 4 and 5 of this Act, the commissioner shall have authority to enter into agreements with the state game and fish commissioner for any assistance which may be appropriate and which will further the objectives of this Act.

SECTION 9. DRAINAGE OF WETLANDS. The commissioner shall direct the state engineer, and the state engineer shall be required, to notify the commissioner of any drainage permit application pursuant to section 61-01-22 which has been denied by the state engineer. The commissioner shall direct each water management district, and each water management district shall be required, to notify the commissioner of any drainage permit application pursuant to section 61-01-22 which has been denied by a water management district. Such notice shall be sent to the commissioner by

certified mail not later than ten days after the decision. After receipt of any such notice, the commissioner shall investigate the wetland area proposed to be drained to determine whether it would be eligible for inclusion in the state waterbank program, and shall take appropriate action to attempt to enter into an agreement under this Act with the landowner for conservation of the wetland area.

SECTION 10. AUTHORIZATION FOR RECEIPT OF FUNDS. The commissioner shall be authorized to receive funds, not exceeding one million dollars in aggregate total, for this program from any private or public source, and shall also be authorized to receive any funds from any North Dakota state agency, which have been specifically authorized for that purpose by the legislative assembly.

SECTION 11. APPROPRIATION. There is hereby appropriated out of any moneys, public or private, received by the commissionor for this program, not exceeding $1,000,000 in aggregate total, and not otherwise appropriated, or so much thereof as may be necessary, to the commissioner of agriculture for the purpose of implementing and administering the provisions of this Act for the biennium beginning July 1, 1981, and ending June 30, 1983. No contract shall be entered into by the commissioner unless there are moneys on hand and appropriated to pay for all of the lease payments for the duration of the contract.

Approved March 31, 1981

WEEDS

CHAPTER 638

SENATE BILL NO. 2046
(Legislative Council)
(Interim Agriculture Committee)

NOXIOUS WEED CONTROL

AN ACT to create and enact nine new sections to chapter 63-01.1 of the North Dakota Century Code, relating to establishing county weed boards, powers and duties of county weed boards, requiring certification and education of county weed control officers, establishment of a leafy spurge control program, funding of a leafy spurge control program, a mill levy assessment for a leafy spurge control program, and weed control quarantines; to create and enact chapter 63-05 of the North Dakota Century Code, relating to landowners or operators cutting weeds and grasses along county and township highways; to amend and reenact sections 63-01.1-01, 63-01.1-02, subsection 4 of section 63-01.1-03, sections 63-01.1-04, 63-01.1-05, 63-01.1-06, 63-01.1-08, 63-01.1-09, 63-01.1-10.1, 63-01.1-13.1, and 63-01.1-16 of the North Dakota Century Code, all relating to noxious weed control; to repeal sections 63-01.1-10 and 63-01.1-11 of the North Dakota Century Code, relating to township control of noxious weeds along township roads, and landowners or operators cutting weeds and grasses along county and township highways; and providing a penalty.

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

SECTION 1. AMENDMENT. Section 63-01.1-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

63-01.1-01. CONTROL AND ERADICATION OF NOXIOUS WEEDS. It shall be the duty of every person in charge of or in possession of land in this state, whether as landowner, lessee, renter, or tenant, under statutory authority or otherwise, to eradicate or to control the spread of noxious weeds on those lands ~~owned or controlled by him in the state of North Dakota~~.

SECTION 2. AMENDMENT. Section 63-01.1-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

63-01.1-02. DEFINITIONS. As used in this chapter:

~~1. "Person" means any individual, partnership, firm, corporation, company, society, association, the state or any department, agency, or subdivision thereof, or any other entity which occupies or controls land or which causes noxious weed seeds or propagating parts to be disseminated or transported in North Dakota.~~

~~2. "Control", "controlled", or "controlling" includes being in charge of or being in possession of land, whether as owner, lessee, renter, tenant, under statutory authority, or otherwise.~~

~~3. "Commissioner" herein referred to means the duly elected North Dakota state commissioner of agriculture.~~

~~4. "Noxious weed" means any plant propagated by either seed or vegetative parts which is determined by the commissioner after consulting with the state cooperative extension service, or a county control authority after consulting with the county extension agent, to be injurious to public health, crops, livestock, land, or other property.~~

~~5. "Control authority" means the commissioner and those he may designate to act in his behalf, and the governing body of each county, organized township, and city in North Dakota.~~

~~6. "Control" as applied to weed control means to prevent the spread of any noxious weed designated by the commissioner, by seed or any other propagating part thereof.~~

1. "Board member area" means a geographical area within the county from which a member of the weed board is appointed.

2. "Commissioner" means the North Dakota state commissioner of agriculture.

3. "Control" means to prevent the spread of any noxious weed, designated by the commissioner or other control authority, by seed or any other propagating part.

4. "Control authority" means the commissioner and those he may designate to act in his behalf, and the county weed board.

5. "County weed board" means members of the board of each county as appointed by the county commissioners of the county pursuant to section 63-01.1-04.

6. "County weed control officer" means the person appointed or designated by the county weed board to be responsible for the operation and enforcement of this chapter within each county.

7. "Eradicate" or "eradication" means to destroy a plant so that it is not viable.

8. "Landowner" means any owner of federal, state, municipal, or private land, under statutory authority or otherwise, but does not include a lessee, renter, tenant, operator, or an owner of any easement or right of way.

9. "Noxious weed" means any plant propagated by either seed or vegetative parts which is determined by the commissioner after consulting with the state cooperative extension service, or a county weed board after consulting with the county extension agent, to be injurious to public health, crops, livestock, land, or other property.

10. "Operator" means the person chiefly responsible for the farming or other operations being performed on the land, whether for self-benefit, or for the benefit of the landowner or another.

11. "Person" means any individual, partnership, firm, corporation, company, society, association, the state, or any department, agency, or subdivision thereof, or any other entity which occupies or owns land or which causes noxious weed seeds or propagating parts to be disseminated or transported in North Dakota.

SECTION 3. AMENDMENT. Subsection 4 of section 63-01.1-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The commissioner shall cooperate with the county~~,~~ ~~township,-and-city-authorities,-local~~ weed board, county weed control officers, highway patrol officers, county sheriffs, the truck regulatory division, and others in carrying out his duties under this chapter. He shall also encourage the state cooperative extension service to disseminate information and to conduct educational campaigns with respect to eradication and control of noxious weeds.

SECTION 4. A new section to chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

COUNTY WEED BOARD - JURISDICTION. All land within the boundaries of North Dakota, including all federal, state, private, and municipally owned lands, is included in the county weed board's jurisdiction within the county in which the land is located.

SECTION 5. AMENDMENT. Section 63-01.1-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

63-01.1-04. ~~GOVERNING--BODY~~ COUNTY WEED BOARD AS CONTROL AUTHORITY ~~--POWERS-AND-DUTIES~~.

1. The county weed board ~~of--county-commissioners~~ of each county in the state shall be the control authority for that county~~,--the--board--of-township-supervisors-in-each organized-township-in--the--state--shall--be--the--control authority-for-that-township,-and-the-city-council-or-board of-city-commissioners-of-each-city-in-the-state--shall--be the-control-authority-for-that-city~~.

~~2.--The--governing--body--shall--appoint--or--designate-a-weed control-officer-who-shall-cooperate-with-the--commissioner and--be--responsible-for-operation-and-enforcement-of-this chapter-within-the-county.--Such-officer-may-be--a--member of--the--governing-body-or-may-be-any-other-interested-and able-person.--The-same-person-may-serve--as--weed--control officer--for-more-than-one-governing-body.--Employment-may be-for-such-tenure,-and-at-such-rates-of-compensation--and reimbursement--for--travel--expenses-as-the-governing-body may--prescribe--and--shall--be--without--regard---to---any provisions--of--law--relating-to-age-or-dual-compensation. The-appointment-or-designation-of-a-weed--control--officer shall--be--certified--by--the--governing--authority-to-the commissioner.~~

~~3.--The-control-authority-of-any-county,-city,-or-township-may expend-such-funds-from-those-sources-authorized-in-section 63-01.1-06--for--the-purpose-of-controlling-noxious-weeds, in--addition--to--any--other--expenditures---for---control authorized--by-this-chapter,-when-such-weeds-have-grown-on any-public-or-private-land-and-the-control-authority-finds that--the--extent--of--such--weeds-is-so-severe-that-their eradication-would-constitute-an-extreme--financial--burden upon-the-person-otherwise-liable-for-such-expense.~~

~~4.--The--control--authority--of--any--county--may--develop-and compile-a-county-list-of-noxious-weeds-for-the-purposes-of such--county.---Any--such-county-list-shall,-at-a-minimum, contain---those---noxious---weeds---determined---by----the commissioner.---The--commissioner--may--remove--the-county noxious-weed-determination--from--the--county--list--after consulting--with-the-board-of-county-commissioners-and-the state-cooperative-extension-service.~~

~~5.--Any--control--authority--shall--cooperate--with--any-other control-authority.~~

2. The board of county commissioners of each county shall hold a public meeting for appointing a county weed board

prior to July 21, 1981. Prior to the meeting the board of county commissioners shall establish the number of members of the board and shall establish board member areas. Each board member area shall be contiguous. Notice of the meeting shall be given in the same manner as other election notices are posted.

3. The board of county commissioners shall appoint a county weed board which shall consist of five or seven members. Members shall serve for a term of four years or until their successors are appointed and qualified. The terms of members shall be staggered so that the terms of no more than two members shall expire each year. Any qualified elector, in the board member area he is appointed to represent, is eligible for membership on the board.

4. All county weed board members shall be appointed by the board of county commissioners prior to August 5, 1981. In counties encompassing cities or towns with a population of five thousand or more, one board member shall be appointed from within the city limits of a city or town. A board member shall assume office at the first regular meeting of the county weed board following that member's appointment.

5. The board of county commissioners shall remove a member of the county weed board for repeated unexcused failure to attend meetings or for refusal or incapacity to act as a board member. When a vacancy occurs on a county weed board, the board of county commissioners, at its next regular meeting, shall appoint an individual, who possesses the necessary qualifications, as a board member to fill the unexpired term.

6. At its first regular meeting, the county weed board shall elect from its members a chairman and a vice chairman, and appoint a secretary and a treasurer. The secretary and treasurer need not be members of the board. The board of county commissioners may set rates of compensation for board members. Board members are entitled to reimbursement for actual and necessary expenses and a mileage allowance at the rate established for state employees.

SECTION 6. A new section to chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

POWERS AND DUTIES OF COUNTY WEED BOARD.

1. The county weed board shall appoint or designate a county weed control officer who shall cooperate with the board and be responsible for operation and enforcement of this chapter within the district. The officer may be a member of the county weed board or may be any other interested

and able person. The same person may serve as weed control officer for more than one county weed board. Employment shall be for a tenure and at rates of compensation and reimbursement for travel expenses as the county weed board may prescribe and shall be without regard to any provisions of law relating to age or dual compensation. The appointment or designation of a county weed control officer shall be certified by the county weed board to the commissioner.

2. The county weed board may expend funds from those sources authorized in section 63-01.1-06 for the purpose of controlling noxious weeds, in addition to any other expenditures for control authorized by this chapter, when weeds have grown on any public or private land and a control authority finds that the extent of the weeds is so severe that their eradication would constitute an extreme financial burden upon the person otherwise liable for the expense.

3. The county weed board may develop and compile a county list of noxious weeds. Any county list shall, at a minimum, contain those noxious weeds determined by the commissioner. The commissioner may remove a county weed board noxious weed determination from the county list after consulting with the board and the state cooperative extension service.

4. County weed boards shall cooperate with all other control authorities.

5. The county weed board shall implement and pursue an effective program for control of noxious weeds.

6. The county weed board shall fix the time and place of regular meetings, which shall occur at least once each year and shall be open to the public. The first regular meeting shall be held prior to August 15, 1981. The board shall keep minutes of all meetings and a complete record of all official acts.

7. The county weed board shall make at least one annual inspection to determine the progress of weed control activities within the county.

8. The county weed board shall control and disburse all moneys received by the county, for weed control, from any source.

9. The county weed board shall render technical assistance to any city with a population of three thousand or more which establishes a program as provided in section 63-01.1-10.1.

SECTION 7. AMENDMENT. Section 63-01.1-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

63-01.1-05. DUTIES OF COUNTY WEED CONTROL OFFICER. The county weed control officer shall:

1. Cooperate with the county weed board, other control authorities and weed control officers, the county extension agent, county land users, the commissioner, and others in furtherance of the provisions of this chapter.

2. Become acquainted with the location of noxious weeds on all land within the ~~jurisdiction of the control authority~~ county.

3. Through personal contact, by letter, telephone, or other means, encourage noxious weed control or eradication by all landowners or occupants within the ~~control authority area~~ county.

4. Investigate all complaints received by himself, the ~~control authority~~ county weed board, or the commissioner. If the weed control officer determines that the complaint is justified, he shall personally serve upon the landowner written notice, or shall issue written notice by certified mail to the ~~person controlling the land, which notice shall require that person~~ address of the landowner requiring the landowner to control or eradicate noxious weeds on his land within five days, unless additional time is requested from and granted by the ~~control authority~~ county weed board. A copy of the written notice shall be sent by certified mail to the address of any lessee, tenant, renter, or operator of the land. If the landowner resides in another state, an additional time of not less than thirty days shall be granted to the landowner for control and eradication purposes. The weed control officer may, upon failure by the landowner to do so in the time limits provided, cause ~~such~~ weeds and grasses to be cut or controlled and the expenses ~~shall~~ to be charged against the land of the landowner ~~or such persons controlling the land and~~.

When noxious weeds in an area of more than three acres in each forty-acre area, in which a crop is growing, are to be cut, controlled, or eradicated because of infestations of noxious weeds, the landowner, lessee, renter, tenant, or operator of the land may petition the county weed board to halt the cutting, controlling, or eradication of the noxious weeds on the land, and the cutting, controlling, or eradication shall not take place unless approved by the county weed board by a majority vote of those members present and voting at a regular or special meeting.

The expenses charged shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto, or the landowner ~~and such persons controlling the land~~ shall be subject to the penalties provided in section 63-01.1-15. Complaints, subject to the approval of the ~~control authority~~ weed board, may be initiated by the weed control officer, and notice served in accordance with this subsection.

5. Cause to be posted or inserted in official newspapers ~~such~~ those official notices ~~as~~ the commissioner may deem necessary in the furtherance of this chapter.

6. Prepare reports as requested by the commissioner.

7. Attend area or statewide meetings called by the commissioner for the purpose of assisting in the effective execution of this chapter.

8. Serve as county seed inspector for the purposes of enforcing ~~such~~ the laws and regulations under the jurisdiction of the North Dakota state seed department as shall be directed by the state seed commissioner.

SECTION 8. A new section to chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

CERTIFICATION OF COUNTY WEED CONTROL OFFICERS - EXTENSION DIVISION EDUCATIONAL PROGRAM.

1. The commissioner shall adopt rules setting forth the requirements for certification of county weed control officers, after consultation with the director of the agricultural experiment station and the director of the extension division, Fargo, or their respective designees. The commissioner shall certify all persons meeting the established requirements. All appointed or designated county weed control officers shall be certified pursuant to the rules and requirements adopted by the commissioner before assuming duties pursuant to this chapter.

2. The extension division of North Dakota state university of agriculture and applied science shall establish a program designed to provide educational instruction sufficient to comply with the requirements of certification adopted by the commissioner. The program shall be offered to local weed control officers at reasonable times and places as determined by the director of the extension division.

SECTION 9. AMENDMENT. Section 63-01.1-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

63-01.1-06. FUNDING OF PROGRAMS.

1. The board of county commissioners may pay expenses from the general fund ~~expenses~~ in any one year in furtherance of this ~~weed-control~~ chapter, including weed control along ~~county~~ public highways in the county. The ~~board-of-county commissioners-of-any-county,-when-it-deems-it-necessary-or when-petitioned-by-at-least-five--percent--of--the--voters voting--in--the--last--general--election,--may--submit-the question-of-whether-to-levy~~ county weed board may certify annually to the board of county commissioners a tax, not to exceed two mills on the net assessed valuation of all taxable property ~~therein,-to-the-electorate-of-the-county~~ in the county, to carry out the provisions of this chapter. However, the tax shall not be levied on property within the corporate limits of a city which establishes a program under section 63-01.1-10.1. The tax shall be levied by the board of county commissioners. All taxes levied and collected shall be remitted to the county weed board for a separate fund to be known as the weed control fund, which shall be used only to carry out the provisions of this chapter. The levy ~~may~~ shall be made to cover the salary and expenses of the county weed board, county weed control officer, the expense of weed control along ~~county~~ public highways in the county, and other expenses incurred in the operation of an effective weed control program in the county. ~~Upon-approval-of-sixty-percent-of-the-voters of-the-county-voting-on-the-question,-the~~ The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.

2. ~~The-township-board-of-supervisors-may-pay-for-any-expenses incurred-in-control-of-noxious-weeds--in--accordance--with the--provisions--of-this-chapter-in-the-manner-provided-in section-63-01.1-10.--Expenses-of-any-township-may-also--be paid--by-a-township-tax-levy-made-by-the-township-board-of supervisors-in-the-manner-provided-for-a-county-levy-under subsection-1.~~

~~3.--The--governing--body--of--any--city--may--pay-any-expenses incurred-by-it-in-carrying--out--the--provisions--of--this chapter--from--such--city's--general--fund--revenues.~~ The commissioner shall allocate the funds of any legislative appropriation to the county weed boards and cities which establish a program under section 63-01.1-10.1 pursuant to a formula adopted by the commissioner, after consultation with the director of the extension division and the director of the agricultural experiment station, Fargo, or their respective designees. No county weed board or city shall receive an amount in excess of one-third of its

actual expenditures for noxious weed control from any legislative appropriation, unless the appropriation provides assistance in noxious weed control to a board or city under subsection 3 of this section.

3. If a county weed board determines a weed is seriously endangering areas of a county or the state, assistance in control may be provided by legislative appropriation for this purpose, the commissioner shall allocate the appropriation accordingly, and the commissioner and each affected county weed board and city which establishes a program under section 63-01.1-10.1 shall be responsible for ensuring that the funds are properly expended.

4. The request for allocated funds pursuant to subsections 2 and 3 of this section shall be initiated by the county weed board or city which establishes a program under section 63-01.1-10.1 by submitting a voucher and documentation. Upon approval of the voucher by the commissioner, payment shall be made by the office of management and budget out of funds appropriated for control of weeds.

SECTION 10. AMENDMENT. Section 63-01.1-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

63-01.1-08. ENTRY UPON LAND FOR WEED CONTROL PURPOSES - REMEDIAL REQUIREMENTS - LIENS - PENALTY.

1. The commissioner, any control authority, county weed control officer, or anyone authorized thereby, may enter upon all land under their jurisdiction for the purpose of performing their duties and exercising their powers under this chapter, including the taking of specimens of weeds or other materials, without the consent of the ~~person owning or controlling such land~~ landowner, lessee, renter, tenant, or operator, and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised.

2. If any land is found to be infested with noxious weeds by the commissioner, any control authority, county weed control officer, or other authorized person, the county weed board, by resolution adopted by two-thirds of its members, may confirm the fact. The board may set forth minimum remedial requirements for control of the infested property. The board shall deliver, personally or by certified mail, to the address of the landowner of the infested land:

   a. A copy of the resolution.

b. A statement of the cost of fulfilling the requirements for control.

c. A request that the requirements contained in the resolution be carried out at the landowner's expense within five days, unless additional time is requested from and granted by the board, or on a cooperative basis. If the landowner resides in another state, an additional time of not less than thirty days shall be granted to the landowner for control and eradication purposes.

3. A copy of the resolution shall be sent by certified mail to any lessee, renter, tenant, or operator of the land.

4. A landowner who is responsible for an infestation and fails or refuses to perform the remedial requirements for the control of the weeds on the infested area within the time designated may be fined not more than fifty dollars per day for each day of violation and not more than a total of two thousand five hundred dollars per year as determined by the district court. Any person accused of failure to perform remedial requirements under this section is entitled to a trial by jury, upon request. The accumulated fines under this section are a lien against the property of the landowner from the day the resolution is delivered to the landowner by the county weed board. All fines collected pursuant to this section shall be deposited with the state treasurer and credited to the state school fund.

5. When noxious weeds in an area of more than three acres in each forty-acre area, in which a crop is growing, are to be cut, controlled, or eradicated because of infestations of noxious weeds, the landowner, lessee, renter, tenant, or operator of the land may petition the county weed board to halt the cutting, controlling, or eradication of the noxious weeds on the land, and the cutting, controlling, or eradication shall not take place unless approved by the county weed board by a majority vote of those members present and voting at a regular or special meeting.

SECTION 11. AMENDMENT. Section 63-01.1-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

63-01.1-09. COUNTY ~~COMMISSIONERS~~ WEED BOARD TO DESTROY NOXIOUS WEEDS ALONG ~~COUNTY~~ HIGHWAYS. The county ~~commissioners~~ weed board shall eradicate or control noxious weeds as defined in this ~~law~~ chapter along all ~~county~~ public highways within the county and the expense thereof shall be paid from funds as provided in section 63-01.1-06.

SECTION 12. AMENDMENT. Section 63-01.1-10.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

63-01.1-10.1. CITIES TO CONTROL NOXIOUS WEEDS WITHIN CITIES.

1. The governing body of any city, ~~when--acting~~ with a population of three thousand or more, may act as a control authority, ~~shall--eradicate-or-control-noxious-weeds-when found-within-or-adjacent-to-such-city,~~ and may establish and administer a program for the control of weeds within the jurisdictional limits of the city. If a program is not established, the county weed board shall administer a program for the city.

2. The governing body of any city with a population of three thousand or more may levy a tax, not to exceed two mills on the net assessed valuation of property within the corporate limits of the city, to establish and administer the program.

3. Moneys received by the cities from the levy may be used in any phase of weed control as determined by the governing body of the city. The control program shall include work on weeds included on any county or state noxious weed list.

4. The governing body of a city which establishes a control program may petition the commissioner of agriculture for special assistance in funding authorized by section 63-01.1-06.

5. The governing body of any city may act in conjunction with any other control authority or officer also required to act under this chapter.

SECTION 13. AMENDMENT. Section 63-01.1-13.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

63-01.1-13.1. NOXIOUS WEED CONTROL ON GAME AND FISH LAND. Upon failure of the game and fish department to adequately destroy noxious weeds, or control and prevent spreading and dissemination of noxious weeds, on any parcel of land under its control, the county ~~control--authority~~ weed board for the county in which all or a portion of the land owned and leased by the game and fish department is located may, upon approval of the commissioner, enter upon the land owned and leased by the game and fish department for the purposes of destruction, control, or prevention of noxious weeds. All expenditures by a county ~~control--authorities~~ weed board for destruction, control, or prevention of noxious weeds on game and fish lands pursuant to this section shall be reimbursed by the state game and fish department to the ~~county-control-authority~~ board upon adequate certification by the ~~county-control-authority~~ board.

SECTION 14. AMENDMENT. Section 63-01.1-16 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

63-01.1-16. ALLEGATIONS OF NONCOMPLIANCE. Any landowner ~~or occupant~~, lessee, renter, tenant, or operator may call attention to noncompliance with this chapter, or the rules, regulations, or notices ~~promulgated thereunder~~ adopted pursuant to it, by filing ~~his~~ a complaint in writing with the ~~local~~ county weed control officer ~~who~~ or the county weed board. The officer or board shall take the necessary action.

SECTION 15. A new section to chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

LEAFY SPURGE CONTROL PROGRAM. A leafy spurge control program is authorized and shall be carried out as provided by sections 15 through 17 of this Act, within the limits of legislative appropriation therefor. As used in this chapter leafy spurge refers to all perennial species of the genus euphorbia, except those designated by the commissioner. All state and local government entities shall comply with the leafy spurge program established and administered by the commissioner pursuant to this Act. The commissioner is authorized to fund treatment programs for other designated noxious weeds from the remainder of any legislative appropriation not expended for the leafy spurge control program by the end of the first year of the biennium for which the moneys were appropriated.

SECTION 16. A new section to chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

LEAFY SPURGE CONTROL PROGRAM FUNDING. The leafy spurge control program shall be funded by landowner, county weed board, city, and state contributions as follows:

1. Landowners shall contribute twenty percent of the cost of the leafy spurge treatment program on their land but not to exceed a total cost of sixty dollars per acre over a two-year period. Landowner contributions may be in the form of property other than money, or services, if the contribution is specifically approved by the county weed board. Otherwise, the landowner contribution shall be in money.

2. Except as provided in subsections 1 and 3 of this section, county weed boards and cities which establish a program under section 63-01.1-10.1, shall contribute the total cost of the leafy spurge treatment program on private lands and lands within the board or city's jurisdiction with funds available under section 17 of this Act.

3. The state shall contribute the total cost of the leafy spurge treatment program on state lands plus the amount under subsection 2 of this section which cannot be funded by a county weed board or city under section 17 of this Act, subject to the limitation on expenditures from legislative appropriations set forth in subsection 2 of section 63-01.1-06.

4. Any legislative appropriation for the leafy spurge control program of sections 15 through 17 of this Act 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.

SECTION 17. A new section to chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

LEAFY SPURGE MILL LEVY. The board of county commissioners in each county and the governing body of a city which establishes a program under section 63-01.1-10.1 may levy a tax, not to exceed one mill on the net assessed valuation of all taxable property within its jurisdiction, to fund the contributions to the leafy spurge control program. However, the board of commissioners may not levy the tax on property within the corporate limits of a city which establishes a program under section 63-01.1-10.1. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes. At the request of the county weed board or on the initiative of the board of county commissioners, or on the initiative of the governing body of a city which establishes a program under section 63-01.1-10.1, the tax levy authorized by this section shall not be made when no longer needed for the purposes of the leafy spurge control program. Funds necessary to carry out the provisions of the leafy spurge control program in excess of the revenue derived from the one mill levy authorized by this section shall be funded by the state under subsection 3 of section 16 of this Act.

SECTION 18. A new section to chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

QUARANTINE PERIOD - FARM PRODUCTS AND AREA DEFINED.

1. Whenever the commissioner, the county weed board, or anyone authorized thereby finds any area of the state to be infested with noxious weeds, and it is established that farm products from that area are liable to spread noxious weeds into other areas to the injury of others, the commissioner shall, without unnecessary delay, declare a quarantine against the area to prevent the transfer of farm products from the quarantined area. When it is ascertained that noxious weeds are likely to be introduced

into North Dakota by the importation of farm products, the commissioner shall declare a quarantine against the importation of those farm products.

2. The commissioner shall declare an individual county quarantine when requested by resolution adopted by a two-thirds majority of the county weed board of the county in which the quarantine is to be declared.

3. For the purposes of this section, "area" means a geographical section of land as identified by the commissioner, which may include cities and counties or any portion of a city or county.

4. For the purposes of this section, "farm products" means all crops, crop products, plants or portions thereof, but shall not mean livestock.

SECTION 19. A new section to chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

CANNABIS CONTROL PROGRAM. A cannabis control program is authorized and shall be carried out as provided by sections 19 and 20 of this Act, within the limits of legislative appropriation therefor. As used in this chapter, cannabis refers to annual species of the genus cannabis, also known as marijuana. All state and local government entities shall comply with the cannabis control program established and administered by the commissioner pursuant to this Act.

SECTION 20. A new section to chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

CANNABIS CONTROL PROGRAM FUNDING. The cannabis control program shall be funded by landowner, county weed board, and state contributions as follows:

1. Landowners shall contribute twenty percent of the cost of the cannabis treatment program on their land but not to exceed a total cost of sixty dollars per acre over a two-year period. Landowner contributions may be in the form of property other than money, or services, if the contribution is specifically approved by the county weed board. Otherwise the landowner contribution shall be in money.

2. Except as provided in subsections 1 and 3 of this section, county weed boards and cities which establish a program under section 63-01.1-10.1 shall contribute the total cost of the cannabis treatment program on private lands and lands within the board or city's jurisdiction.

3. The state shall contribute the total cost of the cannabis treatment program on state lands plus the amount under subsection 2 of this section which cannot be funded by the county weed board or city. The commissioner shall allocate the funds of any legislative appropriation for cannabis control to the county weed boards and cities pursuant to a formula adopted by the commissioner, after consultation with the director of the extension division and the director of the agricultural experiment station, Fargo, or their respective designees. No county weed board or city shall receive an amount in excess of one-third of its actual expenditures for cannabis control from any legislative appropriation, unless the appropriation provides specific assistance in cannabis control to seriously endangered areas of a county or the state.

4. Any legislative appropriation for the cannabis control program of sections 19 and 20 of this Act shall be expended only for reimbursement of the costs of cannabis control according to this section to private landowners, including lessees, tenants, renters, or operators of private land, county weed boards, or cities.

SECTION 21. Chapter 63-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

63-05-01. LANDOWNERS OR OPERATORS ALONG COUNTY AND TOWNSHIP HIGHWAYS TO CUT WEEDS AND GRASSES. It is the duty of landowners or operators with land adjoining regularly traveled county and township highways, as designated by the township board of supervisors in organized townships, the board of county commissioners in unorganized townships, and the board of county commissioners in the case of county highways, to cut all weeds and grasses along the regularly traveled highways adjoining their lands, including weeds and grasses growing within the public right of way bordering the highways and their lands. The cutting shall be completed not later than September fifteenth or October first, as prescribed by the board of county commissioners.

63-05-02. DESIGNATION OF TIME FOR CUTTING - NOTICE. The board of county commissioners of each county shall prescribe the time for cutting of the weeds and grasses, designate the county highways along which weeds and grasses shall be cut, and request the board of township supervisors to designate township roads along which weeds and grasses shall be cut. The board of township supervisors shall make the designation, and the board of county commissioners shall publish notice of the designated highways and the time for cutting in the official county newspaper at least twice, and the last publication shall appear not less than two weeks prior to the deadline date. If no official newspaper is published in the county, written notice shall be given by posting, in the same manner as election notices are posted. Expenses incurred in

publishing the notice shall be paid from funds provided in section 63-01.1-06 by the board of county commissioners.

63-05-03. FAILURE TO CUT WEEDS AND GRASSES - EXPENSES LEVIED AS TAXES AGAINST LAND. If the landowner or operator fails to cut the weeds and grasses along the designated highways or roads as provided in this chapter, the board of township supervisors or the board of county commissioners, as the case may be, may cause the weeds and grasses to be cut and the actual expense of cutting shall be certified to the county auditor, and all of the expenses shall be charged against the land of the landowner and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto.

63-05-04. DEFINITION OF "OPERATOR". As used in this chapter, the word "operator" means a person chiefly responsible for the farming or other operations being performed on the land, whether for his own benefit or for the benefit of the landowner or another.

SECTION 22. REPEAL. Sections 63-01.1-10 and 63-01.1-11 of the 1979 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 8, 1981

WEAPONS

CHAPTER 636

SENATE BILL NO. 2335
(Senators Dotzenrod, Shablow)
(Representative Crabtree)

MUZZLELOADER NOT SUBJECT TO PISTOL LICENSING

AN ACT to amend and reenact section 62-01-19 of the North Dakota Century Code, relating to the exemption of antique pistols from the chapter on pistol licensing, and providing for the exemption of muzzleloaders from the chapter provisions.

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

SECTION 1. AMENDMENT. Section 62-01-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

62-01-19. ANTIQUE PISTOLS. This chapter shall not apply to the purchase, possession, or sale as curiosities or ornaments, of pistols more than fifty years old or muzzleloaders nor to the transportation of such pistols unloaded and in a bag, box, or securely wrapped package, but not concealed on the person. For the purposes of this chapter, "muzzleloader" means an antique or replica of an antique firearm loaded from the muzzle and fired by igniting the charge by either a cap or flint.

Approved March 11, 1981

CHAPTER 637

SENATE BILL NO. 2071
(Legislative Council)
(Interim Judiciary "C" Committee)

BLANK CARTRIDGE FIREARMS AND FIRECRACKERS

AN ACT to repeal section 62-04-05 of the North Dakota Century Code, relating to the use or sale of blank cartridge firearms or firecrackers.

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

SECTION 1. REPEAL. Section 62-04-05 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 9, 1981

WORKMEN'S COMPENSATION

CHAPTER 639

HOUSE BILL NO. 1183
(Committee on Industry, Business, and Labor)
(At the request of the Workmen's Compensation Bureau)

DEFINITIONS AND ELECTIVE COVERAGE

AN ACT to amend and reenact subsections 5 and 7 of section 65-01-02 and section 65-07-01 of the North Dakota Century Code, relating to definitions of employee and employer and providing for elective coverage.

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

SECTION 1. AMENDMENT. Subsections 5 and 7 of section 65-01-02 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. "Employee" shall mean every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and:

   a. Such term shall include:

      (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.

      (2) Aliens.

      (3) Poor relief workers except such as are engaged in repaying to counties relief moneys which the counties have been compelled by statute to expend for poor relief.

      (4) Minors, whether lawfully or unlawfully employed; a minor shall be deemed sui juris for the purposes of this title, and no other person shall have any cause of action or right to compensation for any injury to such minor workman, but in the event of the award of a lump sum of compensation

to such minor employee, such sum shall be paid only to the legally appointed guardian of such minor.

b. Such term shall not include:

(1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer.

(2) Any person who is engaged in an illegal enterprise or occupation.

(3) ~~Any executive officer of a business concern shall mean only the president, vice presidents, secretary, or treasurer of a business corporation whose duties are solely those of such executive office, and if an executive officer also performs duties of a kind generally performed by an employee, such employment is not exempt.~~ The spouse or child of the employer dwelling in the household of the employer.

c. Persons employed by subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter shall be deemed to be employees of the general contractor who shall be liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium therefor. This subdivision shall not be construed as imposing any liability upon a general contractor other than liability to the bureau for the payment of premiums which are not paid by a subcontractor or independent contractor.

7. "Employer" shall mean:

a. The state and all political subdivisions thereof.

b. All public and quasi-public corporations in this state.

c. Every person, partnership, association, and private corporation, including a public service corporation.

d. The legal representative of any deceased employer.

e. The receiver or trustee of any person, partnership, association, or corporation, having one or more employees as herein defined.

f. The president, vice presidents, secretary, or treasurer of a business corporation.

SECTION 2. AMENDMENT. Section 65-07-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-07-01. EMPLOYER, SPOUSE AND CHILDREN OF EMPLOYER, SELF-EMPLOYED, AND VOLUNTEERS MAY SECURE COVERAGE. Any employer, by special contract with the bureau, may secure insurance protection against injuries to his own person or for his own death when such injury or death occurs in the course of his work in an industry in which he has secured such protection against injuries to his employees. Any employer may secure such coverage for that employer's spouse and children living in the same household as the employer. Self-employed persons may contract with the bureau for insurance protection for themselves. In addition, any volunteer organization, not otherwise provided for under this title, may contract with the bureau for such insurance protection for its own members while such members are engaged in the specific activity provided for in such contract.

Approved February 20, 1981

CHAPTER 640

SENATE BILL NO. 2138
(Committee on Industry, Business, and Labor)
(At the request of the Workmen's Compensation Bureau)

"PERMANENT IMPAIRMENT" AND CLAIM FILING TIME LIMIT

AN ACT to amend and reenact subsection 11 of section 65-01-02, and sections 65-05-07 and 65-09-02 of the North Dakota Century Code, relating to definition of permanent impairment and time for filing a claim.

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

SECTION 1. AMENDMENT. Subsection 11 of section 65-01-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. "Permanent ~~partial--disability~~ impairment" shall include disfigurement resulting from an injury if such disfigurement diminishes the ability of the employee to obtain employment.

SECTION 2. AMENDMENT. Section 65-05-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-07. INJURED EMPLOYEE GIVEN MEDICAL AND HOSPITAL SERVICE REQUIRED - FURNISHED ARTIFICIAL LIMBS AND APPLIANCES FOR REHABILITATION. Immediately after an injury sustained by an employee and during the resulting period of disability, the fund shall furnish to the employee such medical, surgical, and hospital service and supplies as the nature of the injury may require. If the injury causes permanent ~~partial disability~~ impairment, the fund, in addition to the specific benefits provided, may furnish such artificial limbs, glasses, braces, equipment, or appliances or provide such rehabilitation services as in the judgment of the bureau may be necessary to rehabilitate such injured employee. The bureau may not provide any permanent additions, remodeling, or adaptations to real estate under this section.

