GOVERNMENTAL FINANCE

CHAPTER 280

SENATE BILL NO. 2224
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

CERTIFICATES OF INDEBTEDNESS

AN ACT to amend and reenact sections 21-02-02, 21-02-05, 21-02-07, 21-02-08, 21-02-09, 21-02-10, 21-02-11 and 21-02-13 of the North Dakota Century Code, relating to the issuance and recording of certificates of indebtedness by taxing districts; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 21-02-02 of the 1983 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~~ resource 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 twelve percent per annum if they are sold privately, which may be made payable semiannually. 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 2. AMENDMENT. Section 21-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-05. ~~Registration~~ Recording of certificates of indebtedness. The county auditor, at the time of attaching ~~his certificate~~ the certification to any certificate of indebtedness, shall ~~register~~ record such certificate of indebtedness in ~~his bond register in~~ record space set aside for the ~~registration~~ recording thereof. Such ~~registration~~ record shall ~~show the name and address of the purchaser. If such certificate is negotiated, the holder thereof shall present the same to the county auditor who thereupon shall note in his register the name and address of the purchaser~~ contain the same information as required for the recording of bonds in section 21-03-23.

SECTION 3. AMENDMENT. Section 21-02-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-07. Taxes, revenues and bureau of Indian affairs contract moneys constitute special fund to pay certificates. When any taxing district has issued certificates of indebtedness pursuant to the terms of this chapter, the taxing district shall cause the county auditor ~~shall~~ to set aside all money from bureau of Indian affairs contracts ~~and~~, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or taxes collected from levies for the respective years against which such certificates have been issued, except those for sinking and interest funds thereafter

accruing to the credit of ~~such~~ the district. The ~~same~~ money shall be held by the county treasurer in a special fund to be used only for the purpose of retiring ~~such~~ the certificates of indebtedness and paying interest thereon until sufficient funds shall have been accumulated from the bureau of Indian affairs contract moneys, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or collection of levies of any year or years against which certificates of indebtedness have been issued to retire the certificates of that year.

SECTION 4. AMENDMENT. Section 21-02-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-08. Percentage of current taxes used to pay delinquent certificates of indebtedness. If sufficient funds are not collected under currently existing bureau of Indian affairs contracts, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or from levies against which certificates of indebtedness are issued to retire such certificates, both principal and interest, within two months after their due date, there shall be set aside from current tax collections not less than ten percent ~~nor more than thirty percent~~ of the amount of such collections until such past due certificates have been paid. Within one month after the due date of a certificate of indebtedness, the governing board of the issuing taxing district shall transmit to the county auditor its duly authenticated resolution directing the percentage of tax collections which shall be retained by the county treasurer to retire such certificate within the foregoing limitations. If such resolution is not received within two months after the due date of such certificate, the county auditor shall retain thirty percent of such collections.

SECTION 5. AMENDMENT. Section 21-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-09. Certificates - Payable in order or before maturity ~~--Cancellation~~. Certificates of indebtedness shall be paid in the order of their issuance, the certificate first issued being first paid from the collection of taxes. Upon the accumulation of funds sufficient to retire a certificate, whether the same is due or not, the holder thereof shall be notified by the county auditor and shall be required promptly to present the certificate for payment and cancellation and thereafter interest thereon shall cease. Upon presentment of such certificate to the county auditor, he shall certify the amount due thereon to the county treasurer, who shall

pay to the holder the amount thereof. ~~The certificate shall be canceled and its cancellation shall be noted on the bond register and the canceled certificate returned to the treasurer of the issuing taxing district.~~

SECTION 6. AMENDMENT. Section 21-02-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-10. ~~Municipalities~~ Taxing districts having population over four thousand exempt from certain provisions. Any ~~city, school district, or park~~ taxing district having a population of over four thousand may issue certificates of indebtedness in any amount not in excess of uncollected taxes of the current year, plus uncollected taxes of prior years standing to the credit of the district, plus amounts still owed it under currently existing bureau of Indian affairs contracts, in such form and manner and subject to such terms and conditions as the governing board may prescribe, and need not comply with nor conform to any of the other provisions of this chapter pertaining to the issuance of certificates of indebtedness unless such board shall choose to avail itself of such provisions.

