

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 artificially.

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