SECTION 3. AMENDMENT. Section 65-09-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-09-02. APPLICATION FOR COMPENSATION - HEARING - TIME FOR FILING - PAYROLL REPORT. Any employee whose employer has failed to comply with the provisions of chapter 65-04, who has been injured in the course of his employment, wheresoever such injury has occurred, or his dependents in case death has ensued, in lieu of proceedings against his employer by civil action in court, may file his application with the bureau for an award of compensation in accordance with the terms of this title. All original claims for compensation ~~for--disability--or--death-under-this-chapter-shall-be made-within--sixty--days--after--such--injury--or--death.---For--any reasonable--cause--shown--the--bureau--may-allow-original-claims-for disability-or-death-to-be-made-at-any-time-within-one-year~~ shall be filed within one year after the injury or within two years after the death. The bureau shall notify the claimant and the employer that the matter is being processed under this chapter, and thereafter it shall hear and determine such application for compensation in like manner as in other claims before the bureau. The employer shall be required to furnish to the bureau all of such employer's payroll records for the preceding six years.

Approved March 11, 1981

CHAPTER 641

SENATE BILL NO. 2143
(Committee on Industry, Business, and Labor)
(At the request of the Workmen's Compensation Bureau)

BUREAU'S SUBROGATION INTEREST

AN ACT to amend and reenact section 65-01-09 of the North Dakota Century Code, relating to the bureau's subrogation interest in third party recoveries.

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

SECTION 1. AMENDMENT. Section 65-01-09 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-09. INJURY THROUGH NEGLIGENCE OF THIRD PERSON - OPTION OF EMPLOYEE - FUND SUBROGATED WHEN CLAIM FILED. When an injury or death for which compensation is payable under provisions of this title shall have been sustained under circumstances creating in some person other than the fund a legal liability to pay damages in respect thereto, the injured employee, or his dependents may claim compensation under this title and proceed at law to recover damages against such other person. The fund shall be subrogated to the rights of the injured employee or his dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount it has paid or ~~to be paid~~ would otherwise pay in the future in compensation and benefits for the injured employee ~~and the~~ . The bureau's subrogation interest may not be reduced by settlement, compromise, or judgment. The action against such other person may be brought by the injured employee, or his dependents in the event of his death. Such action shall be brought in his or in his dependents' own right and name and as trustee for the workmen's compensation bureau for the subrogation interest of the bureau. If the injured employee or his dependents do not institute suit within sixty days after date of injury the bureau may bring the action in its own name and as trustee for the injured employee or his dependents and retain as its subrogation interest the full amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or his dependents. Within sixty days after both the injured employee and the bureau have declined to commence an action against a third person as provided above, the employer may bring the action in his own name or in the name of the

employee, or both, and in trust for the bureau and for the employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship. If the action is brought by the injured employee or his dependents, or the employer as provided above, the bureau shall pay fifty percent of the costs of the action, exclusive of attorney fee, when such costs are incurred. Should there be no recovery of damages in the action this shall be a cost of the bureau to be paid from the bureau general fund. When there is recovery of damages in the action the costs of the action, exclusive of attorneys fees, shall be prorated and adjusted on the percentage of the total subrogation interest of the bureau recovered to the total recovery in the action. The bureau shall pay attorney fees to the injured employee's attorney from the bureau general fund as follows:

1. Twenty percent of the subrogation interest recovered for the bureau when legal action is not commenced.

2. Twenty-five percent of the subrogation interest recovered for the bureau when action is commenced and settled before judgment.

3. Thirty-three and ~~a---half~~ one-third percent of the subrogation interest recovered for the bureau when recovered through judgment.

The above provisions as to costs of the action and attorney fees is effective only when the injured employee advises the bureau in writing the name and address of his attorney, and that he has employed such attorney for the purpose of collecting damages or of bringing legal action for recovery of damages. If a claimant fails to pay the bureau's subrogation interest within thirty days of receipt of a recovery in a third party action, the bureau's subrogation interest shall be the full amount of the damages recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or his dependents, and no costs or attorney fees will be paid from the bureau's subrogation interest.

Approved March 12, 1981

CHAPTER 642

SENATE BILL NO. 2158
(Committee on Industry, Business, and Labor)
(At the request of the Workmen's Compensation Bureau)

BURDEN OF PROOF

AN ACT to amend and reenact section 65-01-11 of the North Dakota Century Code, relating to burden of proof in compensation claims.

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

SECTION 1. AMENDMENT. Section 65-01-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-11. BURDEN OF PROOF IN COMPENSATION MATTERS - DEATH CERTIFICATE. If the bureau or an employer shall claim that an employee is not entitled to the benefits of the North Dakota Workmen's Compensation Law by reason of the fact that his injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary intoxication of the employee, the burden of proving such exemption or forfeiture shall be upon the bureau or upon the person alleging the same; however, a blood alcohol level above the legal intoxication limit as defined in subsection 3 of section 39-20-07 shall create a rebuttable presumption that the injury was due to intoxication. Any claimant against the fund, however, shall have the burden of proving by a preponderance of the evidence that he is entitled to participate in the same. In the event of a claim for death benefits the official death certificate shall be considered as evidence of death and may not be used to establish the cause of death.

Approved April 1, 1981

CHAPTER 643

SENATE BILL NO. 2127
(Committee on Industry, Business, and Labor)
(At the request of the Workmen's Compensation Bureau)

CLAIMS, BENEFITS, AND APPEALS

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to penalties for false claims; and to amend and reenact sections 65-05-03, 65-05-04, 65-05-05, 65-05-15, 65-05-17, 65-05-25, and 65-05-26 of the North Dakota Century Code, relating to informing employers of awards, limitation on appeals, payments through other state Acts, aggravation of employment injuries, lump sum settlements, and burial expenses.

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

SECTION 1. A new section to chapter 65-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

FILING FALSE CLAIM OR FALSE STATEMENTS - PENALTY. Any claimant who files a false claim or makes a false statement in connection with any claim or accepts total disability benefits paid for a period after the claimant has returned to work is guilty of a class B misdemeanor. In addition to any other penalties provided by law, the claimant shall reimburse the bureau for any benefits paid based upon such false claim or false statement or for such period that the claimant was not totally disabled; and, in addition, shall forfeit any additional benefits relative to that same injury.

SECTION 2. AMENDMENT. Section 65-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-03. JURISDICTION OF BUREAU TO HEAR QUESTIONS WITHIN ITS JURISDICTION - FINALITY OF DETERMINATION. The bureau shall have full power and authority to hear and determine all questions within its jurisdiction, and its decisions, except as provided in chapter 65-10, shall be final and shall be entitled to the same faith and credit as a judgment of a court of record. ~~Before~~ During the period of experience rating, before an award for permanent ~~disability~~ impairment can be made to a claimant, the bureau shall give notification in writing, by registered or certified mail, addressed to the employer of said claimant at his last known address, of their

intention to make such award, outlining reasons and amount of such evaluation and giving the employer ten days in which to file a written protest to such award. If such protest is registered by the employer, the bureau shall set a date of hearing to show cause, if any there be, why such award should not be made, and shall notify the employer of the date set, and the bureau shall order an examination of the claimant on or before the date set for the hearing by a duly qualified physician licensed to practice and practicing his profession in the state of North Dakota, designated by the employer.

SECTION 3. AMENDMENT. Section 65-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-04. BUREAU HAS CONTINUING JURISDICTION OVER CLAIMS PROPERLY FILED. If the original claim for compensation has been made within the time specified in section 65-05-01, the bureau at any time, on its own motion or on application, may review the award, and in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, may award compensation.

There is no appeal from a bureau decision not to reopen a claim after the bureau's order on the claim has become final.

SECTION 4. AMENDMENT. Section 65-05-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-05. PAYMENTS MADE TO INSURED EMPLOYEES INJURED IN COURSE OF EMPLOYMENT AND TO THEIR DEPENDENTS. The bureau shall disburse the fund for the payment of compensation and other benefits as provided in this chapter to employees, or to their dependents in case death has ensued, who:

1. Are subject to the provisions of this title;

2. Are employed by employers who are subject to this title; and

3. Have been injured in the course of their employment.

Where ~~the injury is sustained outside the state of North Dakota and~~ compensation is ~~claimed and~~ received through some other state act no compensation shall be allowed under this title unless such benefits are awarded by another state as a supplement to this state's benefits.

The bureau shall provide such additional coverage, allow such additional time for claims to be filed, and pay such additional compensation and other benefits in excess of the coverage, filing time, and benefits otherwise provided in this title, as may be required by the Federal Coal Mine Health and Safety Act of 1969 and

amendments thereto, for any coal miner, his widow, or dependents who, due to the disability or death of such coal miner as the result of pneumoconiosis, would be entitled to claim benefits under such federal Act; provided, however, that such pneumoconiosis was contracted or aggravated as the result of employment as a coal miner in the state of North Dakota.

The bureau shall adopt such reasonable rules and regulations and enter into such agreements necessary to comply with section 421 of said federal Act.

SECTION 5. AMENDMENT. Section 65-05-15 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-15. AGGRAVATION OF INJURY OR DISEASE - COMPENSATION AND BENEFITS NOT PAID FOR PREEXISTING CONDITION. Compensation shall not be paid for any condition which existed prior to the happening of a compensable injury nor for any disability chargeable to such condition. In case of aggravation of a condition existing prior to a compensable injury and in case of the aggravation of a compensable injury by a nonemployment injury, compensation, medical or hospital expenses, or death benefits, shall be allowed by the bureau and paid from the fund only for such proportion of the disability, death benefits, or expense arising from the aggravation of such prior condition as reasonably may be attributable to such compensable injury. If the degree of aggravation cannot be determined, the percentage award shall be fifty percent of total benefits recoverable if one hundred percent of the injury had been the result of employment. But any compensation paid on the basis of aggravation shall not be less than ten dollars per week unless the actual wages of claimant shall be less than ten dollars, in which event the actual wages shall be paid in compensation. However, in case of death due to an employment-aggravated condition, burial expenses and special benefits shall be paid in full pursuant to sections 65-05-17 and 65-05-26.

SECTION 6. AMENDMENT. Section 65-05-17 of the 1979 Supplement to 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 ~~ninety~~ one hundred five 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 reach the age of eighteen; or, if such child or children are incapable of self-support, until they are capable of self-

support. 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 ten dollars per week.

2. To each surviving dependent child or issue of said deceased employee born within ten months after the employee's date of death, the amount of seven dollars until such child dies, marries, or reaches the age of eighteen years or if such child is incapable of self-support until it becomes capable of self-support. The bureau, in its discretion, may make such payment directly to such surviving child or issue of the deceased employee or to the surviving parent or guardian of such child or issue.

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 such guardians.

SECTION 7. AMENDMENT. Section 65-05-25 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-25. LUMP SUM SETTLEMENT - GRANTED IN DISCRETION OF BUREAU - HOW COMPUTED. ~~In--case--of--death,---permanent---total disability,---or---permanent--impairment,--the~~ The bureau, if it determines it is in the best interest of the claimant, may pay a lump sum equal to the present value of all future payments of compensation ~~computed--at--two--and---one-half---percent---discount compounded--annually~~ or a lump sum stipulated to by the claimant after an opportunity to seek legal counsel. The probability of the beneficiary's or claimant's death before the expiration of the period during which he is entitled to compensation shall be determined by reference to generally accepted mortality studies. In case of the spouse of a deceased employee, the lump sum shall not exceed compensation for four hundred sixteen weeks and the probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. If at the expiration of a period for which lump sum settlement was made hereunder the claimant is still alive and has not remarried, the bureau, in its discretion, may again assume liability and resume pension payments. The bureau may also grant a partial lump sum settlement, based upon the same computations as the complete lump sum. Any decision of the bureau rendered under this section may be appealed to the district court as provided for in chapter 65-10, and the district court shall render its decision sustaining the decision of the bureau, reversing it, or remanding it back to the bureau with instructions.

SECTION 8. AMENDMENT. Section 65-05-26 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-26. BUREAU BURIAL EXPENSES. If death results from an injury within six years, the fund shall pay to the personal representatives of the deceased employee burial expenses not to exceed ~~one~~ two thousand dollars.

Approved April 8, 1981

CHAPTER 644

HOUSE BILL NO. 1522
(B. Larson)

REHABILITATION ALLOWANCE

AN ACT to amend and reenact section 65-05.1-06 of the North Dakota Century Code, relating to workmen's compensation rehabilitation allowances.

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

SECTION 1. AMENDMENT. Section 65-05.1-06 of the 1979 Supplement to 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, ~~--and compensation for death~~ 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 weekly compensation and dependent benefits that the claimant is entitled to receive plus twenty-five percent. In the event the claimant successfully concludes the terms of the contract, additional awards, not to exceed a total of five 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 March 3, 1981

CHAPTER 645

SENATE BILL NO. 2228
(Senator Lashkowitz)
(Representatives Gorder, Retzer)

SUPPLEMENTARY BENEFITS

AN ACT to amend and reenact sections 65-05.2-02 and 65-05.2-03 of the North Dakota Century Code, relating to the amount of supplementary workmen's compensation benefits and payment from the supplementary benefit fund; and providing that the premium rate may not be increased during the 1981-1983 biennium.

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

SECTION 1. AMENDMENT. Section 65-05.2-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-02. SUPPLEMENTARY BENEFITS - AMOUNT. If a claimant was eligible for the maximum permanent total disability or death benefits in effect at the time of injury, supplementary benefits are ~~twenty~~ twenty-five percent of the difference between the amount of benefits which the claimant is receiving and the maximum amount of benefits in effect on July 1, 1975. Supplementary benefits for a claimant who was eligible for less than the maximum permanent total disability or death benefits in effect at the time of the injury shall be ~~twenty~~ twenty-five percent of the difference between the amount of benefits the claimant is receiving and the benefits in effect on July 1, 1975, in the same proportion as the claimant's present benefits bear to the maximum benefits in effect at the time of injury.

SECTION 2. PREMIUM RATE NOT TO BE INCREASED. During the period of July 1, 1981, through June 30, 1983, the bureau shall not effectuate any increase to base premium to any employer as the result of the increase in benefits provided by section 1 of this Act. Rate adjustment required as the result of other benefit increases provided by law or due to other increased costs or based on actuarial studies or merit rating shall not be limited by this section.

SECTION 3. AMENDMENT. Section 65-05.2-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-03. PAYMENT OF SUPPLEMENTARY BENEFITS FROM THE SUPPLEMENTARY BENEFIT FUND. The payment of supplementary benefits to eligible recipients shall be made by the bureau from the supplementary benefit fund. If the supplementary benefit fund is inadequate to pay the full amount of supplementary benefits to an eligible recipient, the levels of supplementary benefits shall be prorated for all eligible recipients. The bureau shall not be required to provide a reserve in the fund to pay liability incurred as a result of such supplementary benefits.

Approved April 8, 1981

CHAPTER 646

SENATE BILL NO. 2170
(Committee on Industry, Business, and Labor)
(At the request of Workmen's Compensation Bureau)

CRIME VICTIMS REPARATIONS

AN ACT to amend and reenact section 65-13-04.1 of the North Dakota Century Code, relating to inmates who are crime victims.

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

SECTION 1. AMENDMENT. Section 65-13-04.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-13-04.1. NO AWARD PAID TO INMATES. No award of any kind shall be made under this chapter to a victim convicted of a crime and injured while confined in any state, county, or city jail, prison, or other correctional facility.

Approved March 6, 1981

VETOED MEASURES

CHAPTER 647

HOUSE BILL NO. 1251
(Representatives Wald, H. Larson)
(Senators Cussons, Iszler)

INTOXICATION DAMAGE RECOVERY LIMITATION

AN ACT to amend and reenact section 5-01-06 of the North Dakota Century Code, relating to recovery of damages resulting from intoxication.

VETO

March 16, 1981

The Honorable James Peterson
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1251, as passed by the Legislature, amended §5-01-06 of the North Dakota Century Code, which is sometimes referred to as a "Dram Shop statute." This amendment would be an important change in the law because the effect of House Bill 1251 would be to take away the right, in certain limited situations, to bring an action against a host who negligently serves additional intoxicants to a person who is already "intoxicated", and who then injures or damages a totally innocent third person.

Each person should be held accountable for his actions. Where someone has provided alcoholic beverages to "a person under twenty-one years of age, an habitual drunkard, an incompetent, or an intoxicated person . . ." (NDCC 5-01-09), and thereby created a

situation where a totally innocent third party is injured or killed because of the subsequent activity of the intoxicated person, then I believe that the priority of responsibility and accountability to those injured or killed must be first on the intoxicated individual, and secondly, on the person who sold or gave the intoxicant to the intoxicated individual.

That is what the present law provides. However, House Bill 1251 would exempt the person who gave away the intoxicants from any liability, and if the intoxicated person has no insurance or assets to compensate the totally innocent third person who was injured or killed, then the burden falls entirely on that totally innocent person. It would also exempt from any liability an adult who gives away liquor to a minor who might cause injury or damage to a totally innocent party on the highway or elsewhere.

That is an unjust result and contrary to the philosophy that each person should be held accountable for his actions.

The proponents of the bill argue that a person should be able to serve intoxicants to guests in his home without concern for possibly being civilly liable because of subsequent acts committed by his guests. That activity can be conducted in one's home under the existing law if the host acts responsibly; however, if he does not act responsibly, he should not be insulated from liability to the possible detriment of a totally innocent third party.

The statute as it presently exists gives our citizens who are damaged and are totally innocent of wrongdoing two possible sources of recovery for their damage - first, recovery from the intoxicated person and, secondly, from the provider of the intoxicants.

House Bill 1251 would eliminate one of those possible sources of recovery to the detriment of a totally innocent third party. In turn, that is detrimental to the citizens of North Dakota.

For the above reasons, I veto House Bill 1251.

Sincerely,

ALLEN I. OLSON
Governor

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

SECTION 1. AMENDMENT. Section 5-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-06. RECOVERY OF DAMAGES RESULTING FROM INTOXICATION. Every ~~wife, child, parent, guardian, employer, or other~~ person who shall be injured in person, property, or means of support by any intoxicated person, or in consequence of intoxication, shall have a right of action against any ~~person~~ licensed or unlicensed seller and his agent or employees who shall have caused such intoxication by disposing, of or selling, ~~bartering, or giving away~~ alcoholic beverages contrary to statute for all damages sustained.

Disapproved March 16, 1981

Filed March 20, 1981

CHAPTER 648

HOUSE BILL NO. 1593
(Rued)

INSURANCE RATING ORGANIZATION OFFICE

AN ACT to create and enact a new section to chapter 26-29 of the North Dakota Century Code, requiring a fire and property insurance rating organization to maintain an office within the state.

VETO

April 3, 1981

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

House Bill 1593 requires that a fire and property insurance rating organization maintain an office within our state. Other insurance rating organizations are not required to maintain state located offices. All rating organizations operating in the state are regulated by the Commissioner of Insurance regardless of office location.

While it is in the state's best interest to encourage the location of business enterprises within our borders, that interest is not well served by selectively mandating certain businesses to maintain state located office facilities as a condition to providing services to our citizens.

House Bill 1593 creates an unfavorable impression which discourages the consideration of our state for purposes of locating and conducting business enterprise in an equal, fair and competitive atmosphere. We can attract business and industry without first requiring their presence.

State law presently provides for the protection of persons who make use of the services provided by such organizations through fair and nondiscriminatory laws which are administered by the Commissioner of Insurance. The provisions of House Bill 1593 do not add to that high standard of fair and even regulation.

Therefore, I veto House Bill 1593.

Sincerely,

ALLEN I. OLSON
Governor

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

SECTION 1. A new section to chapter 26-29 of the North Dakota Century Code is hereby created and enacted to read as follows:

MAINTENANCE OF LOCAL OFFICE. The rating organization shall maintain an office within this state that shall be open for business during usual business hours and the office shall be staffed by a person trained to interpret the rating organizations' rating methods and the office shall maintain field notes and rate make-ups on all risks that are specifically rated by the rating organization. This section does not apply to rating organizations licensed under this chapter for the rating of inland marine nor for the rating of insurance on growing crops.

Disapproved April 3, 1981

Filed April 3, 1981

INITIATED MEASURES, APPROVED

CHAPTER 649

OIL EXTRACTION TAX

An initiated measure to levy an oil extraction tax; to provide income tax relief by an annual credit equal to the amount of tax liability up to one hundred dollars for individuals, estates and trusts; to provide statewide property tax relief of up to five hundred dollars on each assessment description of real estate and mobile home by an annual credit reducing the twenty-one mill tax levy in each county; to provide dedicated funds for the state foundation aid program for schools; to create a trust fund for protection from future impacts caused by removal of a nonrenewable resource and to use the trust income to provide funds for development of programs for energy conservation and renewable energy sources; and to provide funds for Grafton state school and for general state purposes.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

* SECTION 1. INTENT. It is the intent of the electors of the state of North Dakota to increase the funding of educational opportunities for students in the elementary and secondary schools in North Dakota, to provide funds for Grafton state school, to provide for energy conservation and development programs, and to equalize the tax structure and revenue sources of the state by enactment of an excise tax to be known as the "oil extraction tax" and enactment of an income tax credit and a credit for the county twenty-one mill property tax levy for schools.

SECTION 2. 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 Act 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.

** SECTION 3. EXEMPTIONS FROM OIL EXTRACTION TAX. The following activities are specifically exempted from the oil extraction tax:

* NOTE: This section was amended by section 1 of House Bill No. 1651, chapter 612, by section 1 of Senate Bill No. 2338, chapter 613, and by section 1 of Senate Bill No. 2230, chapter 198.

** NOTE: Subsection 2 was amended by section 1 of House Bill No. 1651, chapter 612.

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51 of the North Dakota Century Code.

2. The activity of extracting from the earth any oil from a stripper well.

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.

SECTION 4. 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. "Oil" shall mean petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas by means of a separator, or by other nonmechanical methods, incidental to the production of the gas.

2. "Stripper well" shall mean an oil producing well whose average daily production of oil is ten barrels or less during the calendar quarter year period for which the exemption is subsection 2 of section 3 of this Act is claimed.

3. "Average daily production" of a well shall mean the qualified maximum total production of oil from the well during a calendar quarter year period divided by the number of calendar days in that period; and "qualified maximum total production" of a well shall mean that the well must have been maintained at the maximum possible rate of production during the period in accordance with recognized conservation practices and not significantly curtailed by reason of mechanical failure or other disruption of production.

4. "Royalty owner" shall mean 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.

SECTION 5. ADMINISTRATION OF OIL EXTRACTION TAX. For the purposes of administering the tax imposed by section 2 of this Act, the provisions of chapter 57-51 of the North Dakota Century Code, but not including section 57-51-08 of that chapter, pertaining to the administration of the oil and gas gross production tax law not in conflict with the provisions of this Act, including but not limited to the provisions of that chapter relating to the filing of returns, deduction of the tax by the purchaser or producer in making settlement with any owner of the oil, payment of the tax and

interest and penalties thereon, refunds, attachment of liens for failure to pay the tax, and civil and criminal penalties for failure to comply with the provisions of that chapter, shall govern the administration of the tax imposed by section 2 of this Act.

SECTION 6. OIL EXTRACTION TAX DEVELOPMENT FUND ESTABLISHED. The tax imposed by section 2 of this Act shall be paid to the state treasurer when collected by the state tax commissioner and shall be credited to a special fund in the state treasury, to be known as the oil extraction tax development fund. The moneys accumulated in such fund shall be allocated as provided in this Act and the legislative assembly shall make any appropriation of money that may be necessary to accomplish the purposes of this Act.

* SECTION 7. ALLOCATION OF MONEYS IN OIL EXTRACTION TAX DEVELOPMENT FUND. Moneys deposited in the oil extraction tax development fund shall be apportioned quarterly by the state treasurer as follows:

1. Forty-five percent shall be allocated to the state school aid program for use in accordance with the provisions of chapter 15-40.1 of the North Dakota Century Code. It is the intent of the electors that other appropriations made by the legislative assembly for state aid to schools in accordance with chapter 15-40.1 of the North Dakota Century Code when added to the amount allocated under this subsection shall provide at least seventy percent of the funds required to meet the educational cost per pupil in elementary and secondary education as determined under the provisions of that chapter.

2. Ten percent shall be allocated and credited to a special trust fund to be established in the state treasury and shall be deposited and invested as are other state funds to earn the maximum amount permitted by law; provided that the first fifteen million dollars allocated and credited to this special trust fund shall be appropriated by the legislative assembly for Grafton state school for the remodeling or reconstruction and equipping of existing buildings and other facilities, for the construction and equipping of new buildings and other facilities, and for providing additional staffing for that institution, as shall be provided by the legislative assembly. The principal of this special trust fund shall not be used for any other purpose, but the income therefrom shall be administered by the state industrial commission pursuant to appropriations made by the legislative assembly for the following: the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith. Any

* NOTE: Subsection 2 was amended by section 2 of Senate Bill No. 2338, chapter 613.

income earned by the special trust fund that is not appropriated by the legislative assembly, or if appropriated but not expended or loaned by the state industrial commission by the end of a fiscal biennium, shall be transferred to the state's general fund.

3. Forty-five percent shall be allocated and credited to the state's general fund for general state purposes and as an offset for the reduction in income tax revenue and for the replacement of the county twenty-one mill property tax credit for schools as provided in section 10 of this Act.

SECTION 8. INCOME TAX CREDIT. Except as limited herein, there shall be allowed to individuals, estates and trusts required to file an income tax return, a credit equal to the tax liability imposed by section 57-38-29 of the North Dakota Century Code. This credit shall be placed on the state income tax return as a separate line item entitled "energy cost relief credit" which shall follow the computation of tax liability pursuant to the provisions of chapter 57-38 of the North Dakota Century Code. The income tax liability computed on the income tax return shall be reduced by the amount of this credit, provided that the maximum credit deducted on any return shall not exceed one hundred dollars for any taxable year.

SECTION 9. PROPERTY TAX CREDIT FOR TWENTY-ONE MILL LEVY. A credit, not to exceed five hundred dollars, shall be allowed for the amount of the twenty-one mill tax levied for schools under section 57-15-24 of the North Dakota Century Code each year on each parcel of real estate assessed locally as provided in sections 57-02-34 and 57-02-38 of the North Dakota Century Code and on each mobile home assessed as provided in chapter 57-55 of the North Dakota Century Code. The credit provided for in this section shall be shown on the tax statement for the property as the "energy cost relief credit."

SECTION 10. REPLACEMENT TO COUNTY EQUALIZATION FUND. The property tax revenue lost to schools because of the credit provided in section 9 of this Act shall be replaced to the county equalization fund of each county by appropriation of the legislative assembly from the state's general fund.

On or before December 31, 1981, and each year thereafter, each county treasurer shall certify to the state tax commissioner the total amount of credits allowed for that year under section 9 of this Act. The state tax commissioner shall forthwith determine the correctness of the amount certified by the county treasurer and shall then certify to the state treasurer the correct amount for immediate payment to the county for crediting to the county equalization fund.

SECTION 11. APPROPRIATIONS. It is the mandate of the electors that this Act will be appropriately funded by the legislative assembly.

SECTION 12. EFFECTIVE DATES. The effective date of section 8 of this Act shall be for all taxable years beginning on or after January 1, 1981. The effective date for the remaining sections of this Act shall be January 1, 1981.

Approved November 4, 1980 163,991 to 125,231

NOTE: This was measure No. 6 on the general election ballot.

CHAPTER 650

HOME MORTGAGE FINANCE PROGRAM

An initiated measure to amend certain sections of the North Dakota Century Code, to provide amendments allowing tax-exempt revenue bonds to be issued to finance single family residential mortgage loans for persons and families of low and moderate income.

BE IT ENACTED BY THE ELECTORS OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 54-17-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-17-01. INDUSTRIAL COMMISSION TO MANAGE INDUSTRIES OF STATE AND TO ACT AS A STATE HOUSING FINANCE AGENCY IN PROVIDING RESIDENTIAL MORTGAGE LOANS FOR PERSONS OR FAMILIES OF LOW AND MODERATE INCOME. The commission created to conduct and manage, on behalf of the state of North Dakota, certain utilities, industries, enterprises, including a home mortgage finance program, and business projects established by law shall be known as the industrial commission of North Dakota, but may be designated as the industrial commission. In the creation of the industrial commission, it is the intention of the legislative assembly that all acts of the industrial commission shall be the acts of the state of North Dakota functioning in its sovereign capacity.

** SECTION 2. AMENDMENT. Section 54-17-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended by adding two new subsections to read as follows:

54-17-07.1. HOME MORTGAGE FINANCE PROGRAM OF COMMISSION. Acting in its capacity as a state housing finance agency, the industrial commission is authorized to purchase or contract to purchase from lenders mortgage loans made to persons or families of low and moderate income to finance the purchase or substantial rehabilitation of owner occupied, single family residential dwelling units which shall include mobile homes and manufactured housing. The term lenders shall mean any bank or trust company chartered by

* NOTE: Section 54-17-01 was also amended by section 1 of House Bill No. 1186, chapter 471.

** NOTE: Section 54-17-07.1 was amended by section 2 of House Bill No. 1196, chapter 524.

the state of North Dakota or any national banking association located in North Dakota, state or federal savings and loan association located in North Dakota, and FHA approved mortgagee or other mortgage banking institutions currently actively engaged in home mortage lending in North Dakota approved by the commission. The term persons or families of low and moderate income shall mean persons or families whose financial means are insufficient, taking into account such factors as the commission shall deem relevant, to secure decent safe and sanitary housing provided by private industry without the financial assistance afforded by the home mortgage finance program of the commission. The commission shall appoint a five-member Advisory Board consisting of representatives of lenders, and others engaged in the residential real estate industry, and home owners and buyers, and in consultation with such board may adopt rules and regulations for the conduct of its home mortgage finance program which may, among other matters, establish requirements for the type and purchase price of dwelling units eligible to be financed, the income limits for eligible low or moderate income persons or families, the interest rates and other terms of mortgage loans by lenders eligible for purchase by the commission, requirements relating to federal or private mortgage insurance or guaranties, and the general terms and conditions for the issuance and security of housing revenue bonds to be issued.

54-17-07.2. HOUSING REVENUE BONDS OF COMMISSION. In order to fund its home mortgage finance program, the commission is authorized to issue revenue bonds which shall be sold at not less than ninety-five percent of par plus any accrued interest. The principal of and interest on such bonds shall be payable only from revenues generated under the home mortgage finance program, and the bonds shall not constitute a debt of the state of North Dakota and shall contain a statement to that effect on their face. The bonds may be sold at public or private sale or by negotiation as the commission may direct, shall mature not more than forty years from their date or dates and shall contain such terms and provisions as the commission shall determine. The commission may capitalize from bond proceeds all expenses incidental to the issuance of the bonds or to its housing mortgage finance program, including, without limitation, any reserves for the payment of the bonds.

Approved November 4, 1980 159,633 to 104,644

NOTE: This was measure No. 7 on the general election ballot.

REFERRED MEASURES, APPROVED

CHAPTER 651

PRESIDENTIAL PREFERENCE AND JUNE PRIMARY

Approval by referendum of Senate Bill No. 2340 of the Forty-sixth Legislative Assembly which provided for presidential preference primary elections in presidential election years and changed the primary election date.

Approved September 2, 1980 64,231 to 52,699

NOTE: This was measure No. 7 on the primary election ballot.

REFERRED MEASURES, DISAPPROVED

CHAPTER 652

CROSS RANCH VETERANS MEMORIAL STATE PARK

Disapproval by referendum of House Bill No. 1221 of the Forty-sixth Legislative Assembly which appropriated moneys to the North Dakota parks and recreation department for the acquisition of the Cross Ranch and other land for designation as the Veterans Memorial State Park.

Disapproved September 2, 1980 57,002 to 72,442

NOTE: This was measure No. 8 on the primary election ballot.

CHAPTER 653

ELECTION LAW REVISION

Disapproval by referendum of House Bill No. 1138 of the Forty-sixth Legislative Assembly which provided for a new election code.

Disapproved November 4, 1980 97,307 to 157,916

NOTE: This was measure No. 8 on the general election ballot.

CONSTITUTIONAL AMENDMENTS, APPROVED

CHAPTER 654

STATE PROPERTY TAX AUTHORITY

House Concurrent Resolution No. 3009, chapter 703, 1979 Session Laws, proposed by the Forty-sixth Legislative Assembly of the State of North Dakota, providing for the amendment of section 174 of the Constitution of North Dakota, relating to legislative authority to provide a four-mill property tax levy to defray the expenses of the state, and providing that the legislative assembly may not raise revenue for the state through a property tax.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 174 of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 174. The legislative assembly shall ~~provide for~~ be prohibited from raising revenue ~~sufficient~~ to defray the expenses of the state ~~for each year, not to exceed in any one year four (4) mills on the dollar of the assessed valuation of all taxable property in the state, to be ascertained by the last assessment made for state and county purposes, and also a sufficient sum to pay the interest on the state debt~~ through the levying of a tax on the assessed value of real or personal property.

Approved September 2, 1980 63,699 to 56,618

NOTE: This was measure No. 2 on the primary election ballot.

CHAPTER 655

JUDICIAL OFFICERS

Senate Concurrent Resolution No. 4006, chapter 706, 1979 Session Laws, proposed by the Forty-sixth Legislative Assembly of the State of North Dakota, providing for the amendment of section 173 of the Constitution of North Dakota, relating to the election of certain county officials, and for the repeal of subsection 6 of section 69 of the Constitution of North Dakota, relating to the jurisdiction of police magistrates, constables, and justices of the peace, and providing for an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 173 of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 173. There shall be elected in each county, organized under the provisions of section 172 of the Constitution of the State of North Dakota, a register of deeds, county auditor, treasurer, sheriff, state's attorney, ~~county judge~~ and a clerk of the district court, who shall be electors in the county in which they are elected and who shall hold their office for a term of four years and until their successors are elected and qualified; ~~provided in counties having fifteen thousand population or less, the county judge shall also be clerk of the district court,~~ provided ~~further that~~ in counties having population of six thousand or less the register of deeds shall also be clerk of the district court ~~and county judge. This amendment shall be construed as applying to the officers elected at the general election in 1962~~. This amendment shall be self-executing, but legislation may be enacted to facilitate its operation.

SECTION 2. REPEAL. Subsection 6 of section 69 of the Constitution of the State of North Dakota is hereby repealed.

SECTION 3. ELECTION OF CLERK OF THE DISTRICT COURT AND EFFECTIVE DATE. In counties having populations of fifteen thousand or less but more than six thousand, a clerk of the district court

shall be elected at the general election in 1982. The provisions of section 1 of this resolution, if approved by the people, shall take effect on January 1, 1983. The provisions of sections 2 and 3 of this resolution, if approved by the people, shall take effect thirty days after certification of approval. This section need not be printed as part of the permanent codification of the Constitution of the State of North Dakota.

Approved September 2, 1980 58,827 to 50,643

NOTE: This was measure No. 5 on the primary election ballot.

CHAPTER 656

STATE BOND SECURITY

Senate Concurrent Resolution No. 4004, chapter 708, 1979 Session Laws, proposed by the Forty-sixth Legislative Assembly of the State of North Dakota, providing for the amendment of section 182 of the Constitution of North Dakota, relating to the security of bonds issued or guaranteed by the state.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 182 of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 182. The state may issue or guarantee the payment of bonds, provided that all bonds in excess of two million dollars shall be secured by first mortgage upon real estate in amounts not to exceed ~~one-half~~ sixty-five percent of its value; or upon real and personal property of state-owned utilities, enterprises, or industries, in amounts not exceeding its value, and provided further, that the state shall not issue or guarantee bonds upon property of state-owned utilities, enterprises, or industries in excess of ten million dollars.

No further indebtedness shall be incurred by the state unless evidenced by a bond issue, which shall be authorized by law for certain purposes, to be clearly defined. Every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest semiannually, and the principal within thirty years from the date of the issue of such bonds and shall specially appropriate the proceeds of such tax, or of such other provisions to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid. No debt in excess of the limit named herein shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war or to provide for the public defense in case of threatened hostilities.

Approved November 4, 1980 132,014 to 125,973

NOTE: This was measure No. 1 on the general election ballot.

CHAPTER 657

COAL DEVELOPMENT IMPACT TRUST FUND

House Concurrent Resolution No. 3088, chapter 712, 1979 Session Laws, proposed by the Forty-sixth Legislative Assembly of the State of North Dakota, providing for the creation of a coal development impact trust fund and providing for an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. The Constitution of the State of North Dakota shall be amended by adding thereto the following article:

Not less than fifteen percent of the tax imposed for severing coal shall be placed into a permanent trust fund in the state treasury to be held in trust and administered by the board of university and school lands, which shall have full authority to invest said trust funds as provided by law, and may loan moneys from the fund to political subdivisions as provided by law. The interest earned on the moneys in said trust fund shall be used first to replace uncollectable loans made from the fund, and the balance shall be credited to the general fund of the state.