SECTION 7. AMENDMENT. Section 21-02-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-11. Advertising for bids - When required - Procedure similar to bond sales. If the governing board of any taxing district determines to borrow upon certificates of indebtedness, it shall follow the procedure and shall be subject to the penalties prescribed in the provisions relating to the sale of bonds in chapter 21-03. Certificates of indebtedness need not be advertised for bids:

1. If they are sold to the state board of university and school lands, the Bank of North Dakota, the North Dakota municipal bond bank, or in case other trust funds administered by public officials are invested in them; or

2. If they do not exceed the total sum of one hundred thousand dollars.

SECTION 8. AMENDMENT. Section 21-02-13 of the 1983 Supplement to 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 a state appropriation or statutory or constitutional provision shall, in anticipation of such revenue, have power to borrow not more than the amount it will receive from that source during that fiscal year. For the purpose of borrowing, all such political subdivisions may issue certificates of indebtedness.

Certificates of indebtedness issued pursuant to this section shall provide for payment by the political subdivision of a stated sum on or before a specified date not more than six months after the anticipated date of receipt of the revenue, together with interest thereon at a specified rate not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on certificates sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The certificates shall be payable out of the anticipated revenue.

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~~ recording of certificates of indebtedness, certifying the amount to be received from the state by a political subdivision, 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, including the exceptions for taxing districts over four thousand in population, shall govern the administration of the provisions of this section.

SECTION 9. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 281

HOUSE BILL NO. 1548
(Representatives Ulmer, Skjerven, Hughes)

VOTE REQUIRED TO ISSUE BONDS

AN ACT to amend and reenact section 21-03-07 and subsection 1 of section 57-15-17 of the North Dakota Century Code, relating to the voter approval requirements for the issuance of general obligation bonds and the use of school building funds.

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

SECTION 1. AMENDMENT. Section 21-03-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-07. Election required - Exceptions. No municipality, and no governing board thereof, ~~except school districts,~~ shall issue bonds without being first authorized to do so by a vote equal to ~~sixty-six and two-thirds percent, in the case of municipalities having a population of less than five thousand, or a vote of~~ sixty percent ~~in the case of municipalities having a population of five thousand or more,~~ of all the qualified voters of such municipality voting upon the question of such issue except:

1. As otherwise provided in section 21-03-04.

2. The governing body may issue bonds of the municipality for the purpose and within the limitations specified by subdivision e of subsection 1 of section 21-03-06, subdivision g of subsection 2 of section 21-03-06, and ~~subsection~~ subsections 4.1 and 7 of section 21-03-06 without an election.

3. ~~Any municipality, as defined and listed in section 21-03-06, may issue its bonds for the replacement of municipally owned public buildings within such municipality upon the authorization of sixty percent of the electors voting upon the question of such issue in the following cases:~~

~~a. When such building has been destroyed by fire, wind, explosion, or other cause.~~

~~b. When, after a public hearing, the governing body of such municipality shall adopt a resolution declaring it necessary to replace a municipally owned public building for the reason that such building has become unsafe or inadequate for use and occupancy as a public building, or for keeping the public records or property of such municipality housed therein. The governing body of such municipality shall give notice of such public hearing by a statement published once each week for two successive weeks in the official county newspaper, if the municipality is other than a city, or, if the municipality is a city, in the city's official newspaper as provided in section 40-01-09. Such statement shall set forth the time and place of the hearing and the reasons therefor.~~

~~4.~~ The governing body of any municipality ~~having a population of five thousand or more~~ may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any federal-aid highway project undertaken under an agreement entered into by ~~authority of such~~ the governing body with the United States government, the commissioner of the state highway department, the board of county commissioners, or any of them, including, but without limitation, the cost of any construction, improvement, financing, planning, and acquisition of right of way of a federal-aid highway routed through the municipality and of any bridges and controlled access facilities thereon and any necessary additional width or capacity of the roadway thereof greater than that required for federal or state highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and street lights; provided, that the portion of the total cost of such project to be paid by the municipality under such agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, shall not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in connection therewith. Nothing herein shall be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted by law, and the cost of any work so financed shall not be included in computing the portion of the project cost payable by the municipality, within the meaning of this subsection,

unless such work is actually called for by the agreement between the municipality and the other governmental agencies involved.

~~5.~~ 4. The governing body of any city may also by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the city for the purpose of providing funds to pay the cost of any improvement of the types stated below, to the extent that the governing body determines that such cost should be paid by the city and should not be assessed upon property specially benefited thereby; provided that the initial resolution authorizing such bonds shall be published in the official newspaper, 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 protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under such initial resolution shall be barred. This procedure is authorized for the financing of the following types of improvements:

a. Any street improvement, as defined in subsection 2 of section 40-22-01, to be made in or upon any federal or state highway or any other street designated by ordinance as an arterial street.

b. The construction of a bridge, culvert, overpass, or underpass at the intersection of any street with a stream, watercourse, drain, or railway, and the acquisition of any land or easement required for that purpose.

c. Any improvement incidental to the carrying out of an urban renewal project, the issuance of bonds for which is authorized by subsection 4 of section 40-58-13.

Nothing herein shall be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments or utility revenues any work incidental to any such improvement, in the manner and to the extent otherwise permitted by law.

~~6. The school board of any school district may issue bonds of the municipality for the purposes and within the limitations specified by subsection 4 of section 21-03-06 upon the authorization of sixty percent of the electors voting upon the question of such issue.~~

~~7.~~ 5. The governing body of any city may also by resolution adopted by a two-thirds vote dedicate the mill levies as

authorized by sections 57-15-42 and 57-15-44 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public buildings or fire stations; provided, that the initial resolution authorizing the mill levy dedication and general obligation bonds shall be published in the official newspaper, and any owner of taxable property within the city may within sixty days after publication file with the city auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under the initial resolution shall be barred.

6. The governing body of any county may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 57-15-06.6 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of regional or county correction centers; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the county may within sixty days after publication file with the county auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the county, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the school district may within sixty days after publication file with the school district clerk a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the

protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

8. The governing body of any city having a population of twenty-five thousand persons or more may use the provisions of subsection ~~4~~ 3 to provide funds to participate in the cost of any construction, improvement, financing, and planning of any bypass routes, interchanges, or other intersection improvements on a federal or state highway system which is situated in whole or in part outside of the corporate limits of the city; provided, that the governing body thereof shall determine by resolution that the undertaking of such work is in the best interest of the city for the purpose of providing access and relieving congestion or improving traffic flow on municipal streets.

SECTION 2. AMENDMENT. Subsection 1 of section 57-15-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. a. All revenue accruing from appropriations or tax levies for a school building fund together with such amounts as may be realized for building purposes from all other sources, shall be placed in a separate fund known as a school building fund, and shall be deposited, held, or invested in the same manner as the sinking funds of such school district or in the purchase of shares or securities of federal or state-chartered savings and loan associations within the limits of federal insurance.

   b. The funds shall be used solely and exclusively for any of the following purposes:

      (1) The erection of new school buildings, or additions to old school buildings, or the making of major repairs to existing buildings.

      (2) The payment of rentals upon contracts with the state board of public school education.

      (3) The payment of rentals upon contracts with municipalities for vocational education facilities financed pursuant to chapter 40-57.

      (4) Within the limitations of school plans as provided in subsection 2 of section 57-15-16.

(5) The payment of principal, premium, if any, and interest on bonds issued pursuant to subsection 7 of section 21-03-07.

c. The funds shall be paid out by the custodian thereof only upon order of the school board, signed by the president and the clerk of the school district, and the order must recite upon its face the purpose for which payment is made.

Approved March 14, 1985

CHAPTER 282

HOUSE BILL NO. 1171
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

REGISTRATION, CERTIFICATION, AND DELIVERY OF BONDS

AN ACT to amend and reenact sections 21-03-22 and 21-03-23 of the North Dakota Century Code, relating to the registration, certification, and delivery of bonds.

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

SECTION 1. AMENDMENT. Section 21-03-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-22. ~~Registration, certification, and delivery~~ Recording of bonds. After the bonds have been executed, they shall be delivered to the county auditor, except in cities or school districts or park districts having a population of more than four thousand, in which cities, school districts, or park districts they shall be delivered to the auditor, clerk, or secretary thereof. When ~~such~~ the bonds are delivered to the county auditor, there shall be delivered to him a certified copy of the resolution of the governing body showing their sale. The county auditor, or the auditor, clerk, or secretary of a city, school district, or park district having a population of more than four thousand, upon receipt of ~~such~~ the bonds, shall ~~register~~ record, in a separate book provided for the purpose, an accurate description of every bond so issued~~, specifying its number, date, purpose, amount, rate of interest, when and where payable, and the coupons attached~~. In all cases where the ~~registering~~ recording officer is not ~~the recording~~ an officer of the governing body of the municipality issuing the bonds, there also shall be filed ~~with him~~ a certified copy of all proceedings of the municipality relating to ~~such~~ the issue. When the transaction relating to the sale of ~~said~~ the bonds is to be consummated, there shall be delivered to the ~~registering~~ recording officer a detailed financial statement of the municipality given by the ~~treasurer~~ auditor, clerk, or secretary of the municipality under oath. When ~~such~~ the bonds have been ~~fully registered~~ recorded as required by this section, and when ~~he~~ the recording officer has received ~~such~~ the detailed financial statement of the municipality, the ~~registering~~ recording officer shall sign an endorsement on the back of each bond certifying that ~~such~~ the bond is ~~registered fully~~