SECTION 2. EFFECTIVE DATE. The provisions of this resolution, if approved by the people, shall take effect on January 1, 1981.

Approved November 4, 1980 154,590 to 104,762

NOTE: This was measure No. 5 on the general election ballot.

CONSTITUTIONAL AMENDMENTS, DISAPPROVED

CHAPTER 658

SALARIES OF PUBLIC OFFICERS

Senate Concurrent Resolution No. 4042, chapter 702, 1979 Session Laws, proposed by the Forty-sixth Legislative Assembly of the State of North Dakota, providing for the amendment of section 84 of the Constitution of North Dakota, relating to the salaries of public officers.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 84 of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 84. Salaries of public officers shall be as prescribed by law, but the salaries of any of the said officers shall not be ~~increased--or~~ diminished during the period for which they shall have been elected~~,--and-all~~. All fees and profits arising from any of the said offices shall be ~~covered-into~~ deposited in the state treasury.

Disapproved September 2, 1980 53,495 to 65,289

NOTE: This was measure No. 1 on the primary election ballot.

CHAPTER 659

STATE MEDICAL CENTER MILL LEVY

House Concurrent Resolution No. 3011, chapter 704, 1979 Session Laws, proposed by the Forty-sixth Legislative Assembly of the State of North Dakota, providing for the repeal of article 60 of the amendments to the Constitution of North Dakota, relating to a 1-mill levy on all taxable property within the State of North Dakota for the North Dakota state medical center at the University of North Dakota.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Article 60 of the amendments to the Constitution of the State of North Dakota is hereby repealed.

Disapproved September 2, 1980 55,785 to 63,002

NOTE: This was measure No. 3 on the primary election ballot.

CHAPTER 660

TAXATION OF PROPERTY

House Concurrent Resolution No. 3062, chapter 705, 1979 Session Laws, proposed by the Forty-sixth Legislative Assembly of the State of North Dakota, providing for the amendment of section 176 of the Constitution of North Dakota, relating to the taxation of property.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 176 of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 176. 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, except as the Congress of the United States shall authorize taxation of it, and of the state, county and municipal corporations 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~~ The 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.~~

Disapproved September 2, 1980 51,178 to 60,830

NOTE: This was measure No. 4 on the primary election ballot.

CHAPTER 661

EMOLUMENTS OF OFFICE

Senate Concurrent Resolution No. 4061, chapter 707, 1979 Session Laws, proposed by the Forty-sixth Legislative Assembly of the State of North Dakota, providing for the repeal of section 39 of the Constitution of North Dakota, relating to the appointment or election of members of the Legislative Assembly to other offices, the emoluments of which have been increased during those legislators' terms of office.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 39 of the Constitution of the State of North Dakota is hereby repealed.

Disapproved September 2, 1980 45,960 to 63,906

NOTE: This was measure No. 6 on the primary election ballot.

CHAPTER 662

LEGISLATIVE COMPENSATION

House Concurrent Resolution No. 3002, chapter 709, 1979 Session Laws, proposed by the Forty-sixth Legislative Assembly of the State of North Dakota, providing for a new section of the Constitution of North Dakota, relating to legislative reimbursement, repealing section 45 of the Constitution of North Dakota, relating to legislative salaries and mileage, and providing for an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section of the Constitution of the State of North Dakota is hereby created to read as follows:

Each member of the legislative assembly shall receive a salary and expense allowance as provided by law.

SECTION 3. REPEAL. Section 45 of the Constitution of the State of North Dakota is hereby repealed.

SECTION 3. EFFECTIVE DATE. If approved by the voters, this measure shall be effective December 1, 1982.

Disapproved November 4, 1980 128,341 to 132,768

NOTE: This was measure No. 2 on the general election ballot.

CHAPTER 663

LEGISLATIVE ARTICLE

House Concurrent Resolution No. 3001, chapter 710, 1979 Session Laws, proposed by the Forty-sixth Legislative Assembly of the State of North Dakota, creating a new article II of the Constitution of North Dakota, relating to the Legislative Assembly, repealing sections 26 through 44 and sections 46 through 70 of the present article II of the Constitution of North Dakota, relating to the Legislative Assembly, and providing for an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new article II of the Constitution of the State of North Dakota is hereby created to read as follows:

ARTICLE II
LEGISLATIVE ASSEMBLY

Section 1. The senate shall be composed of not less than thirty nor more than fifty-two members, and the house of representatives shall be composed of not less than sixty nor more than one hundred four members, which jointly are designated as the legislative assembly of the State of North Dakota.

Section 2. Senators shall be elected for terms of four years, and representatives for terms of two years.

Section 3. Each person elected to the legislative assembly must be, on the day of his election, a qualified elector in the district from which he is chosen and have been a resident of the state for one year next preceding his election.

Section 4. While serving in the legislative assembly, no member may hold any full-time elective state or political subdivision office nor any full-time appointive state office established by this Constitution or designated by law. During the term for which he was elected, no legislator shall be appointed to any full-time office which has been created, or for which the

compensation has been increased, by the legislative assembly during that term.

Section 5. The legislative assembly shall fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators. The districts as thus ascertained and determined after the 1980 federal decennial census shall continue until the adjournment of the first regular session after each federal decennial census, or until changed by law.

The legislative assembly shall guarantee, as nearly as practicable, that every person is equal to every other person in the state in the casting of ballots for legislative candidates. One senator and at least two representatives shall be apportioned to each senatorial district and be elected at large or from subdistricts thereof. The legislative assembly may combine two senatorial districts only when a single-member senatorial district includes a federal facility or federal installation, containing over three-fourths of the population of a single-member senatorial district, and may provide for the election of senators at large and representatives at large or from subdistricts thereof.

Section 6. The legislative assembly shall establish by law a procedure whereby one-half of the members of the senate, as nearly as practicable, are elected biennially.

Section 7. The terms of legislators shall begin on the first day of December following their election.

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 as provided by law and shall thereafter recess until twelve noon on the first Tuesday after the third day in January or at such other time as may be prescribed by law but not later than the eleventh day of January.

Each regular session of the legislative assembly shall not exceed eighty natural days during the biennium. The organizational meeting of the legislative assembly shall not be counted as part of such eighty natural days, nor shall days spent in session at the call of the governor or while engaged in impeachment proceedings, be counted. Days spent in regular session need not be consecutive, and the legislative assembly may authorize its committees to meet at any time during the biennium. As used in this section, a "natural day" means a period of twenty-four consecutive hours.

Neither house may recess or adjourn for more than three days without consent of the other.

Section 8. The house of representatives shall elect one of its members presiding officer at the beginning of each organizational session.

A majority of the members elected to each house shall constitute a quorum. A smaller number may adjourn from day to day and may compel attendance of absent members in a manner, and under a penalty, as may be provided by law.

Each house is the judge of the qualifications of its members, but election contests shall be subject exclusively to judicial review as provided by law. If two or more candidates for the same office receive an equal and highest number of votes, the secretary of state shall choose one of them by lot.

Each house shall determine its rules of procedure, and may punish its members or other persons for contempt or disorderly behavior in its presence. With the concurrence of two-thirds of its elected members, either house may expel a member.

Section 9. 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 present. No bill shall become law except by a recorded vote of a majority of the members elected to each house, and the lieutenant governor shall be considered a member-elect of the senate when he votes.

No law shall be enacted except by a bill passed by both houses, and no bill shall be so amended on its passage through either house as to change its general subject matter. No bill shall embrace more than one subject, which shall be expressed in its title; but a law violating this provision shall be invalidated only to the extent the subject is not so expressed.

Every bill shall 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 shall 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 on the journal.

Every law enacted by the legislative assembly shall take 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 separate 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 shall take 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 shall take 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 shall be enacted, nor shall 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.

Section 10. All sessions of the legislative assembly, including the committee of the whole and meetings of legislative committees, shall be open and public.

Section 11. Members of the legislative assembly shall be immune from arrest during their attendance at the sessions, and in going to or returning from the same, except in cases of felony or breach of the peace. For words used in any speech or debate in legislative proceedings, they shall not be questioned in any other place.

Section 12. The legislative assembly may by law submit to the electors the question: "Shall a constitutional convention be called?" If the question has not been submitted once in any thirty-year period, the secretary of state shall place it on the ballot at the next general election. If a majority of votes cast thereon are affirmative, the legislative assembly shall provide for the election of delegates and the holding of the convention.

Section 13. The legislative assembly shall provide for the appointment of an auditor general. He shall audit the receipt, expenditure, and use of public funds, as provided by law, and shall be responsible to the legislative assembly in the performance of those duties.

SECTION 2. REPEAL. Sections 26 through 44 and sections 46 through 70 of the Constitution of the State of North Dakota are hereby repealed.

SECTION 3. EFFECTIVE DATE. If approved by the voters, this measure shall be effective December 1, 1982.

Disapproved November 4, 1980 111,250 to 137,849

NOTE: This was measure No. 3 on the general election ballot.

CHAPTER 664

EXECUTIVE ARTICLE

House Concurrent Resolution No. 3005, chapter 711, 1979 Session Laws, proposed by the Forty-sixth Legislative Assembly of the State of North Dakota, creating a new article III of the Constitution of North Dakota, relating to the executive branch of government, to the election, qualification, and compensation of executive officials, to executive branch organization, to the powers and duties of the governor, and to gubernatorial succession, repealing article III, consisting of sections 71 through 84, of the Constitution of North Dakota, relating to the executive branch of government, the election, qualification, and compensation of executive officials, the powers and duties of the governor, and gubernatorial succession, and providing for an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. Article III of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Section 71. 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, a commissioner of labor, a tax commissioner, and three public service commissioners.

The tax commissioner and the superintendent of public instruction shall be elected on a no-party ballot in a manner provided by law.

The powers and duties of the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, public service commissioners, attorney general, and commissioners of agriculture and labor shall be prescribed by law.

Section 72. The governor and lieutenant governor shall be elected on a joint ballot. Each vote cast for a candidate for governor shall be 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 shall 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 shall be made in such manner as shall be prescribed by law.

The chief executives of the principal departments, other than those elected or those chosen in a manner otherwise provided for in this Constitution, shall be appointed by the governor and shall serve at the governor's pleasure. They shall be confirmed or rejected by the senate upon a recorded vote of a majority of the members elected. Any nomination not confirmed or rejected by the senate within twenty legislative days after being received shall be deemed confirmed.

The legislative assembly may periodically review the principal executive departments and may by law change and prescribe the manner of selecting those chief executive officers appointed by the governor under the provisions of this article.

Section 73. The elected state officials shall be chosen by the electors at a time designated by the legislative assembly, and shall serve until their successors are duly qualified. Terms of office shall be four years, except that terms of the public service commissioners shall be 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 74. 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 75. The compensation of elected officials shall be as provided by law, but shall not be diminished during the term for which they were elected.

Section 76. Elected state officials and the chief executive officers of the principal departments shall hold office at the seat of government.

Section 77. The legislative assembly shall allocate the executive power among not more than fifteen principal state departments, which shall be organized along broad functional lines. The executive power of each department shall be vested in one person unless otherwise provided by this Constitution or by law. The legislative assembly shall prescribe the duties of and periodically

reorganize the executive departments, provided any reorganization or change in duties shall not affect the organization and powers granted to any boards of education named in this Constitution.

The governor may, for more effective administration, make changes in the statutory allocation of functions, powers, and duties among and within the executive departments, other than those headed by constitutionally designated elective officials. Any change shall be set forth in an executive order and submitted to both houses of the legislative assembly on the same day. The legislative assembly shall have thirty legislative days to disapprove the order. If not disapproved by a majority of the members elected to either house, the order shall have the force of law when filed with the secretary of state or on a later date specified therein.

Section 78. The chief executives of the principal state departments shall constitute the state planning council. The governor shall be chairman of the council and the lieutenant governor shall be a vice chairman. The council shall prepare a comprehensive state plan based on the comprehensive plan for each department.

Section 79. 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 shall present the comprehensive state plan, and the governor's own recommendations, to the legislative assembly at the beginning of each session and at any other time the governor chooses.

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 shall prescribe the duties of the lieutenant governor in addition to those prescribed in section 82 of this article.

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 may grant reprieves, commutations, and pardons. The governor may delegate this power in a manner provided by law.

The governor may supervise business with the United States and other states.

Section 80. Every bill passed by the legislative assembly shall 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 veto items in an appropriation bill. 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 81. 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 shall again be nominated for that office at the same session, nor shall the nominee be appointed to that office during a recess or adjournment of the senate.

Section 82. The lieutenant governor shall serve as president of the senate, and may, if the senate is equally divided on a question, vote on both 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 shall be filled or the disability removed.

SECTION 2. REPEAL. Article III, consisting of sections 71 through 84 of the Constitution of the State of North Dakota, is hereby repealed.

SECTION 3. EFFECTIVE DATE. The provisions of this resolution, if approved by the people, shall take effect on July 1, 1981. The legislative assembly shall provide by law for continuity in the transition from the system of executive government

in operation prior to adoption of this article to that prescribed by this article in a way which will assure orderliness and an effective program of executive organization under the terms of this article.

Disapproved November 4, 1980 94,166 to 153,927

NOTE: This was measure No. 4 on the general election ballot.

CONSTITUTIONAL AMENDMENTS, PROPOSED

CHAPTER 665

SENATE CONCURRENT RESOLUTION NO. 4002
(Legislative Council)
(Interim Judiciary "C" Committee)

POLITICAL SUBDIVISION ARTICLE

A concurrent resolution to create a new article VII to the Constitution of the State of North Dakota, relating to political subdivisions; and to repeal the present article VII of the Constitution of the State of North Dakota, relating to municipal corporations, the election of a superintendent of schools for each county, and county and township organization.

STATEMENT OF INTENT

This amendment creates a new article on political subdivisions to provide for home rule to county and city government. A political subdivision could, by mutual agreement, transfer functions to the county in which it is located, and could revoke the transfer. County functions, rather than officers, would be stated in the Constitution.

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

That the following proposed creation of a new article VII and the repeal of the present article VII 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 1982, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. A new article VII to the Constitution of the State of North Dakota is hereby created to read as follows:

ARTICLE VII
POLITICAL SUBDIVISIONS

Section 1. The purpose of this article is to provide for maximum local self-government by all political subdivisions with a minimum duplication of functions.

Section 2. The legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law.

Section 3. The several counties of the state of North Dakota as they now exist are hereby declared to be counties of the state of North Dakota.

Section 4. The legislative assembly shall provide by law for relocating county seats within counties, but it shall have no power to remove the county seat of any county.

Section 5. Methods and standards by which all or any portion of a county or counties may be annexed, merged, consolidated, reclassified, or dissolved shall be as provided by law. No portion of any county or counties shall be annexed, merged, consolidated, or dissolved unless a majority of the electors of each affected county voting on the question so approve.

Section 6. The legislative assembly shall provide by law for the establishment and exercise of home rule in counties and cities. No home rule charter shall become operative in any county or city until submitted to the electors thereof and approved by a majority of those voting thereon. In granting home rule powers to cities, the legislative assembly shall not be restricted by city debt limitations contained in this constitution.

Section 7. The legislative assembly shall also provide by law for optional forms of government for counties, but no optional form of government shall become operative in any county until submitted to the electors thereof at a special or general election, and approved by a majority of those voting thereon.

Until one of the optional forms of county government is adopted by any county, the fiscal and administrative affairs of the county shall be governed by a board of county commissioners as provided by law.

Section 8. Each county shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services, and any other governmental services or functions as may be provided by law. Any elective county office shall be for a term of four years.

Section 9. Questions of the form of government to be adopted by any county or on the elimination or reinstatement of elective county offices may be placed upon the ballot by petition of electors of the county equal in number to twenty-five percent of the votes cast in the county for the office of governor at the preceding gubernatorial election.

Section 10. Agreements, including those for cooperative or joint administration of any powers or functions, may be made by any political subdivision with any other political subdivision, with the state, or with the United States, unless otherwise provided by law or home rule charter. A political subdivision may by mutual agreement transfer to the county in which it is located any of its powers or functions as provided by law or home rule charter, and may in like manner revoke the transfer.

Section 11. The power of the governing board of a city to franchise the construction and operation of any public utility or similar service within the city shall not be abridged by the legislative assembly.

SECTION 2. REPEAL. Article VII of the Constitution of the State of North Dakota is hereby repealed.

Filed March 27, 1981

CHAPTER 666

HOUSE CONCURRENT RESOLUTION NO. 3055
(Representative Kretschmar)
(Senator Wenstrom)

LEGISLATIVE ASSEMBLY ARTICLE

A concurrent resolution to create a new article IV of the Constitution of the State of North Dakota, relating to the legislative assembly; to repeal the present article IV of the Constitution of the State of North Dakota, relating to the legislative assembly; and to provide an effective date.

STATEMENT OF INTENT

This amendment creates a new article to the constitution providing for a legislative assembly that consists of a senate and house of representatives and establishes terms of office and the number of allowable legislators in each house. Provides for qualifications of legislators, legislative district organization, and reorganization based on one-man one-vote principles, legislative procedures, and restrictions upon legislators serving in other state offices.

The amendment also repeals the present article IV of the Constitution of the State of North Dakota, and provides that these changes will take effect on December 1, 1984.

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 IV and the repeal of the present article IV 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 1982 primary election, in accordance with the provisions of section 45 of the present article IV of the Constitution of the State of North Dakota.

SECTION 1. A new article IV of the Constitution of the State of North Dakota is hereby created to read as follows:

ARTICLE IV
LEGISLATIVE ASSEMBLY

Section 1. The senate shall be composed of not less than forty nor more than fifty-four members, and the house of representatives shall be composed of not less than eighty nor more

than one hundred eight members, which jointly are designated as the legislative assembly of the state of North Dakota.

Section 2. Senators shall be elected for terms of four years, and representatives for terms of two years.

Section 3. Each person elected to the legislative assembly must be, on the day of the election, a qualified elector in the district from which chosen and must have been a resident of the state for one year next preceding that election.

Section 4. While serving in the legislative assembly, no member may hold a full-time elective state or political subdivision office nor any full-time appointive state office established by this constitution or designated by law. During the term for which elected, no member of the legislative assembly shall be appointed to any full-time office which has been created, or to any office for which the compensation has been increased, by the legislative assembly during that term.

Section 5. The legislative assembly shall fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators. The districts as thus ascertained and determined after the 1980 federal decennial census shall continue until the adjournment of the first regular session after each federal decennial census, or until changed by law.

The legislative assembly shall guarantee, as nearly as practicable, that every person is equal to every other person in the state in the casting of ballots for legislative candidates. One senator and at least two representatives shall be apportioned to each senatorial district and be elected at large or from subdistricts thereof. The legislative assembly may combine two senatorial districts only when a single-member senatorial district includes a federal facility or federal installation, containing over two-thirds of the population of a single-member senatorial district, and may provide for the election of senators at large and representatives at large or from subdistricts thereof.

Section 6. The legislative assembly shall establish by law a procedure whereby one-half of the members of the senate, as nearly as practicable, are elected biennially.

Section 7. The terms of members of the legislative assembly shall begin on the first day of December following their election.

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 as provided by law and shall thereafter recess until twelve noon on the first Tuesday after the third day in January or at such other time as may be prescribed by law but not later than the eleventh day of January.

Each regular session of the legislative assembly shall not exceed eighty natural days during the biennium. The organizational meeting of the legislative assembly shall not be counted as part of those eighty natural days, nor shall days spent in session at the call of the governor or while engaged in impeachment proceedings, be counted. Days spent in regular session need not be consecutive, and the legislative assembly may authorize its committees to meet at any time during the biennium. As used in this section, a "natural day" means a period of twenty-four consecutive hours.

Neither house may recess or adjourn for more than three days without consent of the other.

Section 8. The house of representatives shall elect one of its members presiding officer at the beginning of each organizational session.

A majority of the members elected to each house shall constitute a quorum. A smaller number may adjourn from day to day and may compel attendance of absent members in a manner, and under a penalty, as may be provided by law.

Each house is the judge of the qualifications of its members, but election contests shall be subject exclusively to judicial review as provided by law. If two or more candidates for the same office receive an equal and highest number of votes, the secretary of state shall choose one of them by lot.

Each house shall determine its rules of procedure, and may punish its members or other persons for contempt or disorderly behavior in its presence. With the concurrence of two-thirds of its elected members, either house may expel a member.

Section 9. 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 present. No bill shall become law except by a recorded vote of a majority of the members elected to each house, and the lieutenant governor shall be considered a member-elect of the senate when he votes.

No law shall be enacted except by a bill passed by both houses, and no bill shall be so amended on its passage through either house as to change its general subject matter. No bill shall embrace more than one subject, which shall be expressed in its title; but a law violating this provision shall be invalidated only to the extent the subject is not so expressed.

Every bill shall 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 shall 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 on the journal.

Every law enacted by the legislative assembly shall take 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 separate 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 shall take 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 shall take 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 shall be enacted, nor shall 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.

Section 10. All sessions of the legislative assembly, including the committee of the whole and meetings of legislative committees, shall be open and public.

Section 11. Members of the legislative assembly shall receive compensation for their services as provided by law. Members of the legislative assembly shall be immune from arrest during their attendance at the sessions, and in going to or returning from the same, except in cases of felony or breach of the peace. For words used in any speech or debate in legislative proceedings, they shall not be questioned in any other place.

Section 12. Any amendment or amendments to the constitution of the state may be proposed in either house of the legislative assembly, and if the same shall be agreed to upon roll call by a majority of the members elected to each house, it shall be submitted to the electors and if a majority of the votes cast thereon are affirmative, such amendment shall be a part of this constitution.

SECTION 2. REPEAL. The present article IV of the Constitution of the State of North Dakota is hereby repealed.

SECTION 3. EFFECTIVE DATE. If approved by the voters, this measure shall be effective December 1, 1984.

Filed March 30, 1981

NOTE: This will be measure No. 2 on the primary election ballot.

CHAPTER 667

HOUSE CONCURRENT RESOLUTION NO. 3069
(Mattson, R. Anderson, Jacobson, Swiontek, Unhjem)

SCHOOL TRUST FUND DEPOSIT AND USE

A concurrent resolution for the amendment of sections 1 and 2 of article IX of the Constitution of the State of North Dakota, relating to the deposit of bonus moneys received from mineral activities on common school lands in the appropriate permanent trust funds, and to the disposition of the interest and income of the common school trust fund and fines collected for violation of state laws.

STATEMENT OF INTENT

The purpose of these amendments is to require any bonuses paid for mineral leases on state lands held in trust for the common schools or for state institutions to be deposited in the appropriate permanent trust fund; and to allow the common school trust fund distribution.

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

That the following proposed amendments to sections 1 and 2 of article IX 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 1982, 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 IX of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 1. All proceeds of the public lands that have heretofore been, or may hereafter be granted by the United States for the support of the common schools in this state; all such per centum as may be granted by the United States on the sale of public lands; the proceeds of property that shall fall to the state by escheat; all gifts, donations, or the proceeds thereof that come to the state for support of the common schools, or not otherwise appropriated by the terms of the gift, and all other property otherwise acquired for common schools, shall be and remain a

perpetual trust fund for the maintenance of the common schools of the state. Only the interest and income of the fund may be expended and the principal shall be retained and devoted to the trust purpose. All property, real or personal, received by the state from whatever source, for any specific educational or charitable institution, unless otherwise designated by the donor, shall be and remain a perpetual trust fund for the creation and maintenance of such institution, and may be commingled only with similar funds for the same institution. Should a gift be made to an institution for a specific purpose, without designating a trustee, such gift may be placed in the institution's fund; provided that such a donation may be expended as the terms of the gift provide.

The interest and income of each institutional trust fund held by the state shall, unless otherwise specified by the donor, be appropriated by the legislative assembly to the exclusive use of the institution for which the funds were given.

The proceeds of all bonuses, or similar payments, made upon the leasing of coal, gas, oil, or any other mineral interests under, or reserved after sale of, grant lands for the common schools or institutional lands shall be deposited in the appropriate permanent trust fund as created by this section.

SECTION 2. AMENDMENT. Section 2 of article IX of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 2. The interest and income of this fund together with the net proceeds of all fines for violation of state laws and all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the common schools of the state~~,--and--shall--be--for--this-purpose-apportioned-among-and between-all-the-several-common-school-corporations-of-the--state--in proportion--to--the-number-of-children-in-each-of-school-age,-as-may be-fixed-by-law,~~ and no part of the fund shall ever be diverted, even temporarily, from this purpose or used for any other purpose whatever than the maintenance of common schools ~~for--the--equal benefit--of--all--the-people-of-the-state,-provided-however,-that-if any-portion-of-the-interest-or--income--aforesaid--be--not--expended during-any-year,-said-portion-shall-be-added-to-and-become-a-part-of the-school-fund~~ as provided by law.

Filed April 3, 1981

NOTE: This will be measure No. 3 on the primary election ballot.

CHAPTER 668

SENATE CONCURRENT RESOLUTION NO. 4088
(Senator Stenehjem)
(Representative Swiontek)
(Approved by the Committee on Delayed Bills)

COMPENSATION OF ELECTED OFFICIALS

A concurrent resolution to create a new section of the Constitution of the State of North Dakota, relating to compensation for services for elected members or officials of all three branches of government; and to repeal section 46 of article IV and section 14 of article V of the Constitution of the State of North Dakota, relating to the salaries of legislators and public officers.

STATEMENT OF INTENT

This amendment provides that elected members of the legislature, elected state officials, and judges of the supreme court shall be paid for their services only such amount as may be set by law. Payment for travel and meals may not exceed the amounts allowed for other state employees.

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

That the following proposed creation of a new section of the Constitution of the State of North Dakota, and the repeal of section 46 of article IV and section 14 of 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 1982, 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 of the Constitution of the State of North Dakota is hereby created to read as follows:

The legislative, executive, and judicial branches are co-equal branches of government. Elected members and officials of each branch shall receive as compensation for their services only such amounts as may be specifically set by law. Payment for necessary expenses shall not exceed those allowed for other state employees.

SECTION 2. REPEAL. Section 46 of article IV and section 14 of article V of the Constitution of the State of North Dakota are hereby repealed.

Filed April 6, 1981

NOTE: This will be measure No. 4 on the primary election ballot.

CHAPTER 669

HOUSE CONCURRENT RESOLUTION NO. 3035
(Kingsbury, A. Hausauer)

MEDICAL CENTER MILL LEVY

A concurrent resolution to repeal section 10 of article X of the Constitution of the State of North Dakota, previously designated as article 60 of the amendments to the Constitution prior to publication of the renumbered Constitution, relating to a one-mill levy on all taxable property within the State of North Dakota for the North Dakota state medical center at the university of North Dakota.

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

That the following proposed repeal of section 10 of article X of the Constitution of the State of North Dakota, previously designated as article 60 of the amendments to the Constitution prior to publication of the renumbered Constitution, 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 1982, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota, previously designated as section 202 of the Constitution prior to publication of the renumbered Constitution.

SECTION 1. REPEAL. Section 10 of article X of the Constitution of the State of North Dakota, previously designated as article 60 of the amendments to the Constitution prior to publication of the renumbered Constitution, is hereby repealed.

Filed March 25, 1981

NOTE: This will be measure No. 1 on the general election ballot

CHAPTER 670

SENATE CONCURRENT RESOLUTION NO. 4027
(Senators Holmberg, Thane)
(Representatives Kent, R. Jacobsen)

EMINENT DOMAIN PAYMENT CHOICE

A concurrent resolution for the amendment of section 16 of article I of the Constitution of the State of North Dakota, relating to eminent domain.

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 16 of article I 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 1982, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 16 of article I of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 16. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation~~,--which--compensation.~~ Compensation shall be ascertained by a jury, unless a jury be waived~~,--provided--however,-that-when~~. When the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law. Annual payments shall not be subject to escalator clauses but may be supplemented by interest earned.

Filed March 27, 1981

NOTE: This will be measure No. 2 on the general election ballo

CHAPTER 671

SENATE CONCURRENT RESOLUTION NO. 4004
(Legislative Council)
(Interim Judiciary "C" Committee)

OBSOLETE CONSTITUTIONAL REFERENCES

A concurrent resolution for the amendment of sections 7, 10, and 13 of article IX and section 9 of article X of the Constitution of the State of North Dakota, relating to obsolete references in sections concerning appraisal and sale of institutional lands, the location of the school for the blind, and the tax levy to insure owners of growing crops against losses by hail.

STATEMENT OF INTENT

This amendment removes obsolete references in sections concerning appraisal and sale of institutional lands, the location of the school for the blind, and the tax levy to insure owners of growing crops against losses by hail. It also transfers power to determine the location of the school for the blind from the former board of administration to 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 amendments to sections 7, 10, and 13 of article IX and section 9 of article X 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 1982, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 7 of article IX of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 7. All lands ~~mentioned--in--the-preceding-section~~ received by the state for any specific educational or charitable institution shall be appraised and sold in the same manner and under the same limitations and subject to all the conditions as to price and sale as provided ~~above~~ in this constitution for the appraisal and sale of lands for the benefit of common schools~~;-but~~. However, a distinct and separate account shall be kept by the proper officers of each of said funds~~;-provided,-that~~ and the limitations as to the

time in which school land may be sold shall apply only to lands granted for the support of common schools.

SECTION 2. AMENDMENT. Section 10 of article IX of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 10. The legislative assembly ~~shall have authority to~~ may provide by law for the sale or disposal of all public lands that have been ~~heretofore~~, or may hereafter be granted by the United States to the state for purposes other than set forth ~~and named~~ in article IX, section 1~~, and section 159. And the~~. The legislative assembly in providing for the ~~appraisement~~ appraisal, sale, rental, and disposal of the same shall not be subject to the provisions and limitations of ~~this~~ article IX, sections 1 through 11.

SECTION 3. AMENDMENT. Section 13 of article IX of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 13. The following ~~named~~ public institutions are ~~hereby permanently~~ located as ~~hereinafter~~ provided, each to have so much of the remaining grant of one hundred seventy thousand acres of land made by the United States for "other educational and charitable institutions" as is allotted by law~~, namely~~:

1. A soldiers' home, when located, or such other charitable institution as the legislative assembly may determine, at the city of Lisbon~~,~~ in the county of Ransom, with a grant of forty thousand acres of land.

2. The ~~blind asylum shall be known as the North Dakota~~ school for the blind ~~and may be removed from the county of Pembina to~~ at the city of Grand Forks in the county of Grand Forks or at such other location as may be determined by the ~~board of administration~~ legislative assembly to be in the best interests of the students of such institution and the state of North Dakota.

3. A school of forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau, or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.

4. A ~~scientific~~ school of science or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton~~,~~ in the county of Richland, with a grant of forty thousand acres.

5. A state ~~normal school~~ college at the city of Minot in the county of Ward.

6. ~~a.~~ A state ~~normal--school~~ college at the city of Dickinson~~,~~ in the county of Stark.

~~b.~~ 7. A state hospital for the ~~insane~~ mentally ill at such place within this state as shall be selected by the legislative assembly~~,--provided,--that--no~~.

No other institution of a character similar to any one of those located by article IX, section 12, or this ~~article~~ section shall be established or maintained without ~~a--revision~~ an amendment of this constitution.

SECTION 4. AMENDMENT. Section 9 of article X of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 9. The legislative assembly may ~~by--law~~ provide for the levy of a tax upon ~~such~~ lands ~~as--may--be--provided--by--law--of~~ within the state for the purpose of creating a fund to insure the owners of growing crops against losses by hail~~,--provided,--that--such tax---shall--not--affect--the--tax--of--four--mills--levied--by--the constitution~~. The legislative assembly may classify ~~such~~ lands ~~of~~ within the state ~~as--may-be-provided-by-law~~, and divide the state into districts on such basis as shall seem just and necessary, and may vary the tax rates in such districts in accordance with the risk, in order to secure an equitable distribution of the burden of ~~such~~ the tax among the owners of such ~~land-as-may-be-provided-by-law~~ lands.

Filed March 27, 1981

NOTE: This will be measure No. 3 on the general election ballot.

CHAPTER 672

SENATE CONCURRENT RESOLUTION NO. 4008
(Legislative Council)
(Interim Judiciary "C" Committee)

ELECTION OF GOVERNOR AND LIEUTENANT GOVERNOR

A concurrent resolution for the amendment of section 1 of article V of the Constitution of the State of North Dakota, relating to the election of the governor and lieutenant governor to a two-year term in 1988 and thereafter to four-year terms.

STATEMENT OF INTENT

This amendment would result in the election of the governor and lieutenant governor in the "off-year" election rather than on the same ballot as the national presidential election as at present. It would do this by having the governor and lieutenant governor elected in 1988 serve a two-year term until 1990. Four-year terms would then begin again.

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 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 1982, 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,~~ and until his successor is elected and duly qualified. However, the governor and lieutenant governor who are elected in the general election held in 1988 shall hold office for a term of two years only, and thereafter, commencing in 1990, the governor and lieutenant governor shall again be elected for four-year terms.

Filed March 27, 1981

NOTE: This will be measure No. 4 on the general election ballot.

CHAPTER 673

SENATE CONCURRENT RESOLUTION NO. 4016
(Holmberg)

MILEAGE ALLOWANCE FOR LEGISLATORS

A concurrent resolution for the amendment of section 46 of article IV of the Constitution of the State of North Dakota, relating to mileage expenses for members of the legislative assembly.

STATEMENT OF INTENT

This amendment provides that legislators receive the same mileage allowance for travel as other state officials and employees. The Constitution now says ten cents per mile.

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 46 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 general election to be held in 1982, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota, as amended, if either House Concurrent Resolution No. 3055 or Senate Concurrent Resolution No. 4088, having been submitted to the voters, is not approved in the preceding primary election.

SECTION 1. AMENDMENT. Section 46 of article IV of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 46. Each member of the legislative assembly shall receive as a compensation for his services for each session, five dollars per day~~,-and-ten-cents-for-every-mile-of-necessary-travel-in going-to-and--returning--from--the--place--of--the--meeting--of--the legislative-assembly,-on-the-most-usual-route~~ and mileage and travel expenses in the amounts provided by law to state officers and employees.

Filed April 1, 1981

NOTE: If submitted to the electors, this will be measure No. 5 on the general election ballot.

CHAPTER 674

SENATE CONCURRENT RESOLUTION NO. 4041
(Streibel)

BOARD OF HIGHER EDUCATION NOMINEES

A concurrent resolution for the amendment of subsection 2 of section 6 of article VIII of the Constitution of the State of North Dakota, relating to the composition of the nominating committee for state board of higher education members.

STATEMENT OF INTENT

This amendment changes the nominating group which provides lists of names to the governor from which the governor nominates members to the state board of higher education. The amendment replaces the president of the North Dakota education association with the speaker of the house.

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

That the following proposed amendment to subsection 2 of section 6 of article VIII 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 1982, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Subsection 2 of section 6 of article VIII of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

2. a. The state board of higher education shall consist of seven members, 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 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 serve as a member of the board, nor shall 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 employment.

~~On or before the first day of February, 1939, the~~ The governor shall nominate from a list of three names for each position, selected by the unanimous action of the ~~president~~ speaker of the ~~North Dakota educational association~~ house of representatives, 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 shall ~~commence on the first day of July, 1939, one of which terms 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 board members ~~appointed to fill vacancies at the expiration of said terms~~ shall be ~~for~~ seven years, and in the case of vacancies otherwise arising, appointments shall 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 office, selected from a new list, prepared in the manner hereinbefore provided, which nomination shall be submitted to the senate for confirmation, and said proceedings shall be continued until such appointments have been confirmed by the senate, or the session of the legislature shall have adjourned.

c. When any term expires or a vacancy occurs when the legislature 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, at which time his appointment shall be certified to the senate for confirmation, as above provided; and if the appointment be not confirmed by the thirtieth legislative day of such session, his office shall be deemed vacant and the governor shall nominate from a list selected as hereinbefore provided, another candidate for such office and the same proceedings shall be followed as are above set forth; provided further, that when the legislature shall be 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 successor from a list selected as above set forth, within the first thirty days of such session, and upon confirmation by the senate such 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 eligible for an interim appointment.

Filed April 6, 1981

NOTE: This will be either measure No. 5 or measure No. 6 on the general election ballot, depending upon whether Senate Concurrent Resolution No. 4016 is submitted to the electors.

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 675

HOUSE CONCURRENT RESOLUTION NO. 3001
(Legislative Council)
(Interim Budget "B" Committee)

TITLE XIX PLAN AMENDMENT

A concurrent resolution directing the North Dakota Social Service Board to amend the state Title XIX plan to provide coverage for services provided by community intermediate care facilities to developmentally disabled persons.