recorded in ~~his~~ that office, and, ~~if such is the truth,~~ that ~~such~~ the bond is issued in accordance with law and is within the debt limit of the municipality issuing the ~~same~~ bond. No bond shall be valid without ~~such~~ the certificate endorsed thereon. ~~When the bonds have been so registered and certified, such registering and certifying officer shall deliver the same to the purchaser thereof in accordance with the terms of the resolution awarding their sale, and shall forthwith transmit the proceeds thereof to the treasurer of the municipality.~~

SECTION 2. AMENDMENT. Section 21-03-23 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-23. Bond ~~register~~ record. The county auditor shall keep a bond ~~register~~ record in which shall be entered, as to each issue of bonds issued by a taxing district in the county ~~required by the provisions of section 21-03-22 to be delivered to the county auditor after execution~~, a record of the date of issuance, ~~the aggregate amount authorized,~~ the aggregate amount issued, ~~the number of bonds and the denomination of each,~~ the date of maturity of each bond, the rate of interest, the amount of the levy on taxable property for each year certified by the taxing board, the amount levied on any other object of taxation by the municipality, the amount pledged or allocated from other sources of revenue of the municipality, and the amount of any annual or periodic payments or distributions appropriated or allocated by the legislative assembly. ~~Such bond register also shall contain similar information regarding each issue of certificates of indebtedness of each taxing district in the county. The state auditor shall prescribe for the use of the county auditors a uniform form of bond register.~~

Approved March 27, 1985

CHAPTER 283

HOUSE BILL NO. 1484
(O'Shea, Hill)

FLOOD CONTROL LEASE PAYMENTS

AN ACT to amend and reenact section 21-06-10 of the North Dakota Century Code, relating to the allocation of moneys received through leasing of land acquired by the United States for flood control.

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

* SECTION 1. AMENDMENT. Section 21-06-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-06-10. Moneys received through leasing of lands acquired by United States for flood control distributed to counties for schools and roads. The ~~funds so received, as in said Public Law 79-526 [60 Stat. 642, 33 U.S.C. 701c-3] set forth, by any county in this state, the~~ state treasurer ~~of the state of North Dakota~~ shall pay ~~over~~ the moneys allocated to the state under 33 U.S.C. 701(c)(3) to the ~~county or~~ counties entitled ~~thereto as in said public law set forth. The first one-half of such funds shall be distributed~~ to receive them in proportion to the area of the land in the county acquired by the United States for which compensation is being provided under 33 U.S.C. 701(c)(3) as that area bears to the total of these federal lands in the state. A county receiving an allocation under this section shall disburse the moneys received as follows:

1. One-half must be paid to the school districts in the county which have lost land subject to taxation ~~by reason~~ because of the acquisition of lands by the United States ~~on the basis of the proportionate amount of such lands acquired by the United States~~ for which compensation is being provided under 33 U.S.C. 701(c)(3) in proportion to the area of these federal lands in each district as that area bears to the total of such lands in all of the school districts in the county. If, however, all of the land in ~~any such~~ a district ~~shall have~~ has been acquired by the United States ~~the~~, that district's proportionate share of ~~such~~ the funds ~~assignable to such district shall~~ allocated under this subsection must be paid into, ~~and disbursed in~~

* NOTE: Section 21-06-10 was also amended by section 34 of Senate Bill No. 2086, chapter 82.

~~the manner provided by law for~~ the county tuition fund and expended according to the law governing that fund.

2. ~~The next quarter of such funds shall~~ One-quarter must be paid to ~~such counties~~ the county for road purposes to be expended as the county commissioners shall determine.