WHEREAS, the Legislative Assembly recognizes the need for improved medical and supportive services to developmentally disabled persons; and

WHEREAS, moneys available under Title XIX of the Social Security Act will provide a portion of the funding necessary for these additional services; and

WHEREAS, additional services and facilities could provide for the deinstitutionalization of developmentally disabled persons currently residing in state institutions; and

WHEREAS, the North Dakota Social Service Board is the state agency designated to administer the Title XIX plan;

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

That the State Social Service Board is directed to amend the state's plan required under Title XIX of the Social Security Act to include coverage for medical services provided by intermediate care facilities for developmentally disabled persons in North Dakota.

Filed March 25, 1981

CHAPTER 676

HOUSE CONCURRENT RESOLUTION NO. 3002
(Legislative Council)
(Interim Budget "B" Committee)

SERVICES FOR DEVELOPMENTALLY DISABLED

A concurrent resolution encouraging state agencies, institutions, and service providers on the community level to implement a plan for community services for developmentally disabled persons.

WHEREAS, the Legislative Council has studied the needs of developmentally disabled persons in the state of North Dakota; and

WHEREAS, there are a number of developmentally disabled persons in the state of North Dakota including residents of the Grafton State School and San Haven who could benefit from an improved community service program in North Dakota for the developmentally disabled; and

WHEREAS, a plan developed by representatives of various state agencies, including the State Department of Health, the Social Service Board, and the Director of Institutions, is approved by the Legislative Council; and

WHEREAS, such plan is for the development of a project during the 1981-83 biennium to provide improved and new services to developmentally disabled persons and also provide, in those instances where the project does not provide certain services statewide, a demonstration project to determine whether such services for developmentally disabled persons should be provided statewide;

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

That all state agencies and institutions, including the State Department of Health, the State Social Service Board, and the Director of Institutions take such action as may be necessary to encourage the implementation of the project or projects during the 1981-83 biennium as approved by the Legislative Council; and

BE IT FURTHER RESOLVED, that community providers of services cooperate as proposed in the project; and

BE IT FURTHER RESOLVED, that the Committees on Appropriations of the Forty-seventh Legislative Assembly recommend appropriation levels in accordance with the Legislative Council project designed to provide services to developmentally disabled persons during the 1981-83 biennium.

Filed March 2, 1981

CHAPTER 677

HOUSE CONCURRENT RESOLUTION NO. 3003
(Legislative Council)
(Interim Budget "B" Committee)

DEVELOPMENTALLY DISABLED CARE STUDY

A concurrent resolution directing a Legislative Council study to monitor the establishment of intermediate care facilities-services for developmentally disabled persons during the 1981-83 biennium.

WHEREAS, the Legislative Council has conducted a study to determine the need for improved community services to developmentally disabled persons; and

WHEREAS, the study resulted in recommendations to establish community intermediate care facilities for developmentally disabled persons; and

WHEREAS, residents of the Grafton State School will be transferring to community facilities during the next biennium; and

WHEREAS, improved services for developmentally disabled persons will be available to those already residing in various communities of the state; and

WHEREAS, it is important that a high level of services be delivered to persons in such facilities; and

WHEREAS, the experience and success of the establishment of additional community facilities recommended by the Forty-seventh Legislative Assembly will serve as a demonstration project for expansion of such services in the future;

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

That the Legislative Council monitor the efforts of the State Department of Health, the State Social Service Board, the Director of Institutions, and various providers of services on the community level as they provide additional services to developmentally disabled persons during the next biennium; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to the Forty-eighth Legislative Assembly regarding the expansion of community services to developmentally disabled persons in the state.

Filed March 2, 1981

CHAPTER 678

HOUSE CONCURRENT RESOLUTION NO. 3006
(Legislative Council)
(Interim Medical Education Committee)

MEDICAL SCHOOL THIRD YEAR IN STATE

A concurrent resolution recommending establishment of the University of North Dakota Medical School third year in North Dakota.

WHEREAS, the Legislative Council's Medical Education Committee was assigned House Concurrent Resolution No. 3085 of the 1979 Legislative Assembly, which directed a study of the four-year medical program of the University of North Dakota Medical School; and

WHEREAS, Dr. Stanley W. Olson, a recognized expert in medical education, has submitted his final report to the Medical Education Committee, and recommends that the third year of the medical school curriculum be taught in North Dakota rather than in Minnesota, beginning with the 1983-1984 school year; and

WHEREAS, the report indicates that North Dakota has the available clinical resources for the instruction of third-year medical students; and

WHEREAS, the report indicates that North Dakota has a sufficient number of physicians to provide clinical instruction for third-year medical students; and

WHEREAS, the report indicates that the cost of providing third-year instruction in North Dakota should be similar to the cost of sending students to Minnesota; and

WHEREAS, the report indicates that the adoption of the proposal to teach the third year in North Dakota is critical to the survival of the medical school as a degree-granting institution; and

WHEREAS, the report indicates that the success of teaching the third year in North Dakota is essential to the maintenance of quality health care for the people of North Dakota; and

WHEREAS, the Medical Education Committee heard from a number of provider organizations supporting a full degree-granting medical school to include a third year taught in North Dakota;

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

That the Forty-seventh Legislative Assembly recommends that the State Board of Higher Education make the necessary changes to provide for the third year of the medical school curriculum of the University of North Dakota Medical School to be taught in North Dakota, beginning with the 1983-1984 school year.

Filed March 2, 1981

CHAPTER 679

HOUSE CONCURRENT RESOLUTION NO. 3007
(Legislative Council)
(Interim State and Federal Government "A" Committee)

DIRECT FUNDING OF INDIAN SERVICES

A concurrent resolution urging Congress to provide for direct funding of services to Indian reservations in North Dakota.

WHEREAS, Congress has traditionally funded many services to Indian reservations through existing state agencies; and

WHEREAS, state agencies oftentimes do not have any legal jurisdiction over the Indians on such reservations; and

WHEREAS, individuals testifying before the North Dakota Legislative Council's State and Federal Government "A" Committee from the Indian reservations in North Dakota and from North Dakota state agencies have indicated a preference for direct federal funding to the reservations;

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

That the Forty-seventh Legislative Assembly urge the United States Congress to amend federal law accordingly so that all services offered to Indians on recognized Indian reservations be funded directly by Congress rather than through existing state agencies; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Department of Health and Human Services; the Assistant Secretary of the Interior for Indian Affairs; to the chairpersons of the House Standing Committees on Education and Labor; Interior and Insular Affairs; Public Works and Transportation; and Small Business; the Senate Standing Committees on Commerce, Science, and Transportation; Energy and Natural Resources; Environment and Public Works; and the Senate Select Committee on Indian Affairs; and to each member of the North Dakota Congressional Delegation.

Filed March 4, 1981

CHAPTER 680

HOUSE CONCURRENT RESOLUTION NO. 3008
(Legislative Council)
(Interim State and Federal Government "A" Committee)

BENEFITS TO ENROLLED MEMBERS OF INDIAN TRIBES

A concurrent resolution urging Congress to extend the benefits conferred upon enrolled members of recognized Indian tribes to those individuals regardless of whether or not they reside on the reservation and to sufficiently increase funding for these benefits so that all enrolled members may receive adequate services and benefits.

WHEREAS, Congress has provided many benefits to Native Americans who are enrolled members of recognized tribes; and

WHEREAS, many of these benefits are lost by Indians who move off the reservation; and

WHEREAS, Congress currently does not fund these programs sufficiently to meet the needs of either on-reservation Indians or off-reservation Indians living in North Dakota; and

WHEREAS, this policy is causing extreme hardship for the Native Americans in North Dakota;

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

That the Forty-seventh Legislative Assembly urge the United States Congress to amend federal law accordingly so that all benefits available to Native Americans who are enrolled members of federally recognized tribes be available to those individuals regardless of where they choose to reside and to sufficiently increase funding for these benefits so that all enrolled members may receive adequate services and benefits; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Department of Health and Human Services; the Assistant Secretary of the Interior for Indian Affairs; to the chairpersons of the House Standing Committees on Education and Labor; Interior and Insular Affairs; Public Works and Transportation; and Small Business; the Senate Standing Committees on Commerce, Science, and Transportation; Energy and Natural Resources; Environment and Public Works; and the Senate Select Committee on Indian Affairs; and to each member of the North Dakota Congressional Delegation.

Filed March 12, 1981

CHAPTER 681

HOUSE CONCURRENT RESOLUTION NO. 3012
(Martinson)

HIGHWAY PATROLMEN'S RETIREMENT SYSTEM STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the Highway Patrolmen's Retirement System.

WHEREAS, North Dakota Century Code Chapter 39-03.1 establishes the Highway Patrolmen's Retirement System; and

WHEREAS, North Dakota Century Code Chapter 40-45 authorizes police pension systems in cities having organized police departments; and

WHEREAS, North Dakota Century Code Chapter 40-46 authorizes city employee pension plans, which may or may not cover members of municipal police forces; and

WHEREAS, North Dakota Century Code Chapter 54-52 establishes the Public Employees Retirement System, which provides coverage for state security personnel and also coverage for employees of participating political subdivisions; and

WHEREAS, these several retirement systems provide various levels of retirement, disability, and survivor's benefits for law enforcement personnel; and

WHEREAS, a single statewide retirement system for law enforcement personnel may result in increased benefits through unified investment planning and unified 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 is directed to conduct a study of the Highway Patrolmen's Retirement System, which is to include a review of the actuarial standards and soundness of the system, the funding mechanism of the system, the benefits provided by the system, and the coverage of the system, with emphasis on the feasibility of expanding the system to cover other law enforcement personnel; 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 Forty-eighth Legislative Assembly.

Filed March 6, 1981

CHAPTER 682

HOUSE CONCURRENT RESOLUTION NO. 3013
(Representatives A. Olson, Olafson, Schindler)
(Senators Erickson, Vosper)

55 MILE PER HOUR SPEED LIMIT

A concurrent resolution urging Congress to repeal the national 55 mile per hour speed limit.

WHEREAS, Congress has imposed a highway speed limit of 55 miles per hour for the primary purpose of conserving fuel; and

WHEREAS, computations by the Institute of Transportation Studies, University of California, show that the energy saved by driving 55 miles per hour could be saved instead by keeping tires properly inflated; and

WHEREAS, driving at the federally required 55 miles per hour is an enormous waste of travel time, which computations show to approximate $6 billion per year; and

WHEREAS, the elimination of the federally required 55 mile per hour speed limit would result in 102 man-years per year of time saved that is now wasted and that time could be used to improve our nation's productivity; and

WHEREAS, states must impose and enforce the federally required 55 mile per hour speed limit in order to receive federal highway aid funds; and

WHEREAS, the federally required 55 mile per hour speed limit is not followed by a substantial number of motorists and this is recognized by the less than 100 percent compliance level which must be shown by states in order to qualify for federal funds; and

WHEREAS, speed limits on state and local highways should be set by officials who are cognizant of local traffic conditions, and not by federal officials who are not aware of local conditions; and

WHEREAS, the results of the 1980 elections indicate voter support for less federal intervention in local affairs;

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

That the Forty-seventh Legislative Assembly urges the United States Congress to amend the Emergency Highway Energy Conservation Act to eliminate the federally required 55 mile per hour speed limit and to eliminate sanctions against states imposing speed limits reflecting their local conditions; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States, to the Secretary of the Department of Transportation, the chairmen of the Senate and House Committees of Public Works, and each member of the North Dakota Congressional Delegation.

CHAPTER 683

HOUSE CONCURRENT RESOLUTION NO. 3014
(Committee on Employment)

LEGISLATIVE EMPLOYEES

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 and during the Forty-seventh Legislative Assembly the following named persons are employed and appointed as employees of the House and Senate and shall be paid the daily wages opposite their respective names in accordance with their positions as shown below:

HOUSE

Roy Gilbreath, Chief Clerk	$77.00
Barbara Middaugh, Desk Reporter	72.00
David Hillesland, Sergeant-at-Arms	58.00
Skip Sjothun, Assistant Chief Clerk	64.00
Janna Tjaden, Bill Clerk	58.00
Lauren Harms, Chief Stenographer & Payroll Clerk	58.00
Kitty Steidler, Appropriations Committee Clerk	58.00
Andrea Perry, Assistant Appropriations Committee Clerk	53.00
Helen Soma, Chief Committee Clerk	58.00
Mary LaDuke, Committee Clerk	53.00
Eileen Schneider, Committee Clerk	53.00
Shirley Backman, Committee Clerk	53.00
Carol Laidlaw, Committee Clerk	53.00
Darlyne Clausnitzer, Committee Clerk	53.00
Bev Espeland, Committee Clerk	53.00
Sue Feland, Committee Clerk	53.00
Gwyn Herman, Committee Clerk	53.00
Deborah Feland, Committee Clerk	53.00
Maude Grambs, Assistant Committee Clerk	50.00
Dorothy Peterson, Assistant Committee Clerk	50.00
Carol Olson, Chief Page & Bill Book Clerk	50.00
Skip Elefson, Desk Page	44.00
Barbara Larson, Desk Page	44.00
Robert Porter, Desk Page	44.00
Betty Perkins, Secretary to the Speaker	58.00
Mavis Patchen, Secretary to the Majority Leader	58.00
Anne Rowe, Secretary to the Minority Leader	58.00
Jack Whereatt, Deputy Sergeant-at-Arms	47.00
Edgar Beyers, Assistant Sergeant-at-Arms	44.00
Brenda Shark, Assistant Sergeant-at-Arms	44.00
William Harter, Assistant Sergeant-at-Arms	44.00
Bjarne Hjelmstad, Assistant Sergeant-at-Arms	44.00

Phyllis Connolly, Assistant Sergeant-at-Arms	44.00
Eunice Anderson, Information Desk Attendant	44.00
Evelyn Sholts, Bill Room Clerk	44.00
Selmer Severinson, Bill Room Clerk	44.00
Darlene Turitto, Bill Room Clerk	44.00
Faye Caya, Bill Room Clerk	44.00
Hazel Ludemann, Journal Room Clerk	44.00
Lucy Miller, Journal Room Clerk	44.00
Flo Feland, Chief Telephone Attendant	47.00
Peggy Puetz, Telephone Page	44.00
Julia Stromberg, Telephone Attendant	44.00
Thelma Harvey, Telephone Attendant	44.00
Betty Heinrich, Telephone Attendant	44.00
Curt Togstad, Parking Lot Attendant	44.00
Deborah Wood, Stenographer	47.00
Pat Johnson, Stenographer	47.00
Phyllis Johnson, Stenographer	47.00
Gayle Schwehr, Stenographer	47.00
Judy Hoffman, Stenographer	47.00
Eileen Giese, Typist	47.00
Sandra Eckert, Typist	47.00
Renae Doan, Page and Bill Book Clerk	44.00
Laurie Heinsohn, Page and Bill Book Clerk	44.00
Carmen Thompson, Page and Bill Book Clerk	44.00
Tove Mandigo, Page and Bill Book Clerk	44.00
Milton Rue III, Page and Bill Book Clerk	44.00
Wade Strilcov, Page and Bill Book Clerk	44.00
Kelly Herald, Page and Bill Book Clerk	44.00
Jane Hougen, Page and Bill Book Clerk	44.00
Dorene Kainz, Page and Bill Book Clerk	44.00
Barbara DuBois, Page and Bill Book Clerk	44.00
Brad Fay, Page and Bill Book Clerk	44.00
Lenae Vetter, Page and Bill Book Clerk	44.00
Judy Tinjum, Page and Bill Book Clerk	44.00
Peter Strauss, Page and Bill Book Clerk	44.00
Carolyn Blackburn, Page and Bill Book Clerk	44.00
Bonnie Dornbush, Page and Bill Book Clerk	44.00
Hilda Knittel, Journal Proofreader	47.00
Carin Noriega, Journal Proofreader	47.00
Joe Emineth, Janitor (partial pay only)	31.00
Melvin Nelson, Janitor (partial pay only)	31.00
Gene Reynolds, Janitor (partial pay only)	31.00
Steve Larson, Janitor (partial pay only)	31.00
SENATE	
Leo Leidholm, Secretary of the Senate	77.00
Doris McMahon, Desk Reporter	72.00
Olgar Sandven, Sergeant-at-Arms	58.00
J. Vernon Asheim, Assistant Secretary of the Senate	64.00
Sandra Boehler, Bill Clerk	58.00
Adeline Montague, Chief Stenographer and Payroll Clerk and Chief Committee Clerk	58.00
Yvonne Hurkes, Appropriations Committee Clerk	58.00
Debbie Akovenko, Assistant Appropriations Committee Clerk	53.00

Christine Hill, Committee Clerk	53.00
Lorraine Moos, Committee Clerk	53.00
Pearl Berget, Committee Clerk	53.00
Carol Nitschke, Committee Clerk	53.00
Becky Zoller, Committee Clerk	53.00
Jan Rogneby, Committee Clerk	53.00
Sheryl Cowan, Committee Clerk	53.00
Lynne Thompson, Committee Clerk	53.00
Jan Mumma, Committee Clerk	53.00
Meredith Meyer, Committee Clerk	53.00
Sonja Jossart, Assistant Committee Clerk	50.00
Ruby Stadick, Chief Page and Bill Book Clerk	50.00
Susan Strehlow, Assistant Desk Page	44.00
Jean Molinaro, Secretary to the President	58.00
Lois Scherr, Secretary to the Majority Leader	58.00
Dee Hanson, Secretary to the Minority Leader	58.00
Greg Donaldson, Deputy Sergeant-at-Arms	47.00
Wade Williamson, Assistant Sergeant-at-Arms	44.00
Lance Hagen, Assistant Sergeant-at-Arms	44.00
Lindy Lein, Assistant Sergeant-at-Arms	44.00
Rueben Hammond, Assistant Sergeant-at-Arms	44.00
Al Larson, Chief Journal and Bill Room Clerk	53.00
Alvin Jacobsen, Bill Room Clerk	44.00
LeDores Robey, Bill Room Clerk	44.00
Mark Zimmerman, Bill Room Clerk	44.00
Vernon Ruff, Journal Room Clerk	44.00
Lillian Albrecht, Journal Room Clerk	44.00
Michelle Mushik, Stenographer	47.00
Erma Hauglie, Stenographer	47.00
Melinda Wold, Stenographer	47.00
Mary Schmidt, Stenographer	47.00
Esther Davis, Information Desk	44.00
Gayle Skaaden, Telephone Page	44.00
Mary Ann Brown, Telephone Attendant	44.00
Linda Love, Telephone Attendant	44.00
Dolores Molzhon, Telephone Attendant	44.00
Brenda Bullinger, Telephone Attendant	44.00
Herman Jacobsen, Parking Lot Attendant	44.00
LaRaye Pilot, Page	44.00
Fran Brummund, Page	44.00
Robyn Butschat, Page	44.00
Laurie Leingang, Page	44.00
Tammy Meyer, Page	44.00
Robert Evanenko, Bill Book Clerk	44.00
Charles Symington, Bill Book Clerk	44.00
Kevin Bachmeier, Bill Book Clerk	44.00
Jill Schwede, Journal Proofreader	47.00
Ken Harlow, Journal Proofreader	47.00
Arnold Schmitt, Janitor (partial pay only)	31.00
Elmer Schweigert, Janitor (partial pay only)	31.00
Eddy Keller, Janitor (partial pay only)	31.00
Dick Lang, Janitor (partial pay only)	31.00

BE IT FURTHER RESOLVED, that in the event any employee shall resign, be discharged, or for other reasons terminate employment, the compensation provided for in this resolution shall cease, effective the last day of employment.

Filed January 23, 1981

CHAPTER 684

HOUSE CONCURRENT RESOLUTION NO. .015
(Swiontek, Schindler, Gates)

TEACHER'S ROLE IN EDUCATION STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the education and role of the teacher.

WHEREAS, there is growing state and national concern about the quality of education received by the youth of the country; and

WHEREAS, this concern extends beyond the current "back-to-basics" movement in education; and

WHEREAS, because of the growing controversies, many teachers are electing to leave the field of education; and

WHEREAS, it is felt that with proper training and support, the teachers will be encouraged to remain in the profession and will be able to provide the quality education which people have come to expect;

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 role of the teacher in the field of education with emphasis on the student/teacher ratio, the qualifications, certification, and continued evaluation of teachers, in-service education of teachers, and the retention of teachers; 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 Forty-eighth Legislative Assembly.

Filed March 2, 1981

CHAPTER 685

HOUSE CONCURRENT RESOLUTION NO. 3016
(Timm)

SPEED LIMIT INCREASE ACTION

A concurrent resolution urging the Governor and State Highway Commissioner to take action to increase the maximum speed limit in the state when Congress repeals the federally mandated 55 mile per hour speed limit.

WHEREAS, the State of North Dakota imposed speed limits for the state highway system which were reasonable, safe, and prudent prior to November 1, 1973; and

WHEREAS, Congress required states to impose and enforce a maximum 55 mile per hour speed limit by November 1, 1973, in order to receive federal highway aid funds; and

WHEREAS, the Governor of North Dakota complied with this federal mandate by imposing a 55 mile per hour speed limit in the state by Executive Order No. 1974-2 issued on January 25, 1974; and

WHEREAS, the Legislative Assembly of North Dakota complied with this federal mandate by imposing a 55 mile per hour speed limit by Chapter 346, Session Laws of 1975; and

WHEREAS, President Ronald W. Reagan and the 1980 Republican National Platform have called for or favor repeal of the federally mandated 55 mile per hour speed limit; and

WHEREAS, Congress is likely to repeal the federally mandated 55 mile per hour speed limit while the North Dakota Legislative Assembly is not in session; and

WHEREAS, the Governor of North Dakota may rescind Executive Order No. 1974-2 imposing a 55 mile per hour speed limit in the state; and

WHEREAS, the Commissioner of the State Highway Department of North Dakota may alter maximum speed limits on the state highway system by an administrative order after a public hearing under Section 39-09-04 of the North Dakota Century Code;

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

That the Forty-seventh Legislative Assembly urges the Governor of North Dakota to rescind Executive Order No. 1974-2 when Congress repeals the federally mandated 55 mile per hour speed limit and refrain from issuing further executive orders imposing maximum speed limits in the state, except in emergencies in support of national defense; and

BE IT FURTHER RESOLVED, that the Forty-seventh Legislative Assembly urges the Commissioner of the State Highway Department of North Dakota to increase the maximum speed limit on the state highway system, pursuant to section 39-09-04 of the North Dakota Century Code, when Congress repeals the federally mandated 55 mile per hour speed limit; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Governor and Commissioner of the State Highway Department of North Dakota.

Filed March 18, 1981

CHAPTER 686

HOUSE CONCURRENT RESOLUTION NO. 3017
(Representatives B. Larson, E. Pomeroy, Swiontek)
(Senators Barth, Dotzenrod)

PUBLIC LAND USE STUDY

A concurrent resolution directing a Legislative Council study of the methods in which lands owned by the state of North Dakota, any of its agencies, or any of its political subdivisions are sold or leased for agricultural purposes during the 1981-83 biennium.

WHEREAS, the state of North Dakota, its agencies, and its political subdivisions own a considerable amount of farmland; and

WHEREAS, much of that farmland is leased to farmers for agricultural purposes, and those leases are given for specific periods of time and therefore must be renewed on a regular basis; and

WHEREAS, the state of North Dakota, its agencies, and political subdivisions occasionally dispose of the ownership of farmland generally by the highest bidder process; and

WHEREAS, farmers just beginning a career in agriculture often cannot compete for ownership or lease rights of that land in the price market against well-financed, established farmers because of their inability to meet the price offered by established farmers; and

WHEREAS, it is in the best interests of the state of North Dakota and its people to assist beginning farmers in getting a start in agriculture; and

WHEREAS, giving a priority to beginning farmers when state-owned lands become available for lease or sale would assist beginning farmers in establishing a viable farming operation;

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 during the 1981-83 biennium of the practices of the state, its agencies and its political subdivisions in regard to sale and lease of its land and recommend methods of disposing of or leasing that land which would give some preference or priority to beginning farmers in acquiring lands needed to establish a viable farming operation.

Filed March 9, 1981

CHAPTER 687

HOUSE CONCURRENT RESOLUTION NO. 3018
(Strinden, Thompson, Whalen)

TENNECO COAL GASIFICATION PLANT STUDY

A concurrent resolution creating a special Legislative Council interim committee and directing the Legislative Council to conduct a study of the impacts on North Dakota from the proposed Tenneco coal gasification plant at Wibaux, Montana, and methods by which the impacts may be lessened by impact aid grants.

WHEREAS, it appears that a coal gasification plant will be constructed at or near Wibaux, Montana, in the near future; and

WHEREAS, the city of Beach, North Dakota, and the surrounding area will in all probability be heavily impacted by the Tenneco project, due to its size and proximity to the Beach area; and

WHEREAS, the initial mining plans submitted by Tenneco call for coal to be mined in both North Dakota and Montana; and

WHEREAS, the precedent has been established that coal development impact grants made pursuant to North Dakota Century Code Chapter 57-62 may be used only to mitigate the adverse effects of development of North Dakota coal; and

WHEREAS, depending upon the mining progression established by Tenneco, the Beach area may be heavily impacted for a number of years before becoming eligible for coal development impact grants if no coal is mined within North Dakota for the project during those years;

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

That a special Legislative Council interim committee is created, consisting of the director of the Coal Development Impact Office, the chairman of the Natural Resources Council and five legislators appointed by the Legislative Council; with the chairman of the committee designated by the Legislative Council from the five legislators appointed to the committee; and

BE IT FURTHER RESOLVED, that the special Legislative Council interim committee conduct a study of the potential impact of the Tenneco coal gasification plant upon the city of Beach, North Dakota, and the surrounding area, with special emphasis placed on alternative methods of ensuring continuous impact assistance to the area throughout the life of the plant; and

BE IT FURTHER RESOLVED, that the special Legislative Council interim committee shall communicate and meet with an appropriate committee or entity from the state of Montana to arrive at a solution mutually acceptable to both states; and

BE IT FURTHER RESOLVED, that the special Legislative Council interim committee operate according to the statutes and procedures governing the operation of other Legislative Council interim committees and make its report and recommendations 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 688

HOUSE CONCURRENT RESOLUTION NO. 3019
(Eagles, Horgan)

STATE INSECT REFERENCE COLLECTION

A concurrent resolution recognizing the North Dakota State Insect Reference Collection.

WHEREAS, the insect collection maintained by the Entomology Department at North Dakota State University has grown since its establishment in 1890 to include over 315,000 specimens valued at approximately one million dollars; and

WHEREAS, the collection is the only comprehensive resource of its kind in the State of North Dakota; and

WHEREAS, the collection has great historical and scientific importance for teaching, research, and extension activities throughout the State of North Dakota;

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

That the Entomology Department at North Dakota State University be commended for its sustained and diligent efforts over the last ninety years to develop this valuable reference collection for the State of North Dakota; and

BE IT FURTHER RESOLVED, that the Department's collection be hereafter designated as "The North Dakota State Insect Reference Collection"; and

BE IT FURTHER RESOLVED, that other state and federal agencies with entomological interests are hereby encouraged to utilize the North Dakota State Reference Collection and to enhance it by contributing additional specimens no longer needed for their own activities.

Filed March 3, 1981

CHAPTER 689

HOUSE CONCURRENT RESOLUTION NO. 3020
(Melby)

SABBATICAL LEAVE FOR JUDGES STUDY

A concurrent resolution directing the Legislative Council to study the granting of sabbatical leave for judges.

WHEREAS, continuing formalized study through professional workshops and seminars, exchange of views through papers and other writings, interdisciplinary assignments, and sabbatical leave for extended study are part of the law teacher's way of life and there is equal reason for comparable types of activity to be part of the judge's way of life; and

WHEREAS, most judicial candidates do not have the opportunity to obtain judicial training before coming to the bench; and

WHEREAS, seminars for judges on the trial and appellate levels have been shown to be useful and successful; and

WHEREAS, several organizations have constructed meaningful courses and a number of judicial education programs are now offered on a regional or national level; and

WHEREAS, some states provide for statutory sabbatical leave programs for judges; and

WHEREAS, the North Dakota Commission on Criminal Justice Standards and Goals recommends that the state adopt a program of sabbatical leave to enable judges to pursue studies and research relevant to their judicial duties;

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 authorized and directed to conduct a study of the feasibility and desirability of granting sabbatical leave to judges and justices; 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 Forty-eighth Legislative Assembly.

Filed March 20, 1981

CHAPTER 690

HOUSE CONCURRENT RESOLUTION NO. 3021
(Backes, Meiers)

IRANIAN HOSTAGE RELEASE EFFORTS

A concurrent resolution expressing the gratitude and congratulations of the Forty-seventh Legislative Assembly to Warren Christopher for his contribution to securing the release of the Iranian hostages.

WHEREAS, Warren Christopher was born in Scranton, North Dakota, on October 27, 1925; and

WHEREAS, 52 American citizens have been held hostage in Iran contrary to international and moral law since November 4, 1979; and

WHEREAS, the American hostages were released on Tuesday, January 20, 1981, after 14 months of long and difficult negotiations; and

WHEREAS, Warren Christopher played a vital role in securing the release of the American hostages in his position as chief American negotiator for the release of the hostages since April 1980;

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

That the Forty-seventh Legislative Assembly publicly expresses, by adoption of this resolution, its gratitude and congratulations to Warren Christopher for his contribution to securing the release of the American hostages; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded by the Secretary of State to Warren Christopher.

Filed February 4, 1981

CHAPTER 691

HOUSE CONCURRENT RESOLUTION NO. 3022
(Martinson)

SCOLIOSIS SCREENING

A concurrent resolution urging yearly scoliosis screening of all children in grades six through nine and the continuance of scoliosis referral clinics.

WHEREAS, scoliosis is a curvature of the spine affecting ten percent of the adolescent population; and

WHEREAS, with early detection and prompt evaluation, scoliosis can be treated successfully without surgery by use of braces; and

WHEREAS, early detection is critical to achieve optimal treatment, and that detection depends upon mass screening of children in adolescent age groups, especially grades six through nine; and

WHEREAS, screening is a simple, painless procedure involving a thirty second visual examination by a trained person; and

WHEREAS, scoliosis, left untreated, can result in pain, a crippling spine deformity, a decrease in heart and lung functions, and a decreased life span;

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

That yearly screening for scoliosis of all children in grades six through nine be made available by the Department of Health with the cooperation of the Department of Public Instruction; and

BE IT FURTHER RESOLVED, that the North Dakota Crippled Children's Services should continue to handle referral clinics for scoliosis; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Health Department, the Department of Public Instruction, and the North Dakota Crippled Children's Services.

Filed March 19, 1981

CHAPTER 692

HOUSE CONCURRENT RESOLUTION NO. 3023
(Representative Reiten)
(Senator Stenehjem)

SUBSTANCE ABUSE STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the extent and costs of substance abuse in this state.

WHEREAS, the rate of substance abuse has risen significantly over the last two decades; and

WHEREAS, substance abuse contributes significantly to the number of North Dakota highway accidents and fatalities; and

WHEREAS, young people and Native Americans are increasingly affected by this problem; and

WHEREAS, those persons with substance abuse problems are likely in need of medical treatment for their illness; and

WHEREAS, substance abuse problems create innumerable costs to the people of North Dakota;

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 extent of substance abuse in this state and what the resulting costs are to the people of North Dakota. The study should examine the status of preventive programs; alternatives for chemical dependency treatment; any problems in obtaining state approval for alternative methods of treatment; and how present programs are working.

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

Filed March 6, 1981

CHAPTER 693

HOUSE CONCURRENT RESOLUTION NO. 3027
(Unhjem)

CHILD SUPPORT AND PATERNITY LAWS STUDY

A concurrent resolution directing the Legislative Council to study the child support and paternity laws and to determine the feasibility and desirability of combining and streamlining all functions relating to the establishment and enforcement of child support, including paternity, within a single child support enforcement agency.

WHEREAS, activities within the state geared toward the enforcement of child support obligations are presently performed by numerous state and local officials and agencies; and

WHEREAS, areas of responsibility with respect to the enforcement of child support obligations are not clearly defined and are often duplicative; and

WHEREAS, the existing child support system operates in many instances without uniformity, continuity, and coordination giving rise to inefficiency and ineffectiveness; and

WHEREAS, an interim committee study by the Legislative Council with respect to the relationships, functions, capacities, and resources of the numerous entities involved in the enforcement of child support obligations will present an ideal forum for any proposed restructuring of the present 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 is directed to conduct a study of the child support and paternity laws, and to determine the feasibility and desirability of combining and streamlining the functions relating to the establishment and enforcement of child support obligations; and

BE IT FURTHER RESOLVED, that the Legislative Council report its recommendations together with any legislation necessary to carry out the recommendations to the Forty-eighth Legislative Assembly.

Filed March 9, 1981

CHAPTER 694

HOUSE CONCURRENT RESOLUTION NO. 3028
(Richie)

NATIONAL AGRICULTURE DAY

A concurrent resolution recognizing March 19, 1981, as National Agriculture Day.

WHEREAS, agriculture is this nation's most basic industry, and its associated production, processing, and marketing segments provide more jobs than any other single industry; and

WHEREAS, the productivity of American agriculture is a vital ingredient in our strength as a nation, both domestically and on the world scene; and

WHEREAS, to maintain a healthy agriculture it is necessary that all Americans should understand how agriculture affects their lives and well-being, and should be aware of their personal stake in an abundant food and fiber supply; and

WHEREAS, volunteers from all parts of the country will join together on March 19, 1981, in a coordinated effort to communicate the story of the modern agricultural production and distribution system to top decisionmakers, the news media, and urban audiences nationwide; and

WHEREAS, the theme for the 1981 Agriculture Day is "Agriculture: It's Your Heart Beat, America!", which focuses on the contribution agriculture makes to the United States economy; and

WHEREAS, for the first time since its original recognition in 1973, Agriculture Day has been officially proclaimed a national observance by the Ninety-sixth Congress of the United States of America;

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

That the Forty-seventh Legislative Assembly of the State of North Dakota recognizes March 19, 1981, as National Agriculture Day; and

BE IT FURTHER RESOLVED, that the Governor is urged to proclaim March 19, 1981, as National Agriculture Day in North Dakota.

Filed March 9, 1981

CHAPTER 695

HOUSE CONCURRENT RESOLUTION NO. 3029
(Representatives Swiontek, Knudson, H. Larson)
(Senators Erickson, Nelson)

EDUCATION FINANCE STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the financing of elementary and secondary schools in the continuing effort toward the goal of providing the best possible education for the students of North Dakota.

WHEREAS, inflation, declining enrollments, and other factors continue to cause increased unit costs for schools and to complicate the delivery of educational services; and

WHEREAS, court decisions and federal legislation have focused attention on the fact that the state has an obligation to provide an equal educational opportunity for all students; and

WHEREAS, changing times have resulted in changes in educational programs and curriculums, with increased emphasis on transportation and special programs having placed a greater burden on the educational dollar; and

WHEREAS, there is a need to study the financial effect on school districts of large industrial plants, both those subject to property taxes and those subject to taxes in lieu of property taxes, including a study of deductions from foundation program payments for taxes received from such plants and other sources of tax revenue; and

WHEREAS, changes in school districts and programs in recent years, together with the fact that expenditures for schools continue to accelerate, call attention to the need for a continuing study of educational finance in North Dakota in order to assure the citizens of this state the maximum return on their investment for education; and

WHEREAS, oil development and the passage of initiated measure No. 6 have, and will continue to have, substantial fiscal impacts on 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, with the assistance of the Superintendent of Public Instruction, is hereby directed to study the entire field of the financing of elementary and secondary schools in North Dakota, with emphasis on the foundation program, the concept of funding thirty percent of educational costs by local school districts, the costs and distribution formulas for education and transportation, the effect of initiated measure No. 6 which was approved by the electorate at the November 1980, general election, the possibility of implementing a method of evaluating teachers through a merit system, and the problems of financing special and vocational 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 696

HOUSE CONCURRENT RESOLUTION NO. 3030
(Vander Vorst)

GRASSHOPPER CONTROL ON FEDERAL LANDS

A concurrent resolution urging Congress to control grasshopper infestation on federal lands.

WHEREAS, North Dakota and other states have in the past and will in the future suffer substantial damage from the ravages of grasshopper infestation; and

WHEREAS, the federal government controls substantial amounts of uncultivated acreage, which aids and promotes grasshopper breeding and growth; and

WHEREAS, private landowners and farmers engage in programs to control and reduce grasshopper infestation on their lands; and

WHEREAS, grasshoppers from federal lands are uncontrolled and spread to private lands; and

WHEREAS, landowners and farmers should not bear the sole burden of the lack of federal control of grasshopper infestation on federal lands; and

WHEREAS, North Dakota is a primary producer of grain crops and forage for livestock production, which provides strength for the nation and for the nation's economic growth and stability;

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

That the United States Congress is urged to provide funding to federal agencies which own or control land in this state so as to reduce grasshopper infestation on these lands; and

BE IT FURTHER RESOLVED, that the United States Congress is urged to provide funding to restore the United States Department of Agriculture Plant Protection and Quarantine Program's depleted contingency fund for grasshopper control and to direct federal agencies in this state to reduce grasshopper infestations on these lands; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Secretary of Agriculture, the Secretary of the Interior, and to each member of the North Dakota Congressional Delegation.

Filed March 6, 1981

CHAPTER 697

HOUSE CONCURRENT RESOLUTION NO. 3031
(Vig)

NATIONAL ACADEMY OF PEACE AND CONFLICT RESOLUTION

A concurrent resolution urging Congress to establish a National Academy of Peace and Conflict Resolution.

WHEREAS, the world today is increasingly troubled by international strife; and

WHEREAS, relatively recent technological advances have enabled international conflicts to have potentially disastrous consequences for all humankind; and

WHEREAS, the people of North Dakota, the "Peace Garden State", recognize the value of good international relationships and the imperative need to improve these relationships among all nations; and

WHEREAS, the resolution of conflicts, whether personal, local, national, or international, can best be accomplished by the use of trained personnel; and

WHEREAS, the systematic use of trained personnel in the resolution of international conflicts could save this nation and others countless billions of dollars and untold human suffering;

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

That the Forty-seventh Legislative Assembly urges the United States Congress to establish a National Academy of Peace and Conflict Resolution dedicated to training persons in peaceful conflict resolution techniques; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States and each member of the North Dakota Congressional Delegation.

Filed March 25, 1981

CHAPTER 698

HOUSE CONCURRENT RESOLUTION NO. 3032
(Matheny)

SEISMOGRAPHIC TESTING EFFECT STUDY

A concurrent resolution directing the Legislative Council to study the effect on underground water supplies of seismographic testing activities related to energy development.

WHEREAS, exploration for energy resources is increasing in a substantial portion of this state; and

WHEREAS, energy exploration techniques frequently include the drilling of deep holes for seismographic testing; and

WHEREAS, some landowners in oil exploration areas are experiencing a decline in the quality or quantity, or both the quality and quantity, of their underground water supplies; and

WHEREAS, the importance of an adequate water supply to residents in this semiarid climate is such that immediate steps should be taken to determine the relationship, if any, between seismographic testing activities and polluted or depleted ground water supplies;

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 to determine whether, and to what extent, seismographic testing activities have a detrimental effect on underground water supplies; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, along with any legislation required to carry out its recommendations, to the Forty-eighth Legislative Assembly.

Filed March 25, 1981

CHAPTER 699

HOUSE CONCURRENT RESOLUTION NO. 3033
(Representatives Dagne Olsen, Gunderson)
(Senator Mutch)

AMERICAN AGRI-WOMEN PRESIDENT

A concurrent resolution congratulating Mrs. Philip (Evelyn) Landis on being named national president of American Agri-Women (AAW).

WHEREAS, Evelyn Landis has served on national advisory committees including the Agriculture Technical Advisory Committee to the Foreign Agricultural Service and the Advisory Board of National Farm-City Council; and

WHEREAS, she participated in the organization of the American Agri-Women (AAW) in 1974; and

WHEREAS, AAW, now representing 24,000 individuals with membership in 49 states, is organized to communicate for and about agriculture, to influence policy and legislation that concerns agriculture, and to serve as a communication outlet for farm women; and

WHEREAS, she is serving as national president of AAW from November 1979 to November 1981;

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

That the Forty-seventh Legislative Assembly of the State of North Dakota extends its very sincere and hearty congratulations to Mrs. Philip (Evelyn) Landis, Larimore, North Dakota, on being named national president of American Agri-Women (AAW); and

BE IT FURTHER RESOLVED, that the Secretary of State forward an enrolled copy of this resolution to Mrs. Evelyn Landis.

Filed February 10, 1981

CHAPTER 700

HOUSE CONCURRENT RESOLUTION NO. 3036
(Representatives O. Hanson, Houmann, Marsden)
(Senators Adams, Parker, Sorum)

SAGEBRUSH REBELLION

A concurrent resolution expressing support for the efforts of the Sagebrush Rebellion to transfer control of public lands from the federal government to the individual states.

WHEREAS, the United States government controls more than half the lands in the western states, most of which land is under the control of the Bureau of Land Management and other federal agencies, including the United States Fish and Wildlife Service and the United States Forest Service; and

WHEREAS, there has recently been growing concern among the residents of western states regarding the constitutionality of federal ownership and control and the practical efficiency of continued federal ownership and control of those public lands; and

WHEREAS, the state of North Dakota and other western states were compelled to disclaim public lands in favor of the federal government as a condition of statehood; and

WHEREAS, federal law forces ranchers and miners to compete with ecologists, environmentalists, backpackers, and protected animals; and

WHEREAS, federal law prohibits any pollution near federal recreation areas and requires the Secretary of the Department of the Interior to approve any large power development in Utah, Idaho, Nevada, and similar states, making it almost impossible to find sites for large power plants in western states; and

WHEREAS, the Federal Land Policy and Management Act of 1976 enlarged the Bureau of Land Management's power and directed the Bureau of Land Management to hold federal lands in perpetuity; and

WHEREAS, a Sagebrush Rebellion Summit Conference was held in Reno, Nevada, in November 1979, to allow state and local officials in western states to plan unified action; and

WHEREAS, the Sagebrush Rebellion has now taken the form of concerted attack through the introduction of federal legislation to transfer ownership of unreserved and unappropriated federal lands to the states, state legislation laying claim to state ownership of public lands under the control of the Bureau of Land Management, lawsuits, resolutions, and other actions;

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

That the Forty-seventh Legislative Assembly supports the efforts of the Sagebrush Rebellion to transfer ownership or control of unappropriated and unreserved public lands now under the control of the Bureau of Land Management, and lands under the control of other federal agencies such as the United States Fish and Wildlife Service and the United States Forest Service, from the federal government to the states; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Department of the Interior, each member of the North Dakota Congressional Delegation, and United States Senator Orrin Hatch.

Filed March 25, 1981

CHAPTER 701

HOUSE CONCURRENT RESOLUTION NO. 3037
(Representative Strinden)
(Senator Nething)

BALANCED FEDERAL BUDGET

A concurrent resolution urging Congress to balance the federal budget.

WHEREAS, inflation is crippling and devastating the economies of both the state of North Dakota and of the United States; and

WHEREAS, one of the causes of inflation is deficit spending by the federal government; and

WHEREAS, each year during which the federal budget is not balanced results in increasing the national debt; and

WHEREAS, fiscal discipline is needed to restore financial responsibility at the national level;

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

That the Forty-seventh Legislative Assembly urges the Congress of the United States to reduce federal spending and balance the federal budget; and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the speaker and clerk of the United States House of Representatives, the president and the secretary of the United States Senate, and each member of the North Dakota Congressional Delegation.

Filed March 29, 1981

CHAPTER 702

HOUSE CONCURRENT RESOLUTION NO. 3038
(Unhjem)

SCHOOL EXTRACURRICULAR ACTIVITY INFORMATION

A concurrent resolution requesting the Superintendent of Public Instruction to gather and provide information on the cost and income sources of extracurricular activities of elementary and secondary schools.

WHEREAS, the goal of the State of North Dakota is to provide state funds equal to 70 percent of the cost of public school education in the elementary and secondary grades; and

WHEREAS, students in these grades participate in a wide variety of extracurricular activities; and

WHEREAS, it is not known how much these extracurricular activities cost nor how much of these costs are currently paid by state funds; and

WHEREAS, current reporting by school districts to the Superintendent of Public Instruction does not include cost information on extracurricular activites; and

WHEREAS, the Legislative Assembly cannot fulfill its responsibilities without accurate data upon which to base its decisions;

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

That the Superintendent of Public Instruction is requested to require each school district to provide information on the expenses incurred for all extracurricular activities of the school district, including information on salaries, operating expenses, equipment, and capital expenditures for each type of activity, and the income sources, including ticket sales, fees, and state and local funding, for each of these extracurricular activities; and

BE IT FURTHER RESOLVED, that the Superintendent of Public Instruction is requested to provide a preliminary report to the Legislative Council or its designee, and a final report, including breakdowns of each of the above items, to the Forty-eighth Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Superintendent of Public Instruction.

Filed March 19, 1981

CHAPTER 703

HOUSE CONCURRENT RESOLUTION NO. 3039
(Representative Strinden)
(Senator Nething)

COMPREHENSIVE NATIONAL ENERGY POLICY

A concurrent resolution urging the President and Congress to formulate a comprehensive national energy policy.

WHEREAS, energy costs are a major cause of the persistent inflation being experienced today in the United States; and

WHEREAS, the purchase of foreign energy supplies is causing a severe balance of trade deficit which has eroded the strength of the dollar both at home and abroad; and

WHEREAS, America's dependence on foreign sources of energy has had, and will presumably continue to have, serious adverse effects on our nation's foreign policy; and

WHEREAS, the present energy crisis is one of the most serious and persistent problems America has ever faced; and

WHEREAS, this nation's leaders must soon find a solution to the energy crisis if we as a people are to retain control of our destiny;

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

That the Forty-seventh Legislative Assembly urges the President and the Congress of the United States to formulate a comprehensive national energy policy which will:

1. Encourage a program of conservation to eliminate our dependence on foreign sources of energy;

2. Elevate the research and development of synthetic fuels to the same priority as that given to the space program during the 1960's;

3. Provide for the safe development of nuclear energy by strictly regulating the management of nuclear power plants

and by finding an acceptable solution to the problem of disposal of nuclear wastes;

4. Place greater emphasis on the development of renewable energy sources, including solar power, gasohol, and fuel from renewable agricultural products;

5. Ease the distribution of energy fuels by supporting the construction of the Northern Tier pipeline and the consequent use of North Dakota labor, American ships, and Alaskan oil; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States and each member of the North Dakota Congressional Delegation.

Filed March 25, 1981

CHAPTER 704

HOUSE CONCURRENT RESOLUTION NO. 3040
(Matchie)

VOLUNTEER SPIRIT

A concurrent resolution commending the volunteer spirit in the people of North Dakota and the United States.

WHEREAS, much of the humanitarian work for which we in North Dakota and the United States are justly proud is traditionally performed by unpaid volunteers; and

WHEREAS, volunteers come from and provide aid to every segment of our society; and

WHEREAS, volunteers are, in large part, responsible for the continued strength and prosperity of this state and nation; and

WHEREAS, a cursory review of man's greatest achievements will reveal a long list of volunteers, both famous and unknown, whose sole ideal was not the glorification of self, but rather the helping of others in times of need; and

WHEREAS, most major institutions, such as hospitals, schools, and churches, rely heavily on those nine out of every ten Americans who will perform some form of volunteer service during their lifetimes; and

WHEREAS, North Dakota is renowned for its quality of life and the helpful spirit of its people;

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

That the Forty-seventh Legislative Assembly recognizes the importance of the volunteer spirit and encourages the continued growth and support of this spirit throughout the state.

Filed March 4, 1981

CHAPTER 705

HOUSE CONCURRENT RESOLUTION NO. 3041
(Mattson, Berg, Mertens)

MITIGATION ACREAGE DISCUSSIONS

A concurrent resolution urging continued discussion and cooperation among state agencies, federal agencies, and the interested public to resolve expeditiously the conflict over mitigation acreage for federally assisted development projects and develop an acceptable wildlife habitat preservation and management plan for the state.

WHEREAS, North Dakota and federal agencies have been in conflict for several years over the acquisition of mitigation acreage for federally assisted development projects within the state; and

WHEREAS, significant efforts have been made during the past year by North Dakota state agencies, federal agencies, and concerned public interest groups to resolve this mitigation conflict through discussion and cooperation; and

WHEREAS, these cooperative efforts have resulted in the development of alternative approaches to mitigation and the initial development of a wildlife preservation and management plan for the state; and

WHEREAS, to the extent possible, our state's limited productive agricultural lands should be preserved to help meet society's present and future food supply needs;

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

That the Forty-seventh Legislative Assembly urges continued discussion among state agencies, federal agencies, and the interested public to resolve expeditiously the conflict over mitigation acreage for federally assisted development projects and to develop an acceptable wildlife habitat preservation and management plan for the state;

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the United States Secretary of the Interior and each member of the North Dakota Congressional Delegation.

Filed March 23, 1981

CHAPTER 706

HOUSE CONCURRENT RESOLUTION NO. 3042
(Representatives Dagne Olsen, Gunderson)
(Senator Mutch)

GENERAL FEDERATION OF WOMEN'S CLUBS PRESIDENT

A concurrent resolution congratulating Mrs. Don L. Shide on her election as International President of the General Federation of Women's Clubs.

WHEREAS, Mrs. Don L. Shide of Larimore, North Dakota has been elected International President of the General Federation of Women's Clubs; and

WHEREAS, the General Federation of Women's Clubs is the oldest and largest organization of volunteer women in the world with a total membership of 10,000,000 in the United States and 46 other countries; and

WHEREAS, prior to her election to national office, Mrs. Shide served in several state offices of the General Federation of Women's Clubs, including state president; and

WHEREAS, Mrs. Shide currently serves in several national positions, including service on the President's Committee for the Employment of the Handicapped, the National Board of Directors of the Medical College of Pennsylvania, CARE, American Energy Week, the National Board of Advisors of Keep America Beautiful, Outstanding Young Women of America, and Family Time;

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

That the Forty-seventh Legislative Assembly congratulates Mrs. Don L. Shide on her election as International President of the General Federation of Women's Clubs; and

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to Mrs. Don L. Shide.

Filed March 2, 1981

CHAPTER 707

HOUSE CONCURRENT RESOLUTION NO. 3043
(Kent)

P.O.W. RELEASE ACTION

A concurrent resolution urging the President of the United States and the United States Congress to take all steps necessary to secure the return of all Americans still held as prisoners of war in southeast Asia.

WHEREAS, there have been numerous confirmed sightings of Americans still being held hostage by communists as a result of the Korean and southeast Asian conflicts; and

WHEREAS, more than 2,800 American troops are still unaccounted for from the Korean and southeast Asian conflicts; and

WHEREAS, since 1973 there have been more than 4,000 individual sighting reports made with respect to Americans still being held prisoner in southeast Asia; and

WHEREAS, it can be assumed that the conditions of existence for these prisoners is deplorable at best;

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

That the Forty-seventh Legislative Assembly urges the President of the United States and the United States Congress to take all necessary action to obtain the release and return of these prisoners; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States and each member of the North Dakota Congressional Delegation.

Filed March 9, 1981

CHAPTER 708

HOUSE CONCURRENT RESOLUTION NO. 3044
(Representatives Dagne Olsen, Gunderson)
(Senator Mutch)

SUNFLOWER PROMOTION ACCOMPLISHMENTS

A concurrent resolution congratulating Marvin Klevberg on his accomplishments in the area of sunflower marketing and promotion.

WHEREAS, North Dakota farmers grow more sunflowers than do the farmers of any other state; and

WHEREAS, in 1980, North Dakota farmers grew 2,580,000 acres of sunflowers; and

WHEREAS, sunflowers have become a major factor in North Dakota's agricultural economy; and

WHEREAS, Marvin Klevberg of Northwood, North Dakota, organized the National Sunflower Marketing Association in 1967 and has been president of that association since its inception; and

WHEREAS, Marvin Klevberg is also a director of the North Dakota Sunflower Council as well as of the Sunflower Association of America; and

WHEREAS, Marvin Klevberg's accomplishments have paralleled the growth of sunflowers as an increasingly important factor in our state and national economies;

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

That the Forty-seventh Legislative Assembly congratulates Marvin Klevberg of Northwood, North Dakota, on his national accomplishments in the area of sunflower marketing and promotion; and

BE IT FURTHER RESOLVED, that the Secretary of State is hereby directed to present an enrolled copy of this resolution to Marvin Klevberg.

Filed March 3, 1981

CHAPTER 709

HOUSE CONCURRENT RESOLUTION NO. 3045
(Murphy)

WEAPONS LAWS STUDY

A concurrent resolution directing the Legislative Council to conduct a study of state laws governing the possession, sale, and use of weapons.

WHEREAS, questions have arisen among local law enforcement officials, the Attorney General's office, and the public concerning ambiguous, confusing, and conflicting laws governing the possession, sale, and use of pistols, revolvers, machineguns, bombs, explosives, and other weapons in the state; and

WHEREAS, these questions have caused serious problems among local law enforcement officials and the Attorney General's office who are charged with enforcing state laws governing the possession, sale, and use of weapons; and

WHEREAS, these questions have caused serious problems for citizens who possess, sell, and use weapons and endangered the rest of the public;

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 and review of state laws governing the possession, sale, and use of pistols, revolvers, machineguns, bombs, explosives, and other weapons for the purpose of revising and modernizing the laws in order to clarify the laws. The Legislative Council shall direct its efforts toward a revision of the substance, form, and style of current weapons statutes, toward integration and correlation of those statutes where possible, and toward deletion of outmoded or unnecessary statutory material; and

BE IT FURTHER RESOLVED, that the Legislative Council may seek the aid and assistance of the Attorney General's office, local law enforcement officials, and interested citizens; 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 Forty-eighth Legislative Assembly.

Filed March 25, 1981

CHAPTER 710

HOUSE CONCURRENT RESOLUTION NO. 3047
(Representative Strinden)
(Senator Nething)

DEVELOPMENTALLY DISABLED SERVICES STUDY

A concurrent resolution directing the Legislative Council to monitor deinstitutionalization and community service programs for developmentally disabled persons.

WHEREAS, the Forty-seventh Legislative Assembly has received budget requests calling for an additional $13 million to expand community programs for developmentally disabled persons; and

WHEREAS, the Forty-seventh Legislative Assembly has received budget requests from the Grafton State School and San Haven for amounts approaching $60 million for the next biennium to provide services to developmentally disabled persons requiring institutional care; and

WHEREAS, the cooperation of a number of state agencies and institutions and community providers of service is required to provide services to developmentally disabled persons; and

WHEREAS, services to such persons must be carefully planned and delivered to assure that they receive, in the least restrictive environment, the needed levels of care, treatment, and education; and

WHEREAS, a monitoring of program development during the 1981-83 biennium will help the next Legislative Assembly develop future program plans for developmentally disabled persons;

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

That the Budget Section of the Legislative Council be directed to study and monitor all aspects of the deinstitutionalization and community programs for developmentally disabled persons resulting from enactments of the Forty-seventh Legislative Assembly and make its findings and recommendations together with any necessary legislation to the Forty-eighth Legislative Assembly; and

BE IT FURTHER RESOLVED, that all state agencies, departments, and institutions provide such assistance and cooperation as may be requested by the Budget Section in conducting this study.

Filed March 6, 1981

CHAPTER 711

HOUSE CONCURRENT RESOLUTION NO. 3048
(Wald, Hughes, Murphy, Peterson, Thompson)

OIL AND GAS DEVELOPMENT ROAD EFFECTS STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the effects of oil and gas development on primary and secondary roads in North Dakota.

WHEREAS, the exploration for and development of oil and gas reserves in North Dakota is increasing at a rapid rate; and

WHEREAS, the exploration for and development of oil and gas reserves require the use of heavy equipment which generally has a pernicious effect on the primary and secondary roads in the area; and

WHEREAS, the revenues from oil and gas taxation which are provided for the maintenance of primary and secondary roads appear to be inadequate to permit repair of damage caused by the transport of oil and gas equipment; and

WHEREAS, a comprehensive study is needed to determine the amount of harm caused to primary and secondary roads by the exploration for and development of oil and gas reserves and the amount of funding necessary to alleviate such harm;

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 effects of oil and gas exploration and development on primary and secondary roads in North Dakota and the level and type of funding needed to alleviate those effects; 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 Forty-eighth Legislative Assembly.

Filed March 25, 1981

CHAPTER 712

HOUSE CONCURRENT RESOLUTION NO. 3049
(Kingsbury, Olafson)

TRANSMISSION LINE EFFECTS STUDY

A concurrent resolution directing the Legislative Council to study the effects of transmission lines, buried cables, oil and gas well sites, drainage and water lines, and saltwater and oil lines on present and future owners of North Dakota farmland.

WHEREAS, electrical and gas transmission lines, buried cables, oil and gas well sites, drainage and water lines, and saltwater and oil lines disturb the integrity and impair the usefulness of North Dakota's agricultural lands; and

WHEREAS, the burdens associated with these lines and sites accrue to both present and future landowners while the benefits of reimbursement are generally limited to present landowners; and

WHEREAS, the monetary remuneration for the inconvenience and hardships caused by the lines and sites is based on factors in effect at the time of the construction of the lines and sites and may not fairly compensate landowners for future inconvenience;

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 hereby directed to conduct a study of the burdens and benefits, both present and future, associated with electrical and gas transmission lines, buried cables, oil and gas well sites, drainage and water lines, and saltwater and oil lines, particularly with respect to how these burdens and benefits relate to North Dakota's agricultural lands; 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 Forty-eighth Legislative Assembly.

Filed March 25, 1981

CHAPTER 713

HOUSE CONCURRENT RESOLUTION NO. 3050
(A. Hausauer)

OIL AND GAS DEVELOPMENT EFFECTS STUDY

A concurrent resolution directing a Legislative Council study of the effects of oil and gas exploration and development on animal life, plant life, and the quality of life in North Dakota.

WHEREAS, national and international economic factors are causing, and will continue to cause, increasingly rapid exploration for and development of oil and gas reserves in North Dakota; and

WHEREAS, while the exploration for and development of oil and gas reserves is widespread throughout this state, it is not regulated by any single level of government; and

WHEREAS, exploration for and development of oil and gas reserves may affect water availability, water quality, and air quality as well as the habitat of man, domestic livestock, wildlife, cultivated crops, and wild plants; and

WHEREAS, the extent and nature of the possible effects of oil and gas exploration and development are presently unknown; and

WHEREAS, a Legislative Council study, utilizing the resources and expertise of various state departments and agencies, could aid in determining the possible harmful effects of oil and gas exploration and development, as well as discovering available or new means of mitigating such effects;

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 effects of oil and gas exploration and development on animal life, plant life, and the quality of life in North Dakota; and

BE IT FURTHER RESOLVED, that in conducting the study the Legislative Council may consult with the State Geologist, Industrial Commission, State Engineer, Water Commission, and Department of Health, and those entities are directed to give reasonable assistance 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 Forty-eighth Legislative Assembly.

Filed March 25, 1981

CHAPTER 714

HOUSE CONCURRENT RESOLUTION NO. 3051
(Unhjem, Meiers, Mushik, Wagner)

RECORDS MANAGEMENT AND PRINTING POLICIES STUDY

A concurrent resolution directing the Legislative Council to study records management and public printing policies of state government.

WHEREAS, it is over 20 years since an interim committee conducted a comprehensive study of records management in state government; and

WHEREAS, as a result of the last study, the 1961 Legislative Assembly passed the Records Management Act and designated the Secretary of State as the state records administrator; and

WHEREAS, state government has expanded with the creation of many new agencies and has assumed new roles and responsibilities since the original study of records management was conducted, with the result being that many of the procedures established at that time may be inadequate for current requirements; and

WHEREAS, valuable floor space is being occupied by filing cabinets throughout state government and it appears many of the files in those cabinets could be either destroyed or moved to less expensive space; and

WHEREAS, there has been a proliferation of documents, publications, and other printed material which has been created and dispensed by state agencies in recent years with little coordination among agencies;

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 comprehensive study of records management in state government, including the role of the Secretary of State as state records administrator; practices and procedures of various agencies concerning the creation, maintenance, and disposal of records; the utilization of storage space; and public printing policies of state government; and

BE IT FURTHER RESOLVED, that the director of institutions is requested to temporarily refrain from putting available space, which would be suitable for the purpose of records management and storage, to other permanent use or uses pending completion of this study; and

BE IT FURTHER RESOLVED, that the Legislative Council may call upon the Secretary of State and the Department of Accounts and Purchases for such aid and assistance as it deems necessary; 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 Forty-eighth Legislative Assembly.

Filed March 25, 1981

CHAPTER 715

HOUSE CONCURRENT RESOLUTION NO. 3052
(Unhjem, Gerl)

ELECTIONS CONSOLIDATION STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the feasibility and desirability of consolidating city, school district, and primary elections.

WHEREAS, present law provides for separate primary, city, and school district elections; and

WHEREAS, provisions now exist in the law for the use of separate election officials and materials for each election; and

WHEREAS, different geographical boundaries and polling places are utilized in school district and city elections; and

WHEREAS, consolidation of the primary, school district, and city elections would result in financial savings;

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 feasibility and desirability of consolidating the primary, school district, and city elections; 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 Forty-eighth Legislative Assembly.

Filed March 20, 1981

CHAPTER 716

HOUSE CONCURRENT RESOLUTION NO. 3053
(Mushik, Eagles, Meiers)

YOUTHFUL OFFENDER SENTENCING NEEDS STUDY

A concurrent resolution directing a Legislative Council study of the sentencing needs of the juvenile court, alternative placement needs of the State Youth Authority, and facility needs of the State Industrial School for the youthful offender who commits serious offenses or who commits repeated delinquent acts and the age and considerations for waiver from juvenile court to adult court.

WHEREAS, the sentencing provisions of the Uniform Juvenile Court Act provide only minimum terms of commitment to the State Industrial School even for serious offenses; and

WHEREAS, the State Youth Authority as well as the juvenile court need secure placement facilities as well as programs to meet the needs of specialized youthful offenders; and

WHEREAS, the lack of alternative programs for juveniles often results in inappropriate incarceration of status and traffic offenders with serious delinquent and adult prisoners; and

WHEREAS, the rehabilitative programs at the State Industrial School are not directed at the needs of serious youthful offenders who may require longer terms of commitment; and

WHEREAS, the State Industrial School does not have adequate secure facilities for offenders who pose a threat to themselves, other youth at the school, or the general public; and

WHEREAS, the State Penitentiary does not have separate programs for the rehabilitation of serious youthful offenders; and

WHEREAS, the State Penitentiary does not have the capability of separating youthful offenders from adult inmates incarcerated for serious offenses; and

WHEREAS, the interests of the public are not being served due to the lack of appropriate local facilities or programs for status

and traffic offenders and for the serious youthful offender and the youth who commits repeated delinquent acts;

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 hereby directed to conduct a comprehensive study and evaluation of juvenile correctional facility needs, the detention and sentencing needs of the juvenile court, the appropriate jurisdiction over juvenile traffic offenders, alternative placement needs of the State Youth Authority and the appropriate age and considerations for waiver from juvenile court to adult court in the case of serious offenses; and

BE IT FURTHER RESOLVED, that within the scope of this study the Legislative Council is directed to conduct a comprehensive study and evaluation of the location of a secure facility for serious youthful offenders and appropriate rehabilitative programs at the State Industrial School and State Penitentiary for serious youthful offenders; and

BE IT FURTHER RESOLVED, that the Director of Institutions, the State Youth Authority, and such other state agencies and institutions as the Legislative Council may select shall provide such aid and assistance as the Council may request in conducting the study. The Legislative Council shall also appoint a juvenile supervisor, a state's attorney, and two citizen members to serve on the committee; and

BE IT FURTHER RESOLVED, that the Legislative Council shall make its report and recommendations, together with any legislation necessary to implement such recommendations, to the Forty-eighth Legislative Assembly.

Filed March 30, 1981

CHAPTER 717

HOUSE CONCURRENT RESOLUTION NO. 3056
(Representatives Backes, Strinden)
(Approved by the Committee on Delayed Bills)

FORT TOTTEN HISTORIC SITE DESIGNATION

A concurrent resolution urging the National Park Service to include Fort Totten as a national historic site.

WHEREAS, the Fort Totten State Historic Site, located approximately 12 miles southwest of the city of Devils Lake, North Dakota, on the south shore of Devils Lake on the Fort Totten Indian Reservation, and administered by the State Historical Society of North Dakota, is one of the best-preserved military posts surviving from the Indian wars of the trans-Mississippi West; and

WHEREAS, the site is significant as a military post, having been established on July 17, 1867, to help protect an overland route extending from southern Minnesota to western Montana and was located in a strategic position for national defense, serving until abandonment on November 18, 1890; and

WHEREAS, the site is significant in American Indian history, having in its earliest years filled the role of an Indian agency for the native peoples coming into the area after its establishment and from 1890 through 1960 having functioned as an Indian industrial school; and

WHEREAS, in order to avoid major building losses, the buildings on the site need major repairs and restoration work which must be undertaken immediately, a project which is beyond the current capabilities of the state of North Dakota; and

WHEREAS, the National Park Service has the professional capability and expertise to undertake the planning, restoration, and operation of this site, and such management would be in the public interest;

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

That the National Park Service is urged to include the Fort Totten State Historic Site in the national park system as a national historic site and is further urged to take immediate action to provide for the restoration and preservation of the site; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the director of the National Park Service and each member of the North Dakota Congressional Delegation.

Filed March 25, 1981

CHAPTER 718

HOUSE CONCURRENT RESOLUTION NO. 3058
(Representative Kelly)
(Senator Stenehjem)

DEVELOPMENTALLY DISABLED RIGHTS STUDY

A concurrent resolution directing a Legislative Council study of guardianship and conservatorship laws and commitment procedures affecting developmentally disabled persons.

WHEREAS, many of the developmentally disabled citizens of North Dakota are capable of handling all or part of their financial affairs, consenting to medical treatment, entering into contracts, and otherwise giving legal consent; and

WHEREAS, the unique and distinct abilities of developmentally disabled citizens, including the mentally retarded, to manage their affairs may not be recognized by existing laws concerning the establishment of guardianship and conservatorship; and

WHEREAS, voluntary commitment procedures for mentally retarded citizens present legal and ethical questions regarding the ability of the person involved or his parent or guardian to consent to commitment to the Grafton State School, and present involuntary commitment procedures for mentally retarded citizens are governed entirely by criminal laws and are exercised by criminal courts of this state; and

WHEREAS, once persons are committed to the Grafton State School or to San Haven whether voluntarily or involuntarily, section 25-04-13.1 of the North Dakota Century Code automatically establishes the superintendent of the Grafton State School as the guardian and conservator of residents who do not otherwise have a parent or other guardian; and

WHEREAS, the statutory procedure so established by section 25-04-13.1 does not provide for an opportunity for a hearing, which would be otherwise provided in establishing guardianships and conservatorships pursuant to chapters 30.1-26 through 30.1-29, inclusive; and

WHEREAS, many residents of Grafton State School and San Haven may be deinstitutionalized in the next few years and placed in community programs; and

WHEREAS, a review should be made of procedures to ensure the legal rights of developmentally disabled persons in guardianship and conservatorship proceedings; and

WHEREAS, a review should be made of procedures to ensure the legal rights of mentally retarded persons in voluntary and involuntary commitment proceedings to the Grafton State School and San Haven; and

WHEREAS, a review should be made of procedures to transfer guardianships and conservatorships, and to terminate the same when necessary, over mentally retarded persons from the superintendent of the Grafton State School to other appropriate individuals when residents are transferred from the Grafton State School and San Haven to community programs, and to ensure continuity of care, transfer of necessary information, and protection of residents' legal rights and material assets;

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 guardianship and conservatorship laws, including section 25-04-13.1 of the North Dakota Century Code, to ensure the legal rights of developmentally disabled persons in such proceedings and to transfer and terminate the same when residents of the Grafton State School and San Haven are placed in community programs; and to conduct a study of voluntary and involuntary commitment procedures for mentally retarded persons to the Grafton State School and San Haven; 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 Forty-eighth Legislative Assembly.

Filed March 25, 1981

CHAPTER 719

HOUSE CONCURRENT RESOLUTION NO. 3059
(Mattson, A. Hausauer, Timm)

OIL AND GAS TAX DISTRIBUTION STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the formula used for distributing the oil and gas gross production tax.

WHEREAS, the oil and gas gross production tax was initially imposed in 1953; and

WHEREAS, the distribution formula used for the tax revenues generated by this tax has not been changed since 1963; and

WHEREAS, collections under this tax have increased dramatically from approximately $306,000 for fiscal year 1954 to approximately $38,400,000 for fiscal year 1980; and

WHEREAS, the increases in prices and production of oil and gas portend significantly higher tax revenues for the future; and

WHEREAS, these changing circumstances may lead to inequities in the distribution of revenues from this tax, with some political subdivisions receiving disproportionately large allocations and other political subdivisions receiving allocations which are not adequate to meet local needs resulting from oil and gas 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 is hereby directed to study the formula for distributing the oil and gas gross production tax with emphasis on the adequacy and equity of such distribution, including alternative methods of placing limitations on the amounts to which any political subdivision may be entitled and methods of allocating the funds in order to meet more closely local needs resulting from oil and gas development; 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 720

HOUSE CONCURRENT RESOLUTION NO. 3061
(Kretschmar, Kuchera, Mattson)

LEGISLATIVE APPORTIONMENT PLAN STUDY

A concurrent resolution directing the Legislative Council to study and develop a legislative reapportionment plan, or alternative legislative reapportionment plans, for use during the 1983 Legislative Session, or at such other time prior to that session as may be appropriate.

WHEREAS, the Legislative Assembly has the primary responsibility for reapportioning the territory of the state of North Dakota into legislative districts; and

WHEREAS, the demographic data necessary to complete the reapportionment task must come from the United States Bureau of the Census based on the 1980 decennial census; and

WHEREAS, the demographic data was not supplied by the Bureau of the Census in time for the preparation and proper legislative consideration of a reapportionment plan or plans during the scheduled time frame of the 1981 Legislative Session;

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 legislative reapportionment, to receive, or to authorize a designee to receive, the results of a contractual reapportionment plan development being carried out by the University of North Dakota, and to be prepared to report with its proposed plan or plans as soon as possible during the legislative interim, if necessary, or to the Forty-eighth Legislative Assembly.

Filed March 20, 1981

CHAPTER 721

HOUSE CONCURRENT RESOLUTION NO. 3062
(Timm, Richard, Rued, Koski)

TRANSPORTATION PROBLEMS STUDY

A concurrent resolution directing the Legislative Council to conduct a study of transportation problems in North Dakota.

WHEREAS, a viable and safe system of transportation in North Dakota is critical to national defense, agriculture, industry, recreation, and all citizens of and visitors to this state; and

WHEREAS, certain motorists in this state are violating state law by failing to maintain liability insurance, no-fault insurance, and other forms of compulsory insurance on their vehicles; and

WHEREAS, certain motorists in this state are violating state law and endangering the public by driving on highways and roads without valid motor vehicle operator's licenses; and

WHEREAS, local authorities are charging highly diverse fees for special permits issued for vehicles of excessive size and weight which operate on highways under their jurisdiction; and

WHEREAS, an excessive number of law enforcement vehicles are currently enforcing traffic laws and rules without adequate identification as law enforcement vehicles; and

WHEREAS, efficient and safe movement on highways and roads within the state has been impeded by an excessive number of emergency and driving lights on motor vehicles and by the timing of traffic signal lights; and

WHEREAS, many state laws governing motor vehicle equipment have become outdated due to their date of enactment and manufacturing changes and are unenforced due to the outdated nature of the laws and lack of sufficient enforcement authority for appropriate state and local government agencies; and

WHEREAS, these and other transportation problems have impaired the vital need for a viable and safe system of transportation 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 is directed to conduct a study of transportation problems in North Dakota with particular emphasis on means of enforcing compulsory motor vehicle insurance and motor vehicle operator's license statutory requirements, making special fees charged by local authorities for vehicles of excessive size and weight uniform, reducing the number of law enforcement vehicles operating without adequate identification, reducing the number of emergency and driving lights on motor vehicles, synchronizing traffic signal lights to maximize the free flow of traffic, revising and providing sufficient authority for enforcement of motor vehicle equipment laws; and

BE IT FURTHER RESOLVED, that the Legislative Assembly may seek the aid and assistance of state and local governmental officials, insurers, and interested citizens; 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 Forty-eighth Legislative Assembly.

Filed March 25, 1981

CHAPTER 722

HOUSE CONCURRENT RESOLUTION NO. 3064
(G. Pomeroy, Gates, Kuchera)

VISUALLY IMPAIRED SERVICES STUDY

A concurrent resolution directing the Legislative Council to study services to the blind and the visually impaired and the feasibility and desirability of establishing a rehabilitation teacher for the blind program.