3. The final quarter ~~of such funds shall be distributed to~~ must be allocated among the organized townships, if any, ~~within each~~ which have lost land subject to taxation because of land acquisitions by the United States for which compensation is being provided under 33 U.S.C. 701(c)(3) and the county for road purposes ~~to be expended as the township supervisers shall determine. This amount shall be allocated among the various organized townships on the basis of the proportionate true and full valuation, including property valued pursuant to section 57-02-14, of such property within that county. If any area of a county does not lie within an organized township but creates an impact whereby such land is only assessable through an organized township such funds shall be allocated to that township. If any area of a county does not lie within an organized township, a portion of the final quarter of such funds shall be allocated to the county on the basis of the proportionate true and full valuation, including property valued pursuant to section 57-02-14, of such property within that county~~ in proportion to the area of these lands in each township as that area bears to the total area of these federal lands in the county. The county must be allocated a similar proportionate share based on the area of these lands in the county not within an organized township.

This section shall apply to all funds heretofore received or to be received by the counties entitled thereto.

Approved March 27, 1985

CHAPTER 284

SENATE BILL NO. 2049
(Legislative Council)
(Interim Budget "B" Committee)

STATE INVESTMENT BOARD MEMBERS AND MEETINGS

AN ACT to amend and reenact sections 21-10-01 and 21-10-04 of the North Dakota Century Code, relating to the membership and meetings of the state investment board.

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

SECTION 1. AMENDMENT. Section 21-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-01. State investment board - Membership. The North Dakota state investment board ~~shall consist~~ consists of the governor, the state treasurer, the ~~state land~~ commissioner of university and school lands, the chairman of the workmen's compensation bureau, ~~and~~ the ~~state~~ commissioner of insurance ~~commissioner~~, the executive secretary of the teachers' fund for retirement, and two members who are experienced in the field of investments, who have considerable knowledge of the investments enumerated in section 21-10-07, and who are not otherwise employed by the state of North Dakota. The ex officio members of the board shall appoint the members with investment experience to four-year terms concurrent with the four-year terms of the elected officials on the board. The appointed members are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04.

SECTION 2. AMENDMENT. Section 21-10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-04. Board - Meetings --~~Quorum~~. The state investment board shall select one of its members to serve as chairman, and shall meet at the call of the director or upon written notice signed by two members of the board. Such meetings shall be held not less than four times per year. ~~Three members of the board shall constitute a quorum for the transaction of business.~~

Approved April 4, 1985

CHAPTER 285

SENATE BILL NO. 2050
(Legislative Council)
(Interim Budget "B" Committee)

STATE INVESTMENT BOARD INVESTMENT GOALS AND REPORTING

AN ACT to create and enact sections 21-10-02.1 and 21-10-06.1 of the North Dakota Century Code, relating to the state investment board's policies on investment goals and objectives and the state investment board investment reporting; and to amend and reenact section 54-52-04 of the North Dakota Century Code, relating to the public employees retirement system's investment reporting.

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

SECTION 1. Section 21-10-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

21-10-02.1. Board - Policies - Investment goals and objectives. The board shall establish policies on investment goals and objectives for the funds enumerated in section 21-10-06. The policies must provide for:

1. The definition and assignment of duties and responsibilities to advisory services and persons employed by the board.

2. Acceptable rates or return, liquidity, and levels of risk.

3. Long-range asset allocation goals.

4. Guidelines for the selection and redemption of investments.

5. Investment diversification, investment quality, qualification of advisory services, and amounts to be invested by advisory services.

6. The type of reports and procedures to be used in evaluating performance.

Each fund enumerated in section 21-10-06 shall submit to the board the fund's policies on investment goals and objectives.

SECTION 2. Section 21-10-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

21-10-06.1. Board - Investment reports. The board shall annually prepare reports on the investment performance of each fund under its control. The reports must be uniform and must include:

1. A list of the advisory services managing investments for the board.
2. A list of investments including the cost and market value, compared to previous reporting period, of each fund managed by each advisory service.
3. Earnings, percentage earned, and change in market value of each fund's investments.
4. Comparison of the performance of each fund managed by each advisory service to other funds under the board's control and to market indicators. The market indicators to be used are the Standard and Poor's 500, Dow Jones Industrials, New York Stock Exchange, Salomon Bond Index, Lehman Kuhn Loeb Government/Corporation, and treasury bills.