WHEREAS, the public has a vital interest in ensuring that individuals who are blind or visually impaired develop the ability to function as independently as possible; and

WHEREAS, most individuals who are blind or visually impaired need training or assistance if they are to function independently; and

WHEREAS, rehabilitation teachers could provide home teaching services which include evaluation, counseling, adjustment training, communication training, and other rehabilitation services to the blind and the visually impaired; and

WHEREAS, a need exists to identify the number of blind and visually impaired individuals in the state of North Dakota, the location of these individuals throughout the state, the services these individuals need, and the cost of providing the necessary 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 is directed to conduct a study of existing services to blind and visually impaired individuals in the state of North Dakota, additional services necessary to enable the blind and the visually impaired to function independently, and the feasibility and desirability of establishing a rehabilitation teacher program to provide training and assistance to blind or visually impaired individuals; and

BE IT FURTHER RESOLVED, that the Legislative Council shall conduct the study with the cooperation and assistance of the division of vocational rehabilitation, other relevant state agencies or institutions, and interested citizens; 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 723

HOUSE CONCURRENT RESOLUTION NO. 3065
(Kretschmar)

WATER MANAGEMENT DISTRICTS STUDY

A concurrent resolution directing the Legislative Council to study and review the jurisdictional boundaries of water management districts and the selection of the management of such districts.

WHEREAS, the Legislative Assembly has declared that extensive water management powers and responsibilities at the local level are necessary ingredients in providing for effective and efficient management of the water resources of this state; and

WHEREAS, this legislative policy has been given effect by the creation of water management districts, which have been vested with extensive authority for the development, control, and regulation of the water resources of this state; and

WHEREAS, the jurisdictional boundaries of water management districts are generally established along county lines, and water management boards are presently appointed by boards of county commissioners; and

WHEREAS, the Forty-sixth Legislative Assembly adopted House Concurrent Resolution No. 3022, which directed a Legislative Council study of water management districts and legal drain boards and which resulted in proposed legislation calling for the reorganization of water management districts along watershed boundaries, the election of water managers, and a general update and modernization of existing water management statutes; and

WHEREAS, while the watershed concept is supported by the Forty-seventh Legislative Assembly, it is necessary to conduct further study of the best method to adopt watershed boundaries; and

WHEREAS, further study of the method of selection of water managers is also necessary in conjunction with the study of watersheds;

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 hereby directed and authorized to conduct an interim study of the jurisdictional boundaries of water management districts and the selection of the management of such districts. The objective of such study shall be to determine the most effective and efficient method to provide for the management of water resources of this state at the local level on a watershed basis; and

BE IT FURTHER RESOLVED, that the Legislative Council shall conduct the study with the cooperation and assistance of the State Water Commission, the State Engineer, the North Dakota Water Management Districts Association, and the North Dakota Association of Counties; and

BE IT FURTHER RESOLVED, that the Legislative Council shall make its report and recommendations, together with any legislation required to implement the recommendations, to the Forty-eighth Legislative Assembly.

Filed March 18, 1981

CHAPTER 724

HOUSE CONCURRENT RESOLUTION NO. 3070
(Swiontek, Black, Kent, Martinson)

CENTRAL PERSONNEL DIVISION STUDY

A concurrent resolution directing the Legislative Council to study the Central Personnel Division.

WHEREAS, there has not been a comprehensive study of the Central Personnel Division since its creation in 1975; and

WHEREAS, the division should be studied to determine whether it is achieving its goals; and

WHEREAS, new personnel system techniques may be available to promote equal pay for equal work; and

WHEREAS, it may be possible to decrease the amount of paperwork required; and

WHEREAS, the division testing procedures should be reviewed to make sure they are current and appropriate; and

WHEREAS, the division job requirements should be reviewed to assure that qualified persons can be employed on a timely basis;

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 Central Personnel Division and report its findings and recommendations, together with any legislation required to implement the recommendations, to the Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 725

HOUSE CONCURRENT RESOLUTION NO. 3071
(Representative Wald)
(Senator Naaden)
(Approved by the Committee on Delayed Bills)

DEPARTMENT OF ENERGY ABOLITION

A concurrent resolution urging Congress and the President to abolish the United States Department of Energy.

WHEREAS, the President has termed the current state of the national economy the worst since the Great Depression; and

WHEREAS, two of the primary factors contributing to today's economic malaise are governmental overregulation and our dependence on foreign sources of energy; and

WHEREAS, the current national energy crisis has been likened to the "moral equivalent of war"; and

WHEREAS, a lessening of our dependence on foreign sources of energy is critical to both our national economy and our national security; and

WHEREAS, the United States national energy policy is presently the responsiblity of the Department of Energy; and

WHEREAS, the activities of the Department of Energy have been described as "utter chaos, with potential for real disaster"; and

WHEREAS, the Department of Energy costs the American taxpayers and consumers many billions of dollars each year, both directly and indirectly; and

WHEREAS, it is clear that the Department of Energy's regulatory activities are harming both the American consumer and American industry through ineffective, ill conceived, and inefficient overregulation;

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

That the Forty-seventh Legislative Assembly urges the United States Congress and the President of the United States to abolish the United States Department of Energy and to transfer those functions which are clearly necessary to the welfare of the people of this nation to other agencies; 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 Department of Energy, and each member of the North Dakota Congressional Delegation.

CHAPTER 726

HOUSE CONCURRENT RESOLUTION NO. 3072
(Berg)
(Approved by the Committee on Delayed Bills)

GARRISON DIVERSION FINANCING STUDY

A concurrent resolution directing the Legislative Council to conduct a study of financing of the remainder of the Garrison Diversion Project.

WHEREAS, the state of North Dakota has suffered the loss of thousands of acres of farmland for the construction of Missouri River reservoirs; and

WHEREAS, millions of dollars have been expended toward the completion of the Garrison Diversion Unit; and

WHEREAS, the completion of the Garrison Diversion Unit would help stabilize North Dakota's agricultural production and furnish dependable municipal and rural water supplies thereby benefiting a large portion of the state's citizens; and

WHEREAS, construction of the Garrison Diversion Unit by the federal government has been delayed numerous times with construction costs rising with each delay;

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 financing of the Garrison Diversion Project through any feasible combination of revenue sources, to allow the continuation and completion of the project; and

BE IT FURTHER RESOLVED, that the Legislative Council make its report and recommendations to the Forty-eighth Legislative Assembly.

Filed March 31, 1981

CHAPTER 727

HOUSE CONCURRENT RESOLUTION NO. 3074
(Wald, Gerl, Rued)

WORKMEN'S COMPENSATION PREMIUMS STUDY

A concurrent resolution directing a Legislative Council study of the workmen's compensation wage base and premium determinations.

WHEREAS, North Dakota operates a state fund for workmen's compensation coverage; and

WHEREAS, premiums for coverage are based on the wages paid by the employer; and

WHEREAS, the maximum wage base against which premiums are paid is statutorily established; and

WHEREAS, workmen's compensation is based upon an employee's wages, subject to a statewide average; and

WHEREAS, the amount of a wage base against which premiums are assessed affects the premium levels for all occupations;

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 workmen's compensation program in North Dakota with respect to premium determinations and payroll limitations, with special emphasis on the effect the statutorily established maximum payroll base has on premium levels of various employers, particularly employers whose average employee wage does not exceed the statutory maximum; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with legislation necessary to implement any recommendations, to the Forty-eighth Legislative Assembly.

Filed March 20, 1981

CHAPTER 728

HOUSE CONCURRENT RESOLUTION NO. 3075
(Representatives Reiten, G. Pomeroy)
(Senator Stenehjem)
(Approved by the Committee on Delayed Bills)

GIFT TO UNIVERSITY

A concurrent resolution expressing the gratitude of the Forty-seventh Legislative Assembly to Mr. W. Kenneth Hyslop for his munificent gift to the University of North Dakota.

WHEREAS, Mr. W. Kenneth Hyslop, a North Dakota native, was born at Inkster, North Dakota, on May 19, 1885, attended the University from 1902 through 1906, and graduated with a Bachelor of Arts degree; and

WHEREAS, Mr. Hyslop, following his graduation from the University of North Dakota, started work in a copper mill earning the sum $3.50 per day; and

WHEREAS, Mr. Hyslop rose from that humble beginning to become chairman of the board of the United States operations of Massey-Harris and vice president of the multinational parent company, Massey-Harris Limited, headquartered in Toronto, Canada; and

WHEREAS, Mr. Hyslop, who is presently retired and living in Racine, Wisconsin, has presented the University with a gift exceeding $6 million in value; and

WHEREAS, this gift not only represents the largest gift ever made to the University but may have been among the two largest gifts to any university in the United States during 1980; and

WHEREAS, Mr. Hyslop has been recognized for believing that, through education and hard work, a person of ambition can achieve high standards of excellence, and he certainly exemplifies this belief;

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

That the Forty-seventh Legislative Assembly expresses its deep appreciation and gratitude to Mr. W. Kenneth Hyslop of Racine, Wisconsin for his generous gift to the University of North Dakota; and

BE IT FURTHER RESOLVED, that an enrolled copy of this resolution be forwarded to Mr. Hyslop by the Secretary of State.

Filed March 4, 1981

CHAPTER 729

HOUSE CONCURRENT RESOLUTION NO. 3076
(Committee on Appropriations)

LICENSE FEES STUDY

A concurrent resolution directing the Legislative Council to study and review the fees charged by state agencies, boards, and commissions to license persons, activities, and facilities.

WHEREAS, many occupations and professions are regulated by state boards or commissions and require a license to practice or engage in the occupation or profession; and

WHEREAS, persons or entities must obtain licenses issued by state agencies as a prerequisite to engaging in many activities; and

WHEREAS, many facilities must be licensed by state agencies as a condition of operation; and

WHEREAS, the license fees charged have been set piecemeal by legislative action, without consideration of comprehensive criteria, and at many different times;

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 and review the amounts charged by the various state agencies, boards, and commissions to license persons, activities, and facilities; and

BE IT FURTHER RESOLVED, that the Legislative Council shall conduct the study with the cooperation and assistance of any state agency, board, or commission which charges a license fee; 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 730

HOUSE CONCURRENT RESOLUTION NO. 3077
(Solberg)
(Approved by the Committee on Delayed Bills)

MEDICAL EDUCATION PROGRAM MONITORING

A concurrent resolution directing the Legislative Council to monitor the University of North Dakota's planning for the establishment of a four-year medical education program in North Dakota.

WHEREAS, the North Dakota Legislative Assembly encourages the Board of Higher Education to establish a University of North Dakota four-year medical education program in North Dakota; and

WHEREAS, this will be a change from the current 2-1-1 medical education program; and

WHEREAS, a Legislative Council review during the 1981-83 interim will provide a basis for the Forty-eighth Legislative Assembly providing for the establishment of the third year in North Dakota during the 1983-85 biennium;

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 monitor the University of North Dakota Medical School's preparation during the 1981-83 interim to establish the third year of its program in North Dakota in the fall of 1983; and

BE IT FURTHER RESOLVED, that the University of North Dakota Medical School provide such assistance to the Legislative Council as the Council may determine necessary in conducting that study; and

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

Filed March 20, 1981

CHAPTER 731

HOUSE CONCURRENT RESOLUTION NO. 3078
(Martinson)
(Approved by the Committee on Delayed Bills)

JUDICIAL RETIREMENT STUDY

A concurrent resolution directing the Legislative Council to conduct a study of judicial retirement for North Dakota Supreme Court justices and district court judges.

WHEREAS, North Dakota Supreme Court justices and district court judges are presently members of either the judicial retirement program established under chapter 27-17 of the North Dakota Century Code, or members of the Public Employees Retirement System established under chapter 54-52 of the North Dakota Century Code; and

WHEREAS, the retirement benefits provided by these programs to judges of the same classification are unequal; and

WHEREAS, retirement needs of judges may differ from those of other public employees;

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 hereby directed to conduct a comprehensive study of judicial retirement; and

BE IT FURTHER RESOLVED, that the Legislative Council may call on the staff of the Public Employees Retirement System, members and staff of the judicial branch of government, and other persons for necessary assistance, and may, if necessary, seek actuarial consulting assistance; 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 Forty-eighth Legislative Assembly.

Filed March 20, 1981

CHAPTER 732

HOUSE CONCURRENT RESOLUTION NO. 3079
(Richie)
(Approved by the Committee on Delayed Bills)

AMERICAN LEGION WORLD SERIES BID

A concurrent resolution endorsing the Fargo American Legion and its baseball committee in their bid to the National American Legion Americanism Commission to host the 1983 World Series of American Legion Baseball at Jack Williams Stadium in Fargo, North Dakota.

WHEREAS, the National American Legion Americanism Commission must select a site to host the 1983 World Series of American Legion Baseball; and

WHEREAS, Jack Williams Stadium in Fargo, North Dakota, has excellent playing, seating, concession, and parking facilities for a baseball tournament; and

WHEREAS, the Fargo American Legion (Gilbert C. Grafton Post No. 2) has an active and successful baseball program with widespread participation and support; and

WHEREAS, the Fargo American Legion has used its facilities and program to host an American Legion regional baseball tournament in the past; and

WHEREAS, the Fargo American Legion and its baseball committee have been actively engaged in a bid to the National American Legion Americanism Commission to host the 1983 World Series of American Legion Baseball at Jack Williams Stadium in Fargo, North Dakota; and

WHEREAS, the citizens of the city of Fargo and the state of North Dakota overwhelmingly support the Fargo American Legion and its baseball committee in their bid to host the 1983 World Series of American Legion Baseball;

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

That the North Dakota Legislative Assembly endorses the Fargo American Legion (Gilbert C. Grafton Post No. 2) and its baseball committee in their bid to the National American Legion Americanism Commission to host the 1983 World Series of American Legion Baseball at Jack Williams Stadium in Fargo, North Dakota;

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the National American Legion Americanism Commission and the Fargo American Legion (Gilbert C. Grafton Post No. 2).

Filed March 16, 1981

CHAPTER 733

HOUSE CONCURRENT RESOLUTION NO. 3080
(Marsden)
(Approved by the Committee on Delayed Bills)

OMNIBUS SMALL BUSINESS CAPITAL FORMATION ACT OF 1981

A concurrent resolution urging Congress to enact the Omnibus Small Business Capital Formation Act of 1981.

WHEREAS, small businesses constitute 97 percent of all businesses in the United States; and

WHEREAS, small business is responsibile for over seven million new jobs created in the past 10 years; and

WHEREAS, the entrepreneurial spirit of American small business serves as an example in capital formation to the rest of the world; and

WHEREAS, small business in this country is at a comparative disadvantage in relation to larger enterprises in retaining and having access to capital; and

WHEREAS, this disadvantage is exacerbated by a highly discriminatory national tax policy and a deteriorating economic situation;

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

That the Forty-seventh Legislative Assembly urges the United States Congress to enact the Omnibus Small Business Capital Formation Act of 1981; 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.

Filed March 20, 1981

CHAPTER 734

HOUSE CONCURRENT RESOLUTION NO. 3081
(Representative Strinden)
(Senator Nething)

COMPLETION OF LEGISLATIVE JOURNALS

A concurrent resolution providing for the completion of the legislative journals of the House and the Senate.

WHEREAS, after termination of the Forty-seventh Legislative Assembly a complete record with index of the House and Senate journals must be prepared;

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

That Roy Gilbreath, Chief Clerk of the House, and Leo Leidholm, Secretary of the Senate, are hereby authorized and employed to prepare an index of journals of the Forty-seventh Legislative Assembly, and are also directed to arrange for and procure sufficient assistance to ensure that the foregoing work shall be completed within 30 days after the close of the session; and

BE IT FURTHER RESOLVED, that for the expenses of the said Roy Gilbreath and Leo Leidholm, in completing the work required above, there shall be allowed the sum of $3,300 each, which shall include compensation for any assistance which they deem necessary, all to be paid as other legislative expense is paid, and when the respective claims are verified by the affidavits of the said Roy Gilbreath and Leo Leidholm showing completion of such work.

Filed March 25, 1981

CHAPTER 735

HOUSE CONCURRENT RESOLUTION NO. 3083
(Meiers, Sorum)

UNITED STATES JAYCEETTES PRESIDENT

A concurrent resolution congratulating Jan Zook on her election as president of the United States Jayceettes.

WHEREAS, Jan Zook of Bowbells, North Dakota, has been elected president of the United States Jayceettes; and

WHEREAS, the United States Jayceettes is a service organization which was founded in 1974 and currently has 55,000 members in 3,400 chapters across the nation; and

WHEREAS, prior to her election to national office, Mrs. Zook served in several local and state offices of the Jayceettes, including state president; and

WHEREAS, as president of the United States Jayceettes, Mrs. Zook has visited 30 states and has helped raise thousands of dollars for such programs as Muscular Dystrophy, March of Dimes, St. Jude's Children Research Hospital, Juvenile Diabetes, and Cystic Fibrosis.

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

That the Forty-seventh Legislative Assembly congratulates Jan Zook on her election as president of the United States Jayceettes; and

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to Jan Zook.

Filed March 30, 1981

CHAPTER 736

HOUSE CONCURRENT RESOLUTION NO. 3084
(Melby, Hedstrom, Dagne Olsen, Wald)
(Approved by the Committee on Delayed Bills)

HUMAN LIFE CONSTITUTIONAL AMENDMENT

A concurrent resolution urging the United States Congress to propose an amendment to the United States Constitution to protect human life.

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

That the Forty-seventh Legislative Assembly of the State of North Dakota urges the United States Congress to pass a resolution proposing an amendment to the Constitution of the United States to protect all human life.

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the North Dakota Congressional Delegation.

Filed April 3, 1981

HOUSE MEMORIAL RESOLUTIONS

CHAPTER 737

HOUSE MEMORIAL RESOLUTION NO. A
(Committee on Memorial Resolutions)

MEMORIAL TO DECEASED HOUSE MEMBERS

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:

EMIL E. ANDERSON, who served in the Thirty-sixth through the Thirty-ninth Legislative Assemblies, from the thirty-fourth district, died July 11, 1979.

KENNETH L. ANDERSON, who served in the Thirty-third through the Thirty-fifth Legislative Assemblies, from the thirty-second district, died May 27, 1980.

INGVAL BJERKAN, who served in the Thirty-fifth Legislative Assembly, from the twenty-eighth district, died November 11, 1979.

ALFRED O. BROWN, who served in the Nineteenth and Twentieth Legislative Assemblies, from the forty-ninth district, died September 17, 1979.

ELMER W. CART, who served in the Seventeenth through the Nineteenth Legislative Assemblies, from the fortieth district, died February 6, 1980.

WALTER CHRISTENSEN, who served in the Thirty-seventh and Thirty-eighth Legislative Assemblies, from the forty-sixth district, died August 3, 1979.

EDWIN N. DAVIS, who served in the Thirty-third through the Thirty-ninth Legislative Assemblies, from the twenty-fifth district, died December 21, 1979.

THOR HARTMAN GRONVOLD, who served in the Thirty-second Legislative Assembly, from the forty-second district, died December 1, 1980.

CHARLES F. KARABENSH, who served in the Thirty-sixth and Thirty-seventh Legislative Assemblies, from the thirtieth district, died March 29, 1979.

JESS M. JOINER, who served in the Twenty-sixth and Thirtieth Legislative Assemblies, from the second district, died February 3, 1980.

HARRY C. KOLPIN, who served in the Twenty-eighth Legislative Assembly, from the sixteenth district, died December 6, 1980.

LOUIS LEET, who served in the Twenty-eighth through the Thirty-eighth Legislative Assemblies, from the twenty-first district, died July 29, 1980.

JOHN LEIER, who served in the Thirty-first through the Thirty-third Legislative Assemblies, from the twentieth district, died October 20, 1980.

ARTHUR W. LUICK, who served in the Twenty-ninth through the Thirty-first Legislative Assemblies, from the twenty-fifth district, died September 16, 1980.

ADRIAN O. MCLELLAN, who served in the Thirty-second and Thirty-third Legislative Assemblies, from the ninth district, died June 4, 1979.

CARL A. MEYER, who served in the Thirty-sixth through the Thirty-ninth, and the Forty-second and Forty-third Legislative Assemblies, from the thirty-fifth district, died April 15, 1979.

ADIN MILLER, who served in the Thirty-seventh through the Thirty-ninth Legislative Assemblies, from the thirty-ninth district, died April 18, 1979.

ARTHUR NYSTROM, who served in the Twenty-sixth through the Twenty-ninth Legislative Assemblies, from the thirty-second district, died August 26, 1980.

ALBERT J. SANDNESS, who served in the Twenty-seventh through the Twenty-ninth Legislative Assemblies, from the twenty-fourth district, died August 21, 1979.

ROY M. SNOW, who served in the Thirty-first through the Thirty-fifth Legislative Assemblies, from the thirty-ninth district, died July 6, 1979.

JOHN H. SOMMER, who served in the Thirty-second through the Thirty-fourth Legislative Assemblies, from the first district, died April 4, 1980.

HARRY WADESON, who served in the Thirtieth through the Thirty-second Legislative Assemblies, from the eleventh district, died May 29, 1980.

SALMER WESTLIND, who served in the Thirty-sixth Legislative Assembly, from the twenty-second district, died December 5, 1980.

WHEREAS, today, we, as members of the House of Representatives of the Forty-seventh 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 20, 1981

SENATE RESOLUTIONS

CHAPTER 738

SENATE RESOLUTION NO. 1
(Nething)
(Approved by the Committee on Delayed Bills)

INSURANCE DEPARTMENT INVESTIGATION

A resolution creating a select Senate committee to investigate unusual operations in the Insurance Department, particularly during the month of December 1980.

WHEREAS, recent events have led to questions concerning the operations of the Insurance Department during the term of office of the previous commissioner; and

WHEREAS, a recent investigation by the Attorney General's office indicates that there were no actionable violations of the criminal laws; and

WHEREAS, the potential problems alleged in the department may, in any case, give rise to the necessity for ameliorative legislation;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA:

That the creation of a select Senate investigating committee is hereby authorized. The committee shall be composed of seven senators, five from the majority party to be appointed by the Majority Leader, and two from the minority party to be appointed by the Minority Leader. The appointments are to be made within two days after passage of this resolution, and the Majority Leader shall appoint the chairman of the committee. The committee shall investigate the administration and operations of the Insurance Department, and especially such operations during the month of December 1980. The committee is to report its findings and recommendations to the Senate within 16 legislative days after passage of this resolution; and

BE IT FURTHER RESOLVED, that the select committee created by this resolution may call on such persons in the employ of the Insurance Department as it may deem appropriate; and may call on the Legislative Council staff, the Attorney General, the Department of Accounts and Purchases, and any other executive department, agency, office, officer, board, bureau, commission, or institution, or any organization or individuals outside state government, for any reasonable assistance in the conduct of its study and review as the select committee deems necessary; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded immediately by the Secretary of State to the Commissioner of Insurance.

Filed March 6, 1981

CHAPTER 739

SENATE RESOLUTION NO. 2
(H. Christensen, Redlin, Reiten, Walsh)
(Approved by the Committee on Delayed Bills)

LOUISIANA STATE UNIVERSITY BASKETBALL COACH

A resolution expressing the congratulations and appreciation of the North Dakota Senate to native son, Dale Brown, for his outstanding personal character, his achievements as basketball coach of Louisiana State University, and the credit he has brought to his home state of North Dakota.

WHEREAS, Dale Brown was born in Minot, North Dakota, was an all-state basketball player, and led all Class "A" scorers in his senior year at St. Leo's High School; and

WHEREAS, Dale Brown graduated from Minot State College with academic honors and achieved the distinction of being the only athlete at Minot State College to earn 12 letters in varsity sports; and

WHEREAS, Dale Brown was selected head basketball coach at Louisiana State University and is now the winningest coach in the history of LSU basketball; and

WHEREAS, Dale Brown has recently led his team to the "Final 4" of the 1981 National Collegiate Athletic Association Basketball Tournament and has been named 1981 NCAA Basketball "Coach of the Year"; and

WHEREAS, Dale Brown is also active as an outstanding public speaker, both here and abroad, and has motivated young and old alike;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA:

That the North Dakota Senate publicly expresses, by adoption of this resolution, its congratulations and appreciation to native son, Dale Brown, for his outstanding personal character, his achievements as basketball coach of Louisiana State University, and the credit he has brought to his home state of North Dakota; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to Dale Brown, Reuben Hammond, Minot, North Dakota, and the presidents of Louisiana State University and Minot State College.

Filed April 2, 1981

SENATE CONCURRENT RESOLUTIONS

CHAPTER 740

SENATE CONCURRENT RESOLUTION NO. 4001
(Legislative Council)
(Interim Judiciary "A" Committee)

TRUST AND EQUITY JURISDICTION STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the extent of the jurisdiction of the district and new county courts over trusts, equitable matters, and provisional remedies.

WHEREAS, the Forty-seventh Legislative Assembly has adopted a bill draft which provides for a new county court structure; and

WHEREAS, there is a question of whether the new county court would have jurisdiction over the equitable matters provided for in Title 33; and

WHEREAS, the 1979-80 interim Judiciary "A" Committee wanted a study done of the advantages of transferring all jurisdiction over trusts, except implied or constructive trusts, to the new county courts;

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 hereby directed and authorized to study the subject of trusts, equity jurisdiction, and provisional remedies, with emphasis on the appropriate jurisdiction of the new county courts; and

BE IT FURTHER RESOLVED, that the Legislative Council shall make its report and recommendations, accompanied by any necessary legislation to implement such recommendations, to the Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 741

SENATE CONCURRENT RESOLUTION NO. 4009
(Legislative Council)
(Legislative Audit and Fiscal Review Committee)

ACCOUNTING AND FINANCIAL REPORTING SYSTEM IMPROVEMENTS

A concurrent resolution directing improvements to the state of North Dakota's accounting and financial reporting system.

WHEREAS, the Legislative Council was directed by the Forty-sixth Legislative Assembly to conduct a study of the state's accounting system; and

WHEREAS, the Legislative Audit and Fiscal Review Committee selected Arthur Andersen & Co., a recognized accounting firm, to study the state's financial and reporting system with the assistance of state personnel; and

WHEREAS, the present cash basis accounting system does not provide the fiscal information state decisionmakers need; and

WHEREAS, the present accounting and financial reporting system is not in accordance with generally accepted accounting principles; and

WHEREAS, the present state payroll system is outdated and in need of revision; and

WHEREAS, comprehensive financial statements of the state of North Dakota are not available; and

WHEREAS, the development and maintenance of the state accounting system should be coordinated by a single agency; and

WHEREAS, the development of a coordinated mechanized accounting and reporting system would eliminate the need for substantial manual effort in the preparation of financial reports and financial statements;

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

That the Forty-seventh Legislative Assembly directs the Department of Accounts and Purchases to take such action as may be necessary within the limits of legislative appropriations to develop an accrual accounting system for the state of North Dakota, to coordinate and assist in improving and maintaining accounting systems for state agencies, departments, and institutions, and to the extent possible prepare on an annual basis comprehensive financial statements of the state of North Dakota; and

BE IT FURTHER RESOLVED, that the Department of Accounts and Purchases within the limits of legislative appropriations develop an indirect cost allocation plan relating to federal funds received by state agencies and institutions, and that when completed all state agencies and institutions utilize such plan.

Filed March 10, 1981

CHAPTER 742

SENATE CONCURRENT RESOLUTION NO. 4011
(Senator Hanson)
(Representative Swiontek)

CANADIAN NATURAL GAS RATE RELIEF ASSISTANCE

A concurrent resolution urging the North Dakota Public Service Commission to assist in efforts to obtain rate relief from high priced Canadian natural gas and to reduce or eliminate dependence on Canadian natural gas by replacing imported natural gas with domestic natural gas.

WHEREAS, a number of North Dakota cities, school districts, industries, and citizens are dependent on Canadian natural gas as their only source of heating fuel; and

WHEREAS, the consumer cost varies considerably between imported Canadian natural gas and domestic natural gas due to Canada's goal of keeping its natural gas exports priced at levels corresponding to the current world price of oil; and

WHEREAS, efforts to equalize rates between imported Canadian natural gas in North Dakota and domestic natural gas in Minnesota may result in lengthy court action and provide no relief to North Dakota citizens;

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

That the Forty-seventh Legislative Assembly urges the North Dakota Public Service Commission to assist in efforts to reduce rates on imported Canadian natural gas; and

BE IT FURTHER RESOLVED, that the North Dakota Public Service Commission is also urged to assist in community, industry, and citizen efforts to reduce or eliminate North Dakota's dependence on Canadian natural gas by:

1. Petitioning the Federal Economic Regulatory Administration and the Federal Energy Regulatory Commission to effect changes in existing tariffs which would allow transport of domestic natural gas through the pipeline presently transporting only Canadian natural gas.

2. Assisting in securing a permanent supply of domestic natural gas for those areas of North Dakota currently supplied by imported Canadian natural gas.

3. Assisting the pipeline transmission companies transporting Canadian natural gas and the Canadian government in contract concerns relating to transporting of American natural gas in existing pipelines.

BE IT FURTHER RESOLVED, that the Public Service Commission may use this resolution as a presentation document to indicate the concern of the North Dakota Legislative Assembly.

CHAPTER 743

SENATE CONCURRENT RESOLUTION NO. 4015
(Erickson)

AVIATION WEATHER BRIEFING PHONE LINE

A concurrent resolution calling for a statewide, toll-free zenith telephone system for aviation weather briefings from Federal Aviation Administration flight service stations in North Dakota.

WHEREAS, North Dakota has 1,620 general aviation aircraft and helicopters located in eight regions in the state in which the aircraft owners and pilots are in need of real-time aviation weather information before beginning a flight; and

WHEREAS, North Dakota has 100 publicly and 450 privately owned airports many of which are located in rural areas of the state where aircraft are based, and the owners and pilots of these aircraft are in need of current enroute and destination aviation weather information before beginning a flight; and

WHEREAS, in North Dakota there are over 4,000 licensed pilots which are in need of current aviation weather briefings from time to time; and

WHEREAS, general aviation aircraft are based throughout the state in all 53 counties in eight regions with regional aircraft density ranging from a high of 327 aircraft in the Fargo region to a low of 106 aircraft in the Devils Lake region with an average of 203 aircraft for each of the eight regions covering the state of North Dakota; and

WHEREAS, during the past five years, North Dakota has had 29 fatalities of pilots and passengers in general aviation aircraft accidents of which 17 fatalities were directly associated with adverse aviation weather conditions; and

WHEREAS, many of North Dakota's general aviation aircraft accidents associated with weather could have been prevented if the pilot had ready access to real-time aviation weather before beginning a flight; and

WHEREAS, in the 11 months beginning January 1 and ending November 30, 1980, official records show that over 114,000 telephone calls were made by North Dakota pilots to Federal Aviation Administration flight service stations located at Dickinson, Grand Forks, Jamestown, and Minot, requesting aviation weather briefings, and in addition 6,800 telephone calls were made to the National Weather Service offices at Bismarck, Fargo, and Williston requesting aviation weather briefings; and

WHEREAS, general aviation accidents, loss of lives, and aircraft and property loss in North Dakota could be substantially reduced, if aviation weather information were made readily available to all general aviation aircraft owners and pilots in North Dakota;

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

That the director of the Rocky Mountain Region of the Federal Aviation Administration, Denver, Colorado, is hereby urged to install a statewide, toll-free zenith telephone system in North Dakota, which would permit any pilot or aircraft owner to call the Federal Aviation Administration flight service stations in North Dakota for aviation weather briefings, at no cost to the pilot or the state of North Dakota; and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the director of the Federal Aviation Administration, Rocky Mountain Region; director of the Federal Aviation Administration, Washington office; and each member of the North Dakota Congressional Delegation.

Filed January 30, 1981

CHAPTER 744

SENATE CONCURRENT RESOLUTION NO. 4017
(Erickson, Solberg)

FEDERAL AVIATION ADMINISTRATION FIELD OFFICE MAINTENANCE

A concurrent resolution urging the Federal Aviation Administration to maintain its airport field office in Bismarck.

WHEREAS, representatives of the Federal Aviation Administration's Denver regional office are considering closing the FAA's airport field office in Bismarck; and

WHEREAS, the objectives in closing the office appear to be an attempt to save money and to improve FAA service over the entire federal region; and

WHEREAS, most airport construction projects are built with a large percentage of federal funds and local governments seek grants from the FAA to construct projects such as runway lengthening or airport terminal improvement; and

WHEREAS, North Dakota engineers seek assistance from the Bismarck office in drawing specifications for proposed projects and also consult with the Bismarck office during construction to ensure that projects meet federal requirements; and

WHEREAS, the location of the FAA airport field office in North Dakota reduces delays caused in attempting to communicate with federal offices located in Denver or other regional locations; and

WHEREAS, increased travel and project costs created by a shift in the location of the airport field office to Denver probably would offset any savings;

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

That the Forty-seventh Legislative Assembly urges the Federal Aviation Administration to maintain its airport field office in Bismarck, North Dakota; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the director of the Federal Aviation Administration, Washington office; director of the Federal Aviation Administration, Rocky Mountain Region; chief of the Federal Aviation Administration's Denver-based airport division; and each member of the North Dakota Congressional Delegation.

Filed January 30, 1981

CHAPTER 745

SENATE CONCURRENT RESOLUTION NO. 4018
(Hanson)

AUTOMOBILE INSURANCE RATING STUDY

A concurrent resolution requesting the Commissioner of Insurance to study insurance rates and rating procedures for automobile drivers under 25 years of age.

WHEREAS, single male drivers under 25 years of age pay more for automobile insurance than single female drivers in the same age group; and

WHEREAS, this insurance price differential exists even if a male and female driver have identical driving records; and

WHEREAS, insurance pricing is based on risk assessment factors of territory, classification, age and symbol relativities, and underwriting; and

WHEREAS, the risk assessment factor of classification primarily involves the insured's age, sex, and marital status; and

WHEREAS, casualty and other forms of motor vehicle insurance rates should not rely on age, sex, or marital status; and

WHEREAS, North Dakota Century Code Section 26-28-05 authorizes the Commissioner of Insurance to disapprove casualty insurance rate filings;

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

That the Forty-seventh Legislative Assembly requests the Commissioner of Insurance to study insurance rates and rating procedures for automobile drivers under 25 years of age. The study should specifically address the use of age, sex, and marital status as insurance rating factors; and

BE IT FURTHER RESOLVED, that the Commissioner of Insurance report the results of this study by July 1, 1982, to an interim committee of the Legislative Council, designated by the chairman of the Legislative Council.

Filed March 19, 1981

CHAPTER 746

SENATE CONCURRENT RESOLUTION NO. 4019
(Senators Nething, Redlin)
(Representatives Strinden, Backes, Peterson)

PRESIDENTIAL INAUGURATION ATTENDANCE

A concurrent resolution authorizing the Speaker of the House and the majority and minority Senate and House leaders, or their designees, to attend the presidential inauguration, excusing their absence, and authorizing expenditure of moneys from the legislative appropriation necessary to cover their expenses.

WHEREAS, the inauguration of Ronald Reagan as the 40th President of the United States will be on January 20; and

WHEREAS, the presidential inauguration symbolizes democracy in action and freedom in the selection of our nation's leaders; and

WHEREAS, harmonious relationships between the three coequal branches of government on the state and federal levels are vital to the success of our democratic society; and

WHEREAS, important decisions which may greatly alter the future course of events in North Dakota will be made by the President and the executive branch in the next four years; and

WHEREAS, the spirit of goodwill and cooperation between the various branches of state and federal government can be demonstrated by legislative representation at the presidential inauguration during this important period in North Dakota history;

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

That the Speaker of the House and the majority and minority leaders of the House and the Senate, or their designees, are authorized to attend the presidential inauguration in Washington, D.C., on January 20; and

BE IT FURTHER RESOLVED, that the Senate and the House excuse the absence of those members attending the inauguration and authorize the expenditure of such sums as are reasonably necessary from the legislative appropriation to cover their expenses incurred as a result of such attendance.

Filed January 15, 1981

CHAPTER 747

SENATE CONCURRENT RESOLUTION NO. 4021
(Holmberg)

EMANCIPATED MINORS' RIGHTS STUDY

A concurrent resolution directing the Legislative Council to study the need for the creation of statutory rights and responsibilities for emancipated minors, and for the creation of judicial remedies attendant thereon.

WHEREAS, minor citizens of the state of North Dakota often ~~leave~~ their parental homes before attaining the age of 18 years; and

WHEREAS, these minors are often employed, self-supporting, or are married; and

WHEREAS, these minors are legally unable to enter into binding contracts, thus severely limiting their ability to participate fully as responsible citizens;

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 make a comprehensive study of the need for the creation of statutory rights and responsibilities for emancipated minors, and for the creation of judicial remedies attendant thereon; and

BE IT FURTHER RESOLVED, that the Legislative Council make its recommendations and report thereon to the Forty-eighth Legislative Assembly, together with any legislation required to carry out such recommendations.

Filed March 19, 1981

CHAPTER 748

SENATE CONCURRENT RESOLUTION NO. 4023
(Erickson, Tennefos)

ROAD FINANCES STUDY

A concurrent resolution directing the Legislative Council to study the immediate and future availability of the financial resources needed for the construction, reconstruction, repair and maintenance of the various roads, streets and highways of the state.

WHEREAS, the Thirty-third Legislative Assembly in enacting section 24-01-01 of the North Dakota Century Code, declared, in part, that adequate roads and streets generally promoted the economic and social progress of the state and therefore, an adequate and integrated system of roads and streets were deemed essential to the welfare of the State of North Dakota; and

WHEREAS, the state and local entities charged with providing an adequate and integrated system of roads and streets have been confronted with the economic dilemma caused by rapidly escalating costs for the construction, reconstruction, repair and maintenance of the roads and streets, while simultaneously traditional sources of revenues for such undertakings have failed to offset these increased costs; and

WHEREAS, the state is currently experiencing intense activity in the exploration, development and utilization of its energy related natural resources, accompanied by a significant growth in the manufacturing and processing of agricultural products, which activities mandate an efficient transportation system; and concurrent with such increase in economic activity, the state has incurred a substantial loss in its transportation system by virtue of the abandonment and proposed abandonment of railroad main lines, branch lines and segments of branch lines throughout the state; and

WHEREAS, the primary source of funding for the construction, reconstruction, repair and maintenance of the roads and streets have been user fees derived from the motor fuel tax, special fuel taxes, and registration fees, and such sources of revenue will diminish by the mandates of the federal government for lighter and fuel efficient motor vehicles, which will result in reduced motor fuel and special fuels taxes, together with reduced registration fees; and

WHEREAS, it is foreseeable that the existing concept of generating revenues for the construction, reconstruction, repair and maintenance of the roads and streets of this state will be inadequate to provide for the current and future transportation demands placed upon the road and street systems 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 Legislative Council is directed to study the present methods of providing for the financing for the construction, reconstruction, repair and maintenance of roads and streets at all governmental levels and in conjunction therewith, study alternative and additional methods available for the generation of revenues for the same purpose, thereby providing the funding for long term planning in the development and maintenance of the various roads and streets of the state at each governmental level for the general economic welfare of 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 Forty-eighth Legislative Assembly.

Filed March 16, 1981

CHAPTER 749

SENATE CONCURRENT RESOLUTION NO. 4024
(Senator Nething)
(Representative Strinden)

Y.M.C.A. MODEL LEGISLATURE

A concurrent resolution expressing the support of the Forty-seventh 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 forty 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 legislature held following the 1979 legislative session was a successful event 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 Forty-seventh Legislative Assembly express its support for the YMCA model state legislature to be held on Saturday and Sunday, April 25-26, 1981, at 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 January 30, 1981

CHAPTER 750

SENATE CONCURRENT RESOLUTION NO. 4025
(Senator Nething)
(Representative Strinden)

IRANIAN HOSTAGE RELEASE RELIEF

A concurrent resolution expressing the gratitude and relief of the Forty-seventh Legislative Assembly at the recent release of the Iranian hostages.

WHEREAS, the citizens of the United States have been held hostage in Iran contrary to international law since November 4, 1979; and

WHEREAS, the release of the hostages on Tuesday, January 20, 1981, represents an answer to the prayers of the citizens of this nation and of people throughout the world; and

WHEREAS, it is fitting that the North Dakota Legislative Assembly give public expression of gratitude and relief that the 52 American citizens held against their will have been released and will be coming home to their loved ones; and

WHEREAS, the Forty-seventh Legislative Assembly wishes to express its support for any future actions which might be taken by the national government to ensure that such incidents will not occur 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 Forty-seventh Legislative Assembly publicly expresses, by adoption of this resolution, its relief and gratitude that the 52 American citizens held hostage in Iran for the past 14 months have been released; and

BE IT FURTHER RESOLVED, that the Forty-seventh Legislative Assembly expresses its support for action or plans by the federal government designed to prevent a future occurrence of a situation similar to the Iranian hostage situation.

Filed January 30, 1981

CHAPTER 751

SENATE CONCURRENT RESOLUTION NO. 4029
(Albers, Adams, Iszler, Moore, Roen)

LEAFY SPURGE ERADICATION PROGRAM

A concurrent resolution urging Congress to direct and adequately fund the Department of Agriculture to establish a task force to eradicate leafy spurge on all federal lands and a cost-sharing program to eradicate leafy spurge on all nonfederal lands.

WHEREAS, leafy spurge, euphorbia esula L, currently infests over 600,000 acres in North Dakota and over 2.5 million acres in the United States; and

WHEREAS, leafy spurge infestation is rapidly increasing, reducing or eliminating crop yields, and endangering man and animals, thereby increasing food prices and decreasing food supplies at a time of high inflation and food shortages at home and abroad; and

WHEREAS, leafy spurge control is physically difficult, tremendously expensive with costs ranging from $35 to $210 per acre or over $10.5 million in 1978, and requires inventory, research, control, education, and planning to be effective; and

WHEREAS, the federal government currently controls over one-half of the land in the western states through the Bureau of Land Management, United States Forest Service, national parks and monuments, military installations, and Indian reservations; and

WHEREAS, the federal government has not adequately controlled leafy spurge infestation on federal lands due to a lack of funding, interest, and effort and a highly divided approach by federal agencies;

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

That the Forty-seventh Legislative Assembly urges the United States Congress to place total responsibility for leafy spurge control on all federal lands in the United States with the Department of Agriculture; and

BE IT FURTHER RESOLVED, that the Forty-seventh Legislative Assembly urges the United States Congress to direct and adequately fund the United States Department of Agriculture to establish a task force whose sole purpose is to develop an economic and effective means to control leafy spurge through research, education, planning, and other necessary action; and

BE IT FURTHER RESOLVED, that the Forty-seventh Legislative Assembly urges the United States Congress to direct and adequately fund the United States Department of Agriculture to establish a cost-sharing program for the eradication of leafy spurge on all nonfederal lands; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Department of Agriculture, the chairmen of the Senate and House Committee on Agriculture, and each member of the North Dakota Congressional Delegation.

Filed March 16, 1981

CHAPTER 752

SENATE CONCURRENT RESOLUTION NO. 4033
(Melland)

SPECIAL LEGISLATIVE SESSION PROCEDURE

A concurrent resolution establishing the procedures for the Legislative Assembly to call itself into a reconvened session, relating to the call of the special session by the governor, speaking to the role of legislative standing committees, and relating to other matters of legislative procedure.

WHEREAS, the Constitution of the State of North Dakota authorizes the Legislative Assembly to meet for not to exceed 80 natural days during the biennium; and

WHEREAS, fewer than 80 natural days are usually used in a regular session; and

WHEREAS, the Legislative Assembly has the responsibility to the people of the State of North Dakota to carry out its policymaking responsibilities, and to respond to the press of current events; and

WHEREAS, the Legislative Assembly ought to provide a means whereby a governor can have some assurance that he can call a limited special session, if necessary; and

WHEREAS, a means should be established to permit the Legislative Assembly to exercise its constitutional responsibilities to meet problems in situations which may develop during the approximately 20 months between regular biennial legislative sessions;

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

That adjournment of the Forty-seventh Legislative Assembly shall be subject to and in accordance with the provisions of this resolution; and

BE IT FURTHER RESOLVED, that a special session called by the governor may be in accordance with the procedures set out in this resolution and Joint Legislative Rule 901; and

BE IT FURTHER RESOLVED, that the procedures listed below may be followed subsequent to adjournment of the 1981 regular session of the Forty-seventh Legislative Assembly:

1. The governor may, pursuant to Joint Legislative Rule 901 and this resolution, call the Legislative Assembly into special session for a stated purpose or purposes, and the Legislative Assembly shall limit itself to consideration of those measures which relate to the purpose or purposes stated by the governor in his special session call.

2. The Legislative Council upon a majority vote of the statutory membership at a regular or special meeting may call the Legislative Assembly back into continued regular session, in accordance with such procedure as the Legislative Council may adopt.

3. Upon receipt of a petition for a continued regular session signed by 33 members of the Senate and 67 members of the House of Representatives, the Legislative Council shall meet and shall issue a call to convene in continued regular session in accordance with the terms of the petition, or, if no convening date is set in the petition, the call shall be to convene at a date not more than 60 days from the date the petition is received. A petition is received under this subsection on the date it is filed with the Legislative Council staff.

4. The legislative officers and committee structure in office or in effect upon adjournment of the regular session of the Forty-seventh Legislative Assembly shall continue throughout any session called pursuant to this concurrent resolution or by the governor under his authority set out in article V, section 5 of the Constitution, unless altered by resignation, vacancy, or changes made by the Legislative Assembly in special session or in a session called pursuant to this concurrent resolution.

5. The call of a continued regular session by the Legislative Council may include the following:

   a. A limit on the time during which the session may meet.

   b. A limit on the subject matter which may be considered.

   c. A limit on the bills which may be introduced.

   d. Provision for meetings of specified standing committees or joint committees at legislative expense prior to the convening of the session being called for the purpose of considering bills to be the subject matter of the called session.

6. The standing committees of the Legislative Assembly may meet in joint session following adjournment of the regular session of the Forty-seventh Legislative Assembly if directed to do so by the Legislative Council. The standing committees may be assigned draft bills to be considered at any forthcoming continuation or special session; or they may be, in the discretion of the Legislative Council, assigned interim study resolutions or other study assignments. Meetings of standing committees pursuant to this resolution shall be paid for from the appropriation to the Legislative Assembly, and shall be staffed, to the extent personnel are available, by the Legislative Council staff.

Filed April 6, 1981

CHAPTER 753

SENATE CONCURRENT RESOLUTION NO. 4034
(Committee on Appropriations)

BLOCK GRANT STATE AID DISPENSATION

A concurrent resolution urging Congress to dispense aid to the state in the form of block grants.

WHEREAS, there has been a decrease in the amount of federal funds appropriated to the states in the form of grants; and

WHEREAS, federal regulations governing the expenditure of those moneys have not decreased; and

WHEREAS, moneys dispensed in the form of block grants would reduce federal regulations and allow the state to decide how federal grants can best be utilized in state programs;

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

That the Forty-seventh Legislative Assembly urges the United States Congress to appropriate and authorize expenditure of federal moneys in the form of block grants to the several states; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the North Dakota Congressional Delegation, the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States, the Office of Management and Budget, and the President of the United States.

Filed March 10, 1981

CHAPTER 754

SENATE CONCURRENT RESOLUTION NO. 4038
(Senators Nething, Redlin)
(Representative Strinden)

GARRISON DIVERSION PROCESSION

A concurrent resolution urging the United States Secretary of the Interior to proceed with phased construction of, and to seek consultations on, the authorized Garrison Diversion Unit.

WHEREAS, the Garrison Diversion Unit is authorized and funded as a multipurpose water resource development project; and

WHEREAS, the Garrison Diversion Conservancy District has adopted a program for phased development of the project as authorized, with the initial construction of 5,000 acres of irrigation features within the James River Basin; and

WHEREAS, this program of phased development includes a cooperative research and monitoring program consistent with the International Joint Commission's recommendations for conditions precedent to proceeding with project construction; and

WHEREAS, consultations between the United States and Canada have been proposed to discuss certain features of the Garrison Diversion Project;

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

That the Forty-seventh Legislative Assembly supports phased development of the authorized and funded Garrison Diversion Unit and urges the United States Secretary of the Interior to proceed with its construction; and

BE IT FURTHER RESOLVED, that the Secretary of Interior is urged to recommend that any consultations with Canada concern the features of the authorized 250,000 acre unit; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the North Dakota Congressional Delegation, the United States Secretary of the Interior, and the Governor of North Dakota.

Filed March 13, 1981

CHAPTER 755

SENATE CONCURRENT RESOLUTION NO. 4039
(Iszler, Nelson, Vosper)

SOIL STEWARDSHIP

A concurrent resolution requesting the Secretary of Agriculture to ensure that federal farm programs neither require nor encourage cultivation of highly erosive land.

WHEREAS, agriculture is the source of a substantial portion of the new wealth created annually in North Dakota; and

WHEREAS, farmers and ranchers are a vital link between managing the soil resource for agricultural production and our ultimate food supply; and

WHEREAS, North Dakota farmers and ranchers must often base their management decisions on programs administered by the United States Department of Agriculture (USDA); and

WHEREAS, USDA farm programs often seem to conflict with the adoption and maintenance of sound soil and water conservation practices; and

WHEREAS, due to severe erosion potential, the cultivation of soils largely suited to pasture, range, and woodland uses should be avoided to guard against serious losses of topsoils; and

WHEREAS, it is essential that the stewardship ethic be stressed through voluntary programs to maintain soil productivity of all types of land for present and future generations; and

WHEREAS, federal farm programs should encourage the stewardship of all soils regardless of their capability;

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

That the Forty-seventh Legislative Assembly requests the Secretary of Agriculture to review federal farm programs and, where necessary, to revise such programs so that incentives for participation in disaster relief programs, crop insurance programs, or any other federal farm programs do not encourage the cultivation of highly erosive land; and

BE IT FURTHER RESOLVED, that the Secretary of Agriculture encourage provisions in federal farm programs which allow greater administrative flexibility at the state and local levels to allow for improved soil resource management; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of Agriculture; the administrators of the Agricultural Stabilization and Conservation Service, the Federal Crop Insurance Corporation, and the Soil Conservation Service; and the members of the North Dakota Congressional Delegation.

Filed March 13, 1981

CHAPTER 756

SENATE CONCURRENT RESOLUTION NO. 4040
(Senators Vosper, Shablow)
(Representative A. Olson)

PEMBILIER DAM PROJECT

A concurrent resolution expressing the support of the North Dakota Legislative Assembly for the Pembilier Dam Project.

WHEREAS, the construction of a multipurpose dam on the Pembina River in northeastern North Dakota has been under investigation and study for more than 25 years by the Army Corps of Engineers, the International Joint Commission, the North Dakota State Water Commission, the Province of Manitoba, and others at a total expenditure approaching $3 million by both countries; and

WHEREAS, the numerous studies have been completed but funding for the Pembilier Dam Project, with Canada participating in the construction costs as a joint venture, has not yet been authorized; and

WHEREAS, the benefits assignable to flood damage reduction in the agricultural and urban areas of the Pembina River Basin are estimated at $3,822,000 annually; and

WHEREAS, this would alleviate about 72 percent of the Pembina River flood damage in the United States and 20 percent in Canada; and

WHEREAS, the project would provide the only solution to a serious and continuing boundary dispute between the two countries by alleviating the severity of spring flooding on the Red River of the North that is a constant problem to the United States and Canada; and

WHEREAS, the project is supported by the public, and all local, state, and provincial units of government, including all conservation interests and agencies; and

WHEREAS, the phase one study was authorized by Congress, and is scheduled for completion in 1983;

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

That the Forty-seventh Legislative Assembly requests the United States Congress to support rapid completion of the phase one study and that the United States Congress authorize construction of the Pembilier Dam so urgently needed for the protection and livelihood of people and their property located in the lower Pembina Basin in the United States and Canada; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the North Dakota Congressional Delegation, the United States Department of State, the United States Army Corps of Engineers, the Canadian Department of External Affairs, the Water Resources Branch of the Manitoba Department of Natural Resources, and the secretary-treasurer of the Lower Red River Valley Water Commission.

Filed March 17, 1981

CHAPTER 757

SENATE CONCURRENT RESOLUTION NO. 4042
(Senators Tennefos, Melland)
(Representatives Kloubec, Moore)

FINANCIAL INSTITUTIONS REGULATION STUDY

A concurrent resolution directing the Legislative Council to study state statutes and regulatory requirements relating to all financial institutions.

WHEREAS, state laws provide for the regulation of state banks, credit unions, savings and loan associations, and other financial entities; and

WHEREAS, the Depository Institutions Deregulation and Monetary Control Act of 1980 substantially affects the state-chartered financial entities; and

WHEREAS, the regulation of state-chartered banks, credit unions, savings and loan associations, and other financial entities should be reviewed to determine the relationships among these institutions at the state and the federal level and the powers exercised by each type of entity;

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 to conduct a study of state statutes and regulatory procedures with respect to banks, credit unions, savings and loan associations, and other financial entities, with special emphasis on the powers of each, the reserve requirements of each, and the extent of regulatory overview and duplication between the state and federal regulators; and

BE IT FURTHER RESOLVED, that the findings and recommendations of the Legislative Council be reported, together with any legislation required to implement the recommendations, to the Forty-eighth Legislative Assembly.

Filed March 17, 1981

CHAPTER 758

SENATE CONCURRENT RESOLUTION NO. 4043
(Iszler, Albers, Sorum)

AGRICULTURAL PROCESSING PLANTS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of state promotion of processing plants for North Dakota products within the state.

WHEREAS, agriculture in North Dakota is the basis for 70 percent of revenues in the state; and

WHEREAS, processing of North Dakota agricultural products in other states imposes high transportation cost on North Dakota producers and provides substantial revenues and jobs for out-of-state processing plants and those states' citizens; and

WHEREAS, traditional avenues of transportation to out-of-state processing plants, such as local branch railway lines, are closing or falling into disuse; and

WHEREAS, the establishment of processing plants for North Dakota products within the state would lower transportation costs and increase revenues and jobs for North Dakota;

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 feasibility and desirability of state promotion of processing plants for North Dakota products within 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 Forty-eighth Legislative Assembly.

Filed March 27, 1981

CHAPTER 759

SENATE CONCURRENT RESOLUTION NO. 4044
(Albers, Iszler)

COOPERATIVE AGRICULTURAL MARKETING EFFORTS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of cooperative marketing efforts by the North Dakota Beef Commission, North Dakota Dairy Products Promotion Commission, North Dakota Edible Bean Commission, North Dakota Potato Council, North Dakota Sunflower Council, and North Dakota Wheat Commission.

WHEREAS, marketing of agricultural products is becoming increasingly competitive; and

WHEREAS, nations compete with other nations and states compete with other states for world markets; and

WHEREAS, North Dakota is fortunate in having several independent entities to apply expertise in marketing their own agricultural commodities; and

WHEREAS, the total marketing effort of all the agricultural commodities entities still falls short of efforts in other states;

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 hereby directed and authorized to conduct a study of the feasibility of combining the marketing efforts of the North Dakota Beef Commission, North Dakota Dairy Products Promotion Commission, North Dakota Edible Bean Commission, North Dakota Potato Council, North Dakota Sunflower Council, and North Dakota Wheat Commission to allow joint efforts to increase sales of North Dakota agricultural products and at the same time allow each entity to maintain its autonomy; and

BE IT FURTHER RESOLVED, that the Legislative Council shall conduct the study with the cooperation and assistance of the Commissioner of Agriculture, North Dakota Beef Commission, North Dakota Dairy Products Promotion Commission, North Dakota Edible Bean Commission, North Dakota Potato Council, North Dakota Sunflower Council, and North Dakota Wheat Commission; 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 Forty-eighth Legislative Assembly.

Filed March 13, 1981

CHAPTER 760

SENATE CONCURRENT RESOLUTION NO. 4045
(Senator Nething)
(Representative Strinden)

GUBERNATORIAL APPOINTMENTS CONFIRMATION STUDY

A concurrent resolution directing a Legislative Council study of statutes and procedures related to Senate confirmation of gubernatorial appointments.

WHEREAS, the Constitution and statutes of this state require consent of the Senate for at least 52 appointees of the governor; and

WHEREAS, a list of gubernatorial appointees subject to senatorial consent ranges from some major policymaking administrators and bodies to other boards and committees the primary duties of which are to promote cultural activities; and

WHEREAS, some of the major policymaking appointments made by the governor are not now subject to consent by the Senate; and

WHEREAS, the statutes requiring Senate confirmation contain a variety of provisions regarding the terms of appointees and procedures for consent;

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

That the Legislative Council, through its Legislative Procedure and Arrangements Committee, is directed to study the constitutional provisions, statutes, and procedures for Senate confirmation of gubernatorial appointments, with a view toward ensuring that confirmation is required only for policymaking positions; 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 Forty-eighth Legislative Assembly.

Filed March 10, 1981

CHAPTER 761

SENATE CONCURRENT RESOLUTION NO. 4047
(Iszler, Erickson, Naaden)

IRRIGATION DISTRICTS STUDY

A concurrent resolution directing the Legislative Council to study and review the powers and authorities of irrigation districts, and related statutes pertaining to irrigation as contained in chapters 61-05 through 61-14 of the North Dakota Century Code.

WHEREAS, laws were enacted in 1917 which authorize and govern the organization, government, powers, fiscal affairs, assessments, boundaries, dissolution and general rules of irrigation districts; and

WHEREAS, since that time, these statutes, as contained in chapters 61-05 through 61-14, have not been updated or amended except on a limited piecemeal basis; and

WHEREAS, significant technological and other changes have been developed in the field of irrigation since laws relating to irrigation districts and related subjects were first enacted; and

WHEREAS, demand for water permits for irrigation has been significant in recent years, resulting in increasing interest in the formation of irrigation districts, utilizing chapters 61-05 through 61-14;

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 hereby directed and authorized to conduct an interim study of the organization, powers, government, fiscal affairs, boundaries, dissolution and general rules of irrigation districts, as contained in chapters 61-05 through 61-14 of the North Dakota Century Code, to determine any amendments and improvements that may be necessary to provide for workable organization and subsequent operation of irrigation districts under current technologies and conditions; and

BE IT FURTHER RESOLVED, that the Legislative Council conduct the study with the consultation and assistance of a citizens advisory committee of irrigators and other appropriate persons, which shall be mutually appointed by the chairman of the interim committee conducting the study and the North Dakota Irrigation 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 Forty-eighth Legislative Assembly.

Filed March 23, 1981

CHAPTER 762

SENATE CONCURRENT RESOLUTION NO. 4048
(Senators Iszler, Vosper, Naaden)
(Representative Vander Vorst)

BEEKEEPING STUDY

A concurrent resolution directing the Legislative Council to conduct a study of state laws governing beekeeping.

WHEREAS, landowners, beekeepers, independent hobbyists, and the public have a vital interest in the maximum, equitable, and safe production of bee products in this state; and

WHEREAS, certain agreements between landowners and beekeepers have been inequitable, unenforceable, or both; and

WHEREAS, independent hobbyists have certain rights and duties which have not been considered in current laws governing beekeeping; and

WHEREAS, questions have arisen among landowners, beekeepers, independent hobbyists, the Department of Agriculture, and the public concerning ambiguous, confusing, and conflicting laws governing beekeeping in this state; and

WHEREAS, these agreements and laws have impaired the maximum, equitable, and safe production of bee products in this 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 is directed to conduct a study and review of state laws governing beekeeping for the purpose of revising, modernizing, and clarifying the laws to promote the maximum, equitable, and safe production of bee products in this state. The Legislative Council shall direct its effort toward a revision of the substance, form, and style of current beekeeping statutes, toward integration and correlation of those statutes where possible, and toward deletion of outmoded or unnecessary statutory material; and

BE IF FURTHER RESOLVED, that the Legislative Council may seek the aid and assistance of landowners, beekeepers, independent hobbyists, interested citizens, and the Department of Agriculture; 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 Forty-eighth Legislative Assembly.

Filed March 13, 1981

CHAPTER 763

SENATE CONCURRENT RESOLUTION NO. 4050
(Senator Nething)
(Representative Swiontek)

SCHOOL ACCREDITATION AND TEACHER CERTIFICATION STUDY

A concurrent resolution directing a Legislative Council study of the standards and criteria used for school accreditation and teacher certification.

WHEREAS, the Superintendent of Public Instruction is responsible for adopting accreditation standards for public and private schools; and

WHEREAS, the accreditation standards affect the cost of education provided by schools in the state; and

WHEREAS, the Superintendent of Public Instruction is responsible for establishing criteria for teacher certification; and

WHEREAS, these certification criteria affect the cost of obtaining and maintaining qualified teachers in the schools of this state; and

WHEREAS, accreditation standards are not required to be adopted through normal administrative agencies practice procedures, while teacher certification criteria are required to be adopted following normal administrative agencies practice procedures; and

WHEREAS, the Legislative Council's Committee on Administrative Rules is responsible for reviewing state agency rules assigned to the committee by the Legislative Council chairman;

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

That the Legislative Council, through its Committee on Administrative Rules, study the standards for accreditation of public and private schools and the criteria for certification of teachers, as adopted by the Superintendent of Public Instruction, with special emphasis on the procedures followed by the Superintendent of Public Instruction in adopting the standards and criteria, the substance of the standards and criteria, and the effect the standards and criteria have on the cost of education in North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with legislation necessary to implement the recommendations, to the Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 764

SENATE CONCURRENT RESOLUTION NO. 4051
(Reiten, Lodoen)

SUNDAY CLOSING LAW STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the Sunday closing law.

WHEREAS, questions have arisen among business owners, employees, law enforcement officials, and the public concerning who may sell goods and services, which goods and services may be sold, and other ambiguous, confusing, and conflicting provisions of chapter 12.1-30, the Sunday closing law; and

WHEREAS, these questions have caused serious problems for those persons attempting to enforce or comply with the Sunday closing law;

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 conduct a study and review of chapter 12.1-30, the Sunday closing law, for the purpose of revising, modernizing, and clarifying the chapter. The Legislative Council shall direct its efforts toward the revision of the substance, form, and style of chapter 12.1-30, toward integration and correlation of provisions of the chapter where possible, and toward deletion of outmoded or unnecessary statutory material; and

BE IT FURTHER RESOLVED, that the Legislative Council may seek the aid and assistance of business owners, employees, law enforcement officials, and interested citizens; 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 Forty-eighth Legislative Assembly.

Filed March 17, 1981

CHAPTER 765

SENATE CONCURRENT RESOLUTION NO. 4052
(Wenstrom, Nething, Redlin)

PUBLIC TRANSPORTATION STUDY

A concurrent resolution directing the Legislative Council to conduct a study on the need for and availability of public transportation in North Dakota.

WHEREAS, transportation is an essential part of our everyday activities and should be readily available to all citizens; and

WHEREAS, public transportation is limited in North Dakota, particularly in rural areas, to an extent that restricts many citizens in their day-to-day activities; and

WHEREAS, the persons most affected by a lack of public transportation are the young, the elderly, the handicapped, and those with low incomes; and

WHEREAS, acquiring insurance on public buses is very costly;

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 hereby directed to conduct a study of the need for public transportation in North Dakota, including what types of public transportation are feasible, what methods of funding public transportation programs might be available, including state and federal aid, and possible alternatives for reducing the cost of insurance for public buses. The Legislative Council may seek the assistance of public officials, departments, and agencies, and other interested citizens; and

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

Filed March 17, 1981

CHAPTER 766

SENATE CONCURRENT RESOLUTION NO. 4053
(Wenstrom, Nething, Redlin)

NURSING HOME REGULATION STUDY

A concurrent resolution directing the Legislative Council to conduct a study of state regulation of nursing homes, including the rates nursing homes charge.

WHEREAS, nursing home residents, relatives of nursing home residents, and the public have a vital interest in requirements imposed as a condition of admission to nursing homes, rates charged by nursing homes, and restrictions on residents' freedom of choice; and

WHEREAS, some nursing homes require the applicant or the applicant's guardian or conservator, as a condition of admission, to pay admission fees in excess of $100, to loan money to the nursing home, or to promise to leave all or a portion of the applicant's estate to the nursing home; and

WHEREAS, some nursing homes charge nonmedical assistance residents rates in excess of 10 percent of the rates approved by the Social Service Board for medical assistance residents; and

WHEREAS, some nursing homes require residents to use the services of a physician or pharmacist selected by the home instead of by the resident;

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 conduct a study of state laws and regulations governing the conditions and restrictions that nursing homes may impose on applicants or residents, the rates charged by nursing homes, and related issues. The Legislative Council shall direct its efforts toward revision, modernization, and clarification of laws regulating nursing homes; and

BE IT FURTHER RESOLVED, that the Legislative Council may seek the aid and assistance of the Social Service Board, nursing home administrators and employees, nursing home residents and their relatives, and interested citizens; 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 Forty-eighth Legislative Assembly.

Filed March 23, 1981

CHAPTER 767

SENATE CONCURRENT RESOLUTION NO. 4054
(Senator Vosper)
(Representative Black)
(Approved by the Committee on Delayed Bills)

LEGISLATIVE PHOTOGRAPHER

A concurrent resolution to appoint an official photographer for the Forty-seventh 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, Renner Studios offers to take six 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, and to retouch the final prints to compile a composite color picture of all Senate members 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 of the foregoing at a total cost of $2,817;

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

That Renner Studios of Mandan, North Dakota, be and is hereby appointed official photographer for the Forty-seventh Legislative Assembly of the State of North Dakota; and

BE IT FURTHER RESOLVED, that Renner Studios 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-mentioned legislative employees of the Forty-seventh Legislative Assembly, at the total cost of $2,817 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 Renner Studios, and the photography committees of the Senate and House of Representatives.

Filed March 10, 1981

CHAPTER 768

SENATE CONCURRENT RESOLUTION NO. 4055
(Reiten)

SMALL BUSINESS VIABILITY ISSUES STUDY

A concurrent resolution directing the Legislative Council to conduct a study of issues facing the continued viability of small business in North Dakota.

WHEREAS, small business is the foundation on which our economic strength and growth has been built; and

WHEREAS, small business has created more than two-thirds of all the new jobs; and

WHEREAS, small business has produced more than half of all major inventions; and

WHEREAS, small business has contributed almost half of our economic growth; and

WHEREAS, small business leaders from across our state recently participated in the Governor's Conference on Small Business to establish priority measures vital to business; and

WHEREAS, small business is troubled by problems that threaten to undermine its foundation; and

WHEREAS, it is essential that every effort be made to strengthen and revitalize America's small business community;

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 hereby directed to study issues facing the continued viability of small business in North Dakota, with emphasis on such vital measures as tax reform, regulatory reform, financing, innovation, budget reform and others; and

BE IT FURTHER RESOLVED, that the Legislative Council may seek the aid and assistance of owners of small businesses, state and local agency officials, and interested citizens; 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 769

SENATE CONCURRENT RESOLUTION NO. 4056
(Lips)

INCURABLY DISEASED PERSONS NEEDS STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the educational, employment, and life and health insurance needs of persons over 21 years of age with incurable diseases.

WHEREAS, due to advances in medical science, many persons who would have formerly died during childhood from the pernicious effects of incurable diseases, now live beyond 21 years of age; and

WHEREAS, despite their illnesses, many of these persons are capable of being productive members of society; and

WHEREAS, the productivity of these persons is frequently limited or denied because of a dearth of legislation which would enable them to participate fully in society; and

WHEREAS, with proper legislative support, these persons can lead full, happy, and productive lives and thereby avoid becoming burdensome to the remaining members 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 is directed to conduct a study of the educational, employment, and life and health insurance needs and opportunities of persons over 21 years of age 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 770

SENATE CONCURRENT RESOLUTION NO. 4057
(Goodman)

TAXATION STATUTES ORGANIZATION STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the organization of statutes relating to taxation.

WHEREAS, there has been no comprehensive study in the recent past on the organization of Title 57 of the North Dakota Century Code, relating to taxation; and

WHEREAS, such a study would likely result in suggestions for consolidation and reorganization which could be made without substantively changing the law; and

WHEREAS, understanding of the tax laws of North Dakota, and their administration, would probably be greatly assisted by such revisions;

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 hereby directed to study Title 57 of the North Dakota Century Code, relating to taxation for the purpose of identifying and removing unused and archaic sections and laws, reconciling conflicts and ambiguities, eliminating surplus language and obsolete references, and reorganizing and arranging the subject matter in the laws in a proper and logical sequence; and

BE IT FURTHER RESOLVED, that all departments, agencies, and institutions provide the necessary aid, information, and assistance as requested by 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 771

SENATE CONCURRENT RESOLUTION NO. 4058
(Committee on Natural Resources)

RESOURCE REGULATORY FUNCTIONS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating the natural resource regulatory functions of various state agencies.

WHEREAS, North Dakota is a state rich in natural resources; and

WHEREAS, the development of North Dakota's natural resources is becoming increasingly important to the economy of both the state and the nation; and

WHEREAS, the development of North Dakota's natural resources is presently regulated by several state agencies; and

WHEREAS, this diffusion of regulatory responsibilities inhibits coordinated planning and the efficient use of the state's natural resources for the benefit of all North Dakotans; and

WHEREAS, the consolidation of natural resource regulatory functions into one state agency may better ensure effective, efficient, and equitable management of the state's natural resources;

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 hereby directed to study the feasibility and the desirablity of consolidating the natural resource regulatory functions of state government; 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 Forty-eighth Legislative Assembly.

Filed March 13, 1981

CHAPTER 772

SENATE CONCURRENT RESOLUTION NO. 4059
(Hanson)

HIGHER EDUCATION RESEARCH ACTIVITIES STUDY

A concurrent resolution directing the Legislative Council, with assistance from the State Board of Higher Education, to study the financing of research activities at institutions of higher education under the jurisdiction of the State Board of Higher Education.

WHEREAS, the major objectives of institutions of higher education are teaching, service, and research; and

WHEREAS, the objective of research has received little or no state funding over the years; and

WHEREAS, the institutions of higher education under the jurisdiction of the State Board of Higher Education have a long history of research activities on problems of concern to both the citizens of North Dakota and the nation on such diverse subjects as agriculture, cancer, coal, oil and gas, and land restoration; and

WHEREAS, the research activities of the institutions of higher education in North Dakota have been funded by sources other than state appropriations; and

WHEREAS, such research activities help to foster a healthy economy in the state which, in turn, helps to create jobs for citizens of the state; and

WHEREAS, such research activities are becoming increasingly expensive and nonstate sources of funding are diminishing at a time when there is an increased need for such research activities;

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

That the Legislative Council, with the cooperation and assistance of the State Board of Higher Education, is directed to study the financing of research activities at institutions of higher education under the jurisdiction of 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 773

SENATE CONCURRENT RESOLUTION NO. 4060
(Solberg)

FISCAL NOTE PROCESS STUDY

A concurrent resolution directing the Legislative Council to study the fiscal note process.

WHEREAS, the North Dakota Legislative Assembly has had a rule since the 1965 Session requiring fiscal notes on measures which have a potential impact on the state of $5,000 or more; and

WHEREAS, legislation under consideration during the current session will require similar fiscal notes on legislation having an impact on counties and cities beginning in 1983; and

WHEREAS, because fiscal notes are requested of agencies in all three branches of state government, some of the directives contained in the joint rules may more appropriately belong in statutes; and

WHEREAS, because of the importance of fiscal notes, it is essential that everyone involved have a better understanding of the process in order to facilitate the legislative process; and

WHEREAS, there is a need to review the entire fiscal note process in order to improve procedures for future legislative sessions;

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 fiscal note process, including the propriety of using rules or statutes to effectuate the process and the need for changes in rules, statutes, or administrative procedures used to carry out the process; and

BE IT FURTHER RESOLVED, that the Legislative Council may call on other agencies and departments for such aid and assistance as it deems necessary; and

BE IT FURTHER RESOLVED, that the Legislative Council make its report and recommendations, together with any legislation or rules proposals required to implement the recommendations, to the Forty-eighth Legislative Assembly.

Filed March 12, 1981

CHAPTER 774

SENATE CONCURRENT RESOLUTION NO. 4061
(Nelson)

COUNTIES AND TOWNSHIPS STATUTES STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of making both substantive and nonsubstantive revision of North Dakota Century Code Title 11, relating to counties, and Title 58, relating to townships, and related statutes.

WHEREAS, many current statutory provisions relating to townships and counties are both confusing and ineffective; and

WHEREAS, a general revision of such current statutory provisions would clearly be of benefit to both counties and townships as well as the state; and

WHEREAS, such revision should focus primarily on nonsubstantive issues;

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 hereby directed to conduct a study of the revision of North Dakota Century Code Title 11, relating to counties, and Title 58, relating to townships, and related 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 Forty-eighth Legislative Assembly.