* **SECTION 3. AMENDMENT.** Section 54-52-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-04. Board authority. ~~**The board shall have the following powers and duties:**~~

1. The board shall ~~**have the power and duty to**~~ adopt ~~**such**~~ rules ~~**and regulations as may be**~~ necessary to implement ~~**the provisions of**~~ this chapter, and to manage the system, subject to the limitations of this chapter. ~~**It shall have**~~ The board has the powers and privileges of a corporation, including the right to sue and be sued in its own name as ~~**such**~~ the board. The venue of all actions in which the board is a party ~~**shall**~~ must be Burleigh County, North Dakota.
2. The board shall appoint an executive director to serve at its discretion. The executive director shall be bonded by the state bonding fund in the amount required by the board and shall perform such duties as assigned by the board.
3. The board shall authorize the creation of whatever staff it deems necessary for sound and economical administration of the system. The executive director shall hire the staff, subject to the approval of the board.

* NOTE: Section 54-52-04 was also amended by section 1 of House Bill No. 1132, chapter 581.

4. The board shall arrange for actuarial and medical advisers for the system. ~~It~~ The board shall cause a qualified, competent actuary to be retained on a consulting basis. The actuary shall make a biennial valuation of the liabilities and reserves of the system and a determination of the contributions required by the system to discharge its liabilities and pay the administrative costs under this chapter, and to recommend to the board rates of employer and employee contributions required, based upon the entry age normal cost method, to maintain the system on an actuarial reserve basis; ~~and as soon after July 1, 1977, as practicable and~~ once every even-numbered year ~~thereafter,~~ make a general investigation of the actuarial experience under the system including mortality, retirement, employment turnover, and other items required by the board, and recommend actuarial tables for use in valuations and in calculating actuarial equivalent values based on such investigation; and perform ~~such~~ other duties as may be assigned by the board.

5. The state shall provide the board ~~shall be provided by the state~~ with the retirement systems office or offices to be used for the meetings of the board and for the general purposes of the administrative personnel.

6. The board shall select the funding agent or agents and establish an investment agreement contract. The contract ~~shall~~ must authorize the funding agent or agents to hold and invest moneys for the system. No moneys of the system ~~shall~~ may be invested by the board. ~~Said~~ The moneys ~~shall~~ must be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed. All securities, agreements, contracts, or instruments of value ~~shall~~ must be delivered to the Bank of North Dakota, or its agents. Except for dispensing money to the funding agent or agents, paying prior service benefits, or making withdrawal payments and refunds, the board shall expend money only for administrative purposes by preparing an appropriate voucher and submitting such voucher to the office of management and budget and as limited by the appropriation first made by the legislative assembly.

7. The board shall administer ~~the provisions of~~ chapters 39-03.1 and 54-52.1.

8. The board ~~shall~~ annually ~~prepare a summarized financial statement~~ shall report in accordance with section 21-10-06.1 the investment performance of the ~~fund~~ funds that it administers and distribute a copy to each participant.

Approved March 22, 1985

CHAPTER 286

SENATE BILL NO. 2051
(Legislative Council)
(Interim Budget "B" Committee)

INVESTMENT BOARD INVESTMENTS

AN ACT to amend and reenact section 21-10-07 of the North Dakota Century Code, relating to legal investments of the state investment board.

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

SECTION 1. AMENDMENT. Section 21-10-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-07. Legal investments. The following types of securities ~~shall be~~ and investments are legal investments for funds, the investment of which is under the supervision of the board:

1. Securities which are a direct obligation of the treasury of the United States or of an instrumentality thereof.

2. Bonds or certificates of indebtedness of ~~the~~ this state ~~of North Dakota~~.

3. General obligation bonds of any other state.

4. Bonds, certificates of indebtedness, or warrants of any political subdivision of ~~the~~ this state ~~of North Dakota~~ which constitute the general or contingent general obligations of the issuing tax authority, or revenue bonds of a political subdivision issued for public utility purposes or under the authority of ~~the Municipal Industrial Development Act contained in~~ chapter 40-57.

5. Loans and mortgage investments, insured or guaranteed in any manner, wholly or in part, or for which a commitment to so insure or guarantee has been issued by the United States or any instrumentality or agency thereof; or other investments that are issued by or fully insured or guaranteed by the United States or any instrumentality or

agency thereof