Filed March 17, 1981

CHAPTER 775

SENATE CONCURRENT RESOLUTION NO. 4062
(Senators Moore, Nelson, Tierney)
(Representatives Metz, Knudson, Swiontek)

STATE-MANDATED EDUCATION COSTS STUDY

A concurrent resolution directing the Legislative Council to study the financing of elementary and secondary education, with emphasis upon state-mandated costs of education.

WHEREAS, North Dakota has had a state foundation aid program since 1959 which has provided financial payments to school districts based upon the educational cost per pupil; and

WHEREAS, state law mandates that certain courses and activities be offered in schools and requires schools to maintain certain minimum standards to be eligible for state foundation aid; and

WHEREAS, initiated measure No. 6, approved by the voters in the 1980 general election, contains a statement of intent that state foundation aid to school districts equal at least 70 percent of the funds required to meet the educational cost per pupil; and

WHEREAS, the appropriate definition of educational cost per pupil is subject to differences of opinion;

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

That the Legislative Council, with the assistance of the Superintendent of Public Instruction, is directed to study the financing of elementary and secondary education, with emphasis upon the identification of state-mandated costs of education and finding methods of providing state financial aid to support those costs; 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 776

SENATE CONCURRENT RESOLUTION NO. 4063
(Thane)

LEGISLATIVE DATA PROCESSING USE STUDY

A concurrent resolution directing the Legislative Council to study future legislative use of data processing services and resources and to develop a plan for use of data processing resources and services for the future.

WHEREAS, legislative use of data processing services and resources during each legislative session, and during the interim between sessions, is growing; and

WHEREAS, the potential for legislative utilization of electronic data processing is almost unlimited, and has not yet begun to be fully realized; and

WHEREAS, the legislatures of other states are also heavily involved in the use of electronic data processing, and have some capabilities which are not utilized in North Dakota; and

WHEREAS, the Legislative Assembly should make sound policy decisions concerning the extent to which it desires to have necessary services performed through use of electronic data processing; and

WHEREAS, it is desirable that as many legislators as possible be familiar with the extent of, and potential for, use of electronic data processing by the Legislative Assembly and the Legislative Council;

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 hereby directed to carry out a comprehensive study of the use of data processing services, equipment, and facilities by the Legislative Assembly and the Legislative Council, that the Legislative Council develop, during the course of this study, a comprehensive plan concerning such development, and that the Legislative Council prepare its 1983-85 budget request taking that plan into account; and

BE IT FURTHER RESOLVED, that the Department of Accounts and Purchases and other state agencies shall give all reasonable assistance as may be requested by the Legislative Council in carrying out this study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, along with a data processing plan and any necessary legislation to implement its recommendations, to the Forty-eighth Legislative Assembly.

Filed March 12, 1981

CHAPTER 777

SENATE CONCURRENT RESOLUTION NO. 4065
(Stenehjem)

ADULT EDUCATION PROGRAM NEEDS STUDY

A concurrent resolution directing the Legislative Council, with assistance from the Superintendent of Public Instruction, the State Board for Vocational Education, and other appropriate state agencies, to study the needs and financing of locally based adult and community education programs.

WHEREAS, participation in existing adult and community education programs has grown rapidly in North Dakota communities; and

WHEREAS, an increasing number of communities within the state have been seeking assistance in establishing adult and community education programs; and

WHEREAS, all adults in North Dakota desiring to continue education, whether for personal or career reasons, should be afforded that opportunity without being unduly penalized by high student fees and transportation costs as a result of where they reside within the state; and

WHEREAS, over 27 other states have enacted legislation supporting community education as an economical vehicle to help local communities provide educational services to their citizens;

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

That the Legislative Council, with the cooperation and assistance of the Superintendent of Public Instruction, the State Board for Vocational Education, and other appropriate agencies, is directed to conduct an interim study of the needs and financing of locally based adult and community education programs; and

BE IT FURTHER RESOLVED, that the Legislative Council shall make its report and recommendations, together with any legislation required to implement the recommendations, to the Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 778

SENATE CONCURRENT RESOLUTION NO. 4066
(Committee on Appropriations)

HIGHER EDUCATION PURCHASES FORMULA STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the method of appropriating funds for equipment purchases at the institutions of higher education.

WHEREAS, the appropriations for equipment purchases recommended in the executive budget for the institutions of higher education for the 1981-83 biennium total $5,669,211; and

WHEREAS, an accurate determination of equipment needs at all institutions of higher education should be made; and

WHEREAS, the present formula method of appropriating funds for equipment purchases should be reviewed to determine if such a formula provides an effective, efficient, and cost-beneficial method of financing equipment purchases at the institutions of higher education; and

WHEREAS, alternative methods of appropriating funds for equipment purchases at the institutions of higher education on a systematic basis should be reviewed based on the size of, and type of instruction offered at, each institution;

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 hereby directed and authorized to conduct a study of the formula used as a basis to appropriate funds for equipment purchases at the institutions of higher education, including a review of the adequacy of the present formula in meeting equipment needs along with a review of alternative methods of financing equipment purchases; and

BE IT FURTHER RESOLVED, that the institutions of higher education and the board of higher education office provide such information and assistance as may be requested by the Council in this study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any necessary legislation, to the Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 779

SENATE CONCURRENT RESOLUTION NO. 4067
(Senator Stenehjem)
(Representative Kuchera)

OPEN RECORDS AND MEETINGS LAWS STUDY

A concurrent resolution directing the Legislative Council to study exceptions to open records and open meetings laws for certain governmental purposes.

WHEREAS, open records and open meetings have long been established as a matter of public policy in North Dakota; and

WHEREAS, statutes enacted in 1957 provide that all governmental meetings and records must be open and accessible to the public except as otherwise specifically provided by law; and

WHEREAS, the voters of this state have approved constitutional amendments mandating open governmental meetings and open public records, subject to statutory exceptions; and

WHEREAS, there remains confusion concerning certain types of records and certain types of meetings of governmental groups, particularly those relating to law enforcement, personnel records, governmental attorneys, and judicial proceedings; and

WHEREAS, there is a need to recognize conflicting rights in certain areas of governmental activity, particularly those dealing with personal information regarding individuals;

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 subject of open meetings and open records, limited to the need for statutory exceptions for law enforcement records, governmental personnel records, attorney-client relationships between governmental attorneys and officials and employees, and judicial proceedings; and

BE IT FURTHER RESOLVED, that the Legislative Council seek the assistance of representatives of the North Dakota media, law enforcement agencies and state and local governments to serve on its study committee and to otherwise assist with 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 Forty-eighth Legislative Assembly.

Filed March 31, 1981

CHAPTER 780

SENATE CONCURRENT RESOLUTION NO. 4068
(Nething, Lodoen, Peterson, Reiten)

PUBLIC EMPLOYEE AND NATIONAL GUARD STUDY

A concurrent resolution directing a Legislative Council study of the statutory protections afforded public employees who are members of the National Guard.

WHEREAS, a strong National Guard benefits the state and its political subdivisions by providing vital services in times of emergency and need; and

WHEREAS, National Guard units provide substantial revenue and benefits to political subdivisions in which the units are located or in which training is conducted; and

WHEREAS, public employees who are members of the National Guard are statutorily protected from loss of pay or status while on National Guard duty; and

WHEREAS, political subdivisions have questioned the cost and desirability of providing compensated leave to public employees while engaged in activities of the National Guard;

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 effects state protection of pay and status of public employees has on the membership of the National Guard, with emphasis on the cost of providing compensated leave for public employees and the feasibility and desirability of governmental entities employing persons who are members of the National Guard; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, along with legislation necessary to implement any recommendations, to the Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 781

SENATE CONCURRENT RESOLUTION NO. 4069
(Lips)

INSURANCE LAWS REVISION STUDY

A concurrent resolution directing a Legislative Council study and revision of the insurance laws contained in Title 26 of the North Dakota Century Code.

WHEREAS, the statutory provisions of the North Dakota Century Code governing the Commissioner of Insurance and the regulation of the various types of insurance companies and governing the provisions of various types of insurance policies were, for the most part, enacted many years ago; and

WHEREAS, most insurance laws are contained in North Dakota Century Code Title 26, a relatively "active" title with respect to legislative enactments each legislative session; and

WHEREAS, the substantive provisions of many of the chapters in Title 26 duplicate one another; and

WHEREAS, many of the chapters in Title 26 could be arranged and consolidated to reflect a logical arrangement;

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

That the Legislative Council carry out a comprehensive revision and renumbering of the insurance laws of the state, specifically North Dakota Century Code Title 26, emphasizing appropriate technical and grammatical changes, and avoiding, to the extent possible, substantive recommendations or changes; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, along with necessary legislation revising Title 26, and any related measures, to the Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 782

SENATE CONCURRENT RESOLUTION NO. 4070
(Redlin)

STATE AIRCRAFT USE STUDY

A concurrent resolution directing the Legislative Council to study the use of aircraft by North Dakota state government to find the most efficient method of using aircraft to conduct the state's business.

WHEREAS, the North Dakota Legislative Assembly is dedicated to using tax money as efficiently as possible; and

WHEREAS, there has been considerable discussion regarding the purchase of another aircraft by the Highway Department at a cost of nearly $1 million in addition to the trade-in; and

WHEREAS, there is concern that the total number of state-owned aircraft may not be in line with the specific needs of the various departments of the state of North Dakota; and

WHEREAS, the use of aircraft needs to be maximized to justify the large investment; and

WHEREAS, efficient aircraft charter service with dependable aircraft and qualified pilots is readily available at several airport locations in our state; and

WHEREAS, aircraft pools are used by some fleet owners to make maximum use of all aircraft owned;

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 use of aircraft by North Dakota state government, including a review of the number and usage of existing state-owned aircraft. The Legislative Council shall perform a cost benefit analysis, make comparisons with alternative methods of service, and explore the relative cost of using a combination of charter and commercial aircraft service with a view toward finding the most efficient method of procuring and using aircraft services to conduct the state's business; and

BE IT FURTHER RESOLVED, that the Legislative Council make its report and recommendations, together with any legislation required to implement the recommendations, to the Forty-eighth Legislative Assembly.

Filed March 12, 1981

CHAPTER 783

SENATE CONCURRENT RESOLUTION NO. 4071
(Committee on Appropriations)

SPECIAL FUNDS AND CASH ACCOUNTS STUDY

A concurrent resolution directing the Legislative Council to study the use of special funds and cash accounts maintained in the state treasury.

WHEREAS, there are many special funds and cash accounts maintained in the state treasury, some of which may be available for such uses as the Legislative Assembly may designate; and

WHEREAS, in a period of declining state revenues it may be necessary to use the proceeds of these accounts to supplement general fund revenues;

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 conduct a study of the cash accounts and special funds maintained in the state treasury to determine if such funds are necessary, whether they are making a maximum contribution to the state, whether a portion or all of such fund balances are being invested for the purpose of earning interest, whether the earnings on such funds are being utilized for specific or general purposes, and whether a portion or all of such funds can be deposited in the general fund of the state treasury; 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 784

SENATE CONCURRENT RESOLUTION NO. 4072
(Committee on Appropriations)

STATE BUDGET PRACTICES STUDY

A concurrent resolution asking the Legislative Council to study state practices for the purpose of developing recommendations to improve the budget process.

WHEREAS, the state has developed a program budgeting system; and

WHEREAS, a report on the level of program activity, including the number of persons served, would improve legislative evaluation; and

WHEREAS, the future impact of new programs, their long-term growth and their additional resource needs are not included in the present budget process; and

WHEREAS, the current budget process does not provide nongovernmental, or other governmental units, an opportunity to compete for the authority to provide governmental services; and

WHEREAS, recipients of governmental services may desire a choice in determining whether they want services from governmental or private agencies; and

WHEREAS, the present system for providing governmental services may in some instances foster frustration and cynicism among recipients of governmental 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 conduct a study to improve the budgetary consideration process by developing better information upon which to make decisions, and by determining whether there are alternatives for delivering services which offer greater competition and promote greater recipient participation; and

BE IT FURTHER RESOLVED, that the Legislative Council make its report, together with any legislation required to implement the recommendations, to the Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 785

SENATE CONCURRENT RESOLUTION NO. 4073
(Committee on Appropriations)

STATE ACCOUNTING SYSTEM REVIEW

A concurrent resolution directing the Legislative Council to review changes to the state accounting system and to indirect cost reimbursement procedures.

WHEREAS, the Forty-seventh Legislative Assembly has directed the Department of Accounts and Purchases to improve the state's accounting system; and

WHEREAS, an improved accounting system will provide a better basis for legislative review of the state's fiscal condition and of the activities of the state's agencies and institutions; and

WHEREAS, through modifications to the state accounting system additional federal funds will come to the state in the form of indirect cost reimbursements;

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 hereby directed and authorized to review the implementation by the Department of Accounts and Purchases of an improved accounting and financial reporting system for the state of North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council shall submit its report and recommendations, together with any legislation required to implement the recommendations, to the Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 786

SENATE CONCURRENT RESOLUTION NO. 4074
(Holmberg, Wright)

POLITICAL SUBDIVISION STATUES REVISION STUDY

A concurrent resolution directing a Legislative Council study of the feasibility and desirability of revising all statutes which relate to more than one political subdivision.

WHEREAS, throughout the statutes of North Dakota there are various provisions relating to more than one political subdivision; and

WHEREAS, these provisions are generally either found in the context of one political subdivision or another or are depictatory; and

WHEREAS, statutory provisions which relate to more than one political subdivision may be too broad to be optimally effective; and

WHEREAS, North Dakota's statutes should be as simply and clearly worded as possible; and

WHEREAS, revision of various provisions relating to political subdivisions or incorporation of these provisions into a single title or chapter could help in clarifying those provisions;

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 hereby authorized and directed to conduct a study of the feasibility and desirability of revising all statutes which relate to more than one political subdivision; 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 Forty-eighth Legislative Assembly.

Filed March 17, 1981

CHAPTER 787

SENATE CONCURRENT RESOLUTION NO. 4076
(Senators Tennefos, Reiten)
(Representatives Kloubec, Rued)

GOVERNMENTAL PAPERWORK REDUCTION STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the extent of and means for reducing governmental paperwork in North Dakota.

WHEREAS, the Congress has recently enacted the Paperwork Reduction Act of 1980, which is intended to reduce paperwork and enhance the economy and efficiency of the federal government and the private sector; and

WHEREAS, there exists a similar need to minimize the governmental paperwork burden for state and local government entities, individuals, businesses, and others in North Dakota; and

WHEREAS, the costs of collecting, maintaining, using, and disseminating information are constantly escalating due to the increasingly voluminous and complex nature of state statutes and regulations; and

WHEREAS, there is a need to coordinate, integrate, and to the extent practicable and appropriate, make uniform the information policies and practices in North Dakota;

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 conduct a study of the extent and means for reducing governmental paperwork in North Dakota for state and local government entities, individuals, businesses, and others. The study shall include, but need not be limited to, consideration of the extent, use, need, and cost of governmental paperwork in North Dakota and uniform information policies and practices, legislation, a commission approach, and all other means of reducing governmental paperwork in North Dakota to the greatest extent practicable; and

BE IT FURTHER RESOLVED, that the Legislative Council may seek the aid and assistance of state and local government entities, individuals, businesses, and others; 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 Forty-eighth Legislative Assembly.

Filed March 12, 1981

CHAPTER 788

SENATE CONCURRENT RESOLUTION NO. 4077
(Committee on Appropriations)

STATE EMPLOYEES COMPENSATION AND PERKS STUDY

A concurrent resolution directing the Legislative Council to study the methodology and entire system of compensating state employees and of providing fringe benefits for state employees.

WHEREAS, the state's compensation system should attract and encourage retention of qualified and competent employees; and

WHEREAS, there is concern that the present system of appropriating funds for incremental salary increases for state employees does not consider work effort, productivity measures, recognition of high levels of achievement, and market place considerations; and

WHEREAS, the state's system of compensating its employees should emphasize career development, high levels of performance, and recognition of individual achievement; and

WHEREAS, the state's compensation system should encompass the concept of "equal pay for equal work"; and

WHEREAS, a review should be made of the classification system administered by the Central Personnel Division to determine if the classification system is a mechanism for effective and efficient salary administration; and

WHEREAS, it may be desirable to allow state employees to have a choice of participation in various fringe benefits offered by 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 is authorized and directed to conduct, through a committee on budget, a study of the entire system and method of compensating state employees. This study shall include a review of the adequacy of the classification and compensation plan administered by the Central Personnel Division

including a review of the applicability of the division's salary surveys to state government. The study shall also review alternative methods of compensating state employees based on productivity, levels of performance, recognition of achievement, career development and opportunities, and market place considerations. Finally, the study shall review the desirability of allowing state employees to have a choice of participation in various fringe benefits offered by the state; and

BE IT FURTHER RESOLVED, that all state agencies and institutions shall provide the Legislative Council such assistance as it may request while conducting this 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 Forty-eighth Legislative Assembly.

Filed March 12, 1981

CHAPTER 789

SENATE CONCURRENT RESOLUTION NO. 4078
(Melland)

INTEREST RATE MAXIMUMS STUDY

A concurrent resolution directing a Legislative Council study of the statutory interest rate maximums applicable to commercial transactions.

WHEREAS, the state of North Dakota historically has imposed statutory maximum rates of interest on loans; and

WHEREAS, statutory interest rate maximums apply to commercial transactions involving financial institutions, consumer finance, installment sales, charge accounts, small loans, manufacturer's service charges, and wholesaler's service charges; and

WHEREAS, confusion abounds in determining what interest rate maximums apply to specific commercial transactions; and

WHEREAS, federal laws and regulations have affected and may affect state usury limitations;

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 all state statutes establishing maximum interest rates chargeable on commercial transactions, with emphasis on the various levels of maximum interest rates allowed, the relationship to federal requirements, and the feasibility and desirability of enacting a comprehensive usury statute in place of the diverse statutes now in existence; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement any recommendations, to the Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 790

SENATE CONCURRENT RESOLUTION NO. 4079
(Melland)

STATE FACILITY CONSTRUCTION FINANCE STUDY

A concurrent resolution directing the Legislative Council to study state agency and institution planning methods for maintenance of facilities and facility construction.

WHEREAS, Senate Bill No. 2386, if passed, will create a general revenue bond authority to finance the construction, remodeling, and the renovation of revenue-producing state buildings; and

WHEREAS, Senate Bill No. 2435, if passed, will establish a North Dakota building authority; and

WHEREAS, the state of North Dakota needs a long-range plan for financing and constructing facilities; and

WHEREAS, the role of the State Construction Superintendent in regard to planning for capital construction projects should be defined; and

WHEREAS, the development of a maintenance plan for the state's facilities is necessary to avoid unnecessary long-term costs;

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 conduct a study of the state's methods of planning for future capital construction, including the financing thereof, and for maintenance of existing or future facilities; and

BE IT FURTHER RESOLVED, that the Legislative Council review the functions of offices involved in the state's capital construction programs, and the effectiveness of the preliminary planning revolving fund; and

BE IT FURTHER RESOLVED, that the Legislative Council make its report and recommendations, together with any legislation necessary to implement the recommendations, to the Forty-eighth Legislative Assembly.

Filed March 12, 1981

CHAPTER 791

SENATE CONCURRENT RESOLUTION NO. 4080
(Melland)

STATE GOVERNMENT STATUTES REVISION STUDY

A concurrent resolution directing a Legislative Council study and revision of the sections of law contained in Title 54 of the North Dakota Century Code.

WHEREAS, Title 54 of the North Dakota Century Code is one of the most "active" titles with respect to legislative enactments each legislative session; and

WHEREAS, many of the chapters in Title 54, in light of subsequent amendments, could be more logically placed in another portion of that title, or elsewhere in the Century Code; and

WHEREAS, many of the chapters in Title 54 could be arranged to reflect more clearly the actual organizational structure of state government; and

WHEREAS, many of the sections of law in Title 54 contain antiquated language or set out procedures which need modernization; and

WHEREAS, several chapters of the title have not been utilized in recent years, and may no longer reflect current, or best, governmental practices;

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 hereby directed to carry out a comprehensive revision and renumbering of Title 54 of the North Dakota Century Code, that the revision is to include appropriate technical and grammatical changes, and should avoid, to the extent possible, substantive recommendations; and

BE IT FURTHER RESOLVED, that the Legislative Council shall report its findings and recommendations, along with a bill or bills revising Title 54 of the Century Code and any necessary related measures, to the Forty-eighth Legislative Assembly.

Filed March 12, 1981

CHAPTER 792

SENATE CONCURRENT RESOLUTION NO. 4081
(Melland)

STATE GOVERNMENT GROWTH PLANS STUDY

A concurrent resolution directing the Legislative Council to review the growth anticipated in state government during the next ten years.

WHEREAS, initiative and referendum at the prerogative of the voters has caused revenue fluctuations of great magnitude; and

WHEREAS, the rate of state expenditures is increasing rapidly resulting in a proposed $2 billion budget for state government for the 1981-83 biennium; and

WHEREAS, because of inflation, funding required to meet the educational, health, and other human service needs of the state's citizens has dramatically increased; and

WHEREAS, a review of only the initial cost of implementing programs during a biennium does not provide a proper basis for thorough evaluation of the future cost and benefits of proposed new programs; and

WHEREAS, a review of state agency and institution long-range plans will make it possible for the legislature to make better decisions regarding budget requests;

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

That the Legislative Council, through a committee on budget, is hereby directed and authorized to review state agency and institution fiscal program plans for the next ten years; and

BE IT FURTHER RESOLVED, that all state agencies and institutions shall provide such assistance as may be requested by the Legislative Council to conduct this study; and

BE IT FURTHER RESOLVED, that the Legislative Council shall make its report and recommendations, together with any legislation required to implement the recommendations, to the Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 793

SENATE CONCURRENT RESOLUTION NO. 4082
(Wright)

WATERBANK PROGRAMS AND EASEMENTS STUDY

A concurrent resolution directing the Legislative Council to study waterbank programs and the acquisition by governmental entities of easements in North Dakota.

WHEREAS, North Dakota's economy and the well-being of its people is largely dependent upon this state's agricultural productivity; and

WHEREAS, North Dakota is a semiarid state in which the people recognize the value of dependable water supplies for agricultural, industrial, commercial, and residential purposes; and

WHEREAS, North Dakota is blessed with a large number of wetlands which provide both wildlife habitat and a mechanism for recharging underground water supplies; and

WHEREAS, the interests of agricultural production and wetlands preservation must be an appropriate consideration; and

WHEREAS, past wetlands easement acquisition programs have resulted in much dissension and controversy; and

WHEREAS, the interests of agricultural production and wetlands preservation can be harmonized if proper consideration is given to each interest;

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 conduct a study of waterbank programs and the past, present, and future acquisition by governmental entities of easements in 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 Forty-eighth Legislative Assembly.

Filed March 23, 1981

CHAPTER 794

SENATE CONCURRENT RESOLUTION NO. 4083
(Moore, Nething)

PROPERTY PRODUCTIVITY VALUE METHOD STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the productivity method of valuing property.

WHEREAS, political subdivisions are primarily dependent upon real property taxes to support local services; and

WHEREAS, property taxes seem to be the most difficult to assess equitably and the most burdensome for taxpayers to pay; and

WHEREAS, in inflationary times, the potential market value of real property does not necessarily bear a direct relationship to the ability to pay; and

WHEREAS, the Forty-seventh Legislative Assembly has considered the productivity method of valuing agricultural property as developed by individuals at North Dakota State University and as implemented through Senate Bill No. 2323; and

WHEREAS, this system of valuing land needs to be studied further both as it applies to agricultural property and in its possible application to other types of property;

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 hereby directed to study the system of assessing agricultural land using productivity as developed by individuals at North Dakota State University, with emphasis on its possible adaptation to assessments of other types of real 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 Forty-eighth Legislative Assembly.

Filed March 19, 1981

CHAPTER 795

SENATE CONCURRENT RESOLUTION NO. 4084
(Committee on Education)
(Approved by the Committee on Delayed Bills)

AMERICAN INDIAN HISTORY MATERIALS DISTRIBUTION

A concurrent resolution directing the Superintendent of Public Instruction to distribute approved materials on American Indian history.

WHEREAS, North Dakota's earliest inhabitants were American Indians, and much of this state's history relates to the actions and culture of North Dakota's American Indians; and

WHEREAS, the need for instruction in American Indian history is demonstrated by the extent of misunderstanding that presently exists in our society concerning our state's largest minority group; and

WHEREAS, the Legislative Assembly recognizes the significant contributions and accomplishments of the American Indian and feels that all students in North Dakota schools should also be aware of these contributions and accomplishments; and

WHEREAS, better understanding between all people can come only with better information and education, and our schools are the best place for the dissemination of such information; and

WHEREAS, educational materials concerning American Indian education are available as the result of a three-year research effort costing $500,000;

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

That the Forty-seventh Legislative Assembly requests the Superintendent of Public Instruction to distribute materials approved by the Department of Public Instruction to all public schools in North Dakota for the purpose of instruction in American Indian history; and

BE IT FURTHER RESOLVED, that the Superintendent of Public Instruction continue to encourage the inclusion of American Indian history and culture instruction in all relevant history courses in our public schools; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded by the Secretary of State to the Superintendent of Public Instruction.

Filed March 19, 1981

CHAPTER 796

SENATE CONCURRENT RESOLUTION NO. 4085
(Nething)
(Approved by the Committee on Delayed Bills)

CARDIOPULMONARY RESUSCITATION TRAINING

A concurrent resolution expressing the Legislative Assembly's support for cardiopulmonary resuscitation training; urging statewide support for cardiopulmonary resuscitation training throughout North Dakota; requesting the State Department of Health and the Superintendent of Public Instruction to support such training; and urging certain communications with the American Heart Association Dakota Affiliate and the American Red Cross.

WHEREAS, cardiopulmonary resuscitation, CPR, is a basic lifesaving technique pioneered by the American Heart Association; and

WHEREAS, 60 to 70 percent of sudden deaths caused by cardiac arrest occur before hospitalization, thus emphasizing the need for the entire community to be recognized "as the ultimate coronary care unit" (Journal of the American Medical Association - Vol. 244, No. 5, page 457 - August 1, 1980); and

WHEREAS, heart attacks represent the most numerous medical emergency today and 650,000 persons die from heart attacks each year, most within two hours of the attack's onset; and

WHEREAS, many lives could be saved if prompt and appropriate action were taken; and

WHEREAS, the American Heart Association and the American Red Cross have played a major role in development of the CPR technique and in training people to utilize the technique, commencing with establishment of the Committee on Cardiopulmonary Resuscitation in 1963; and

WHEREAS, CPR as a lifesaving tool is particularly important in a rural state where there are often significant distances to travel to reach the nearest emergency medical care facility; and

WHEREAS, CPR techniques can be utilized to provide initial treatment for victims who have stopped breathing from any one of a number of causes;

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

That the Forty-seventh Legislative Assembly expresses its support of extensive training and retraining in the use of cardiopulmonary resuscitation techniques; urges various civic groups to seek CPR training for their members; urges the Superintendent of Public Instruction to carry out a survey concerning current CPR training levels of educational personnel, and to take other action to promote CPR training; urges the State Department of Health to take appropriate action promoting CPR training; and urges state government employees to seek CPR training; and

BE IT FURTHER RESOLVED, that the Superintendent of Public Instruction and the State Department of Health consult, where appropriate, with the American Heart Association Dakota Affiliate and the American Red Cross during the next biennium as they respond to this resolution; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Superintendent of Public Instruction, the State Health Officer, the executive director of the American Heart Association Dakota Affiliate, and the American Red Cross.

Filed March 27, 1981

CHAPTER 797

SENATE CONCURRENT RESOLUTION NO. 4086
(Senators Nething, Redlin, Reiten)
(Representatives Backes, Strinden)
(Approved by the Committee on Delayed Bills)

EDITORS DAY AND ENCOMIUM ON THE PRESS

A concurrent resolution offering an effervescent encomium on the press; declaring Thursday, March 5, 1981, as North Dakota Editors Day at the Forty-seventh Legislative Assembly; and welcoming Mr. Reid Miller, a distinguished journalist and Assistant Chief of the Washington, D.C., Bureau of the Associated Press, to North Dakota.

WHEREAS, March is not only the month of the biennial Editors Day at the Legislative Assembly, but also, on March 16, the birthday of James Madison, our fourth president and one of the drafters of the Bill of Rights, who stated, "To the press alone, checkered as it is with abuses, the world is indebted for all the triumphs which have been obtained by reason and humanity over error and oppression"; and

WHEREAS, such paeans of praise are appropriate for members of North Dakota's distinguished Fourth Estate, the editors and reporters of the state's 101 daily, semiweekly and weekly newspapers, who are dedicated to informing North Dakotans and thus serve a vital function in the democratic processes; and

WHEREAS, the North Dakota Legislative Assembly receives thorough and complete coverage by the news media which enables it to better fulfill its governmental duties for the citizens of North Dakota, and for which it is much appreciative; and

WHEREAS, the North Dakota Newspaper Association and the North Dakota chapter of the Society of Professional Journalists, Sigma Delta Chi, are cosponsoring the biennial Editors Day at the Legislature March 5, 1981; and

WHEREAS, the Editors Day banquet, to which all members of the Forty-seventh Legislative Assembly will be invited by the press from their respective districts, will feature as a speaker Mr. Reid Miller, a veteran Washington journalist and the Assistant Chief of Washington, D.C., Bureau of the Associated Press;

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

That the Forty-seventh Legislative Assembly commends and congratulates North Dakota's unflaggingly vigilant press through this encomium for its continuing service to all North Dakotans, and declares Thursday, March 5, 1981, as Editors Day at the Forty-seventh Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Forty-seventh Legislative Assembly extends a sincere and hearty North Dakota welcome to Mr. Reid Miller, and hopes that his stay in the Peace Garden state is pleasant and enjoyable; and

BE IT FURTHER RESOLVED, that legislators make every effort to attend the Editors Day banquet at the invitation of the press or be prepared to put up with two years of being misquoted or having their names misspelled; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to Mr. Reid Miller, to Dr. Vernon Keel and Professor Al Austin at the University of North Dakota Journalism Department, and to Mr. Gene Carr of the North Dakota Newspaper Association.

Filed March 6, 1981

CHAPTER 798

SENATE CONCURRENT RESOLUTION NO. 4087
(Committee on Employment)

POSTSESSION LEGISLATIVE EMPLOYEES

A concurrent resolution authorizing the retention of certain employees of the Senate and House and providing supervisory authority, 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; and

WHEREAS, in order to complete and close all current legislative work of the Forty-seventh Legislative Assembly, it is necessary to retain certain employees;

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

That the following named positions may be retained by the Senate and the House of Representatives after the close of the regular session:

SENATE POSITIONS

Secretary of the Senate
Assistant Secretary of the Senate
Desk Reporter
Bill Clerk
Chief Stenographer and Payroll Clerk
Secretary to Majority Leader
Secretary to Minority Leader
Sergeant-at-Arms
Deputy Sergeant-at-Arms
Assistant Sergeant-at-Arms
Appropriations Committee Clerk
Assistant Appropriations Committee Clerk
Chief Committee Clerk
Committee Clerks
Chief Journal and Bill Room Clerk
Chief Page
Pages
Desk Pages
Journal Proofreaders

HOUSE POSITIONS

Chief Clerk
Assistant Chief Clerk
Desk Reporter
Bill Clerk
Chief Stenographer and Payroll Clerk
Secretary to the Speaker
Secretary to the Majority Leader
Secretary to the Minority Leader
Sergeant-at-Arms
Deputy Sergeant-at-Arms
Assistant Sergeant-at-Arms
Chief Telephone Clerk
Appropriations Committee Clerk
Assistant Appropriations Committee Clerk
Chief Committee Clerk
Committee Clerks
Journal Room Clerk
Bill Room Clerk
Chief Page
Pages
Desk Pages
Journal Proofreaders

BE IT FURTHER RESOLVED, that the above-listed Senate and House employees shall serve at the request of, and under the supervision of, the Secretary of the Senate and the Chief Clerk of the House, and that all of the listed employees, including the Secretary of the Senate and the Chief Clerk of the House, shall be employed for not more than 200 man-days in the aggregate. The Secretary of the Senate and the Chief Clerk of the House shall assign work among the available Senate and House employees, respectively, in the appropriate manner. It is the duty of the Secretary of the Senate and the Chief Clerk of the House to 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 Secretary of the Senate and the Chief Clerk of the House 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. 3014 for all work required pursuant to this resolution, and all of these sums are to be paid out of the appropriation to the Forty-seventh and Forty-eighth Legislative Assemblies, and paid at the completion of the legislative work, providing that payment shall not be authorized for more than 200 man-days in the aggregate, and each employee above-listed shall be paid on a pro rata basis, should the total number of man-days exceed the allowed limit.

Filed April 6, 1981

CHAPTER 799

SENATE CONCURRENT RESOLUTION NO. 4090
(Nething)
(Approved by the Committee on Delayed Bills)

STATE AGENCY CONSTRUCTION PLANNING

A concurrent resolution authorizing all state agencies and institutions receiving appropriations under House Bill No. 1341 of the Forty-seventh Legislative Assembly to begin plans for facility construction.

WHEREAS, to avoid additional cost because of inflation, all buildings authorized under House Bill No. 1341 of the Forty-seventh Legislative Assembly should be under construction as soon after the effective date of the Act as possible; and

WHEREAS, state agencies and institutions may have moneys within their current appropriation to pay for the costs of necessary planning and design services; and

WHEREAS, it is expected that sufficient moneys will be available in July 1981 to construct many of the facilities provided for in House Bill No. 1341;

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

That each state agency and institution for which funds were appropriated for facilities in House Bill No. 1341 be authorized to begin the planning and design of such facilities immediately upon the passage of this resolution; and

BE IT FURTHER RESOLVED, that state agencies and institutions may use moneys available within current appropriations, or appropriations from the 1981-83 biennium when such moneys become available, to pay for the costs of such services; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded by the Secretary of State to each agency or institution which has a facility prioritized under House Bill No. 1341.

Filed April 6, 1981

CHAPTER 800

SENATE CONCURRENT RESOLUTION NO. 4091
(Nething)
(Approved by the Committee on Delayed Bills)

PRESIDENTIAL ASSASSINATION ATTEMPT CONCERN

A concurrent resolution expressing the concern of the Forty-seventh Legislative Assembly about the recent presidential assassination attempt, and wishing President Reagan a speedy and complete recovery.

WHEREAS, the Forty-seventh Legislative Assembly was shocked, along with the rest of the citizens of this country, to learn of the assassination attempt on the President of the United States; and

WHEREAS, the Forty-seventh Legislative Assembly deplores this example of uncivilized violence and irrational action; and

WHEREAS, the Forty-seventh Legislative Assembly is pleased and grateful to the Almighty that the President survived the attack; and

WHEREAS, the Forty-seventh Legislative Assembly is concerned about those other persons injured in the shooting;

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

That the Forty-seventh Legislative Assembly expresses its dismay that irrational violence has once again struck the Chief Executive of the United States; expresses its gratitude to the Almighty for the fact that the President's life was not taken; and wishes President Reagan a speedy and complete recovery from his wound; and wishes a speedy recovery to the other wounded and expresses its concern for all the affected families; and

BE IT FURTHER RESOLVED, that an enrolled copy of this resolution be forwarded by the Secretary of State to the President of the United States.

Filed April 6, 1981

STATE MEMORIAL RESOLUTIONS

CHAPTER 801

SENATE MEMORIAL RESOLUTION NO. 1
(Committee on Memorial Resolutions)

DECEASED SENATE MEMBERS

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:

FRANCIS J. BUTLER, who served in the Fortieth through the Forty-third Legislative Assemblies, from the twenty-first district, died April 6, 1979.

ARLIE I. FERRY, who served in the Thirty-third and Thirty-fourth Legislative Assemblies, from the seventeenth district, died March 31, 1980.

JOHN LEIER, who served in the Thirty-fourth and Thirty-fifth Legislative Assemblies, from the twentieth district, died October 22, 1980.

ARTHUR W. LUICK, who served in the Thirty-second through the Forty-first Legislative Assemblies, from the twenty-fifth district, died September 16, 1980.

FRANK J. RUEMMELE, who served in the Thirty-ninth through the Forty-first Legislative Assemblies, from the thirty-fifth district, died October 12, 1979.

ALBERT J. SANDNESS, who served in the Thirtieth through the Thirty-third Legislative Assemblies, from the twenty-fourth district, died August 21, 1979.

HARRY WADESON, who served in the Thirty-third through the Thirty-eighth Legislative Assemblies, from the eleventh district, died May 29, 1980.

WHEREAS, today, we, as members of the Senate of the Forty-seventh 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 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 senators.

Filed March 19, 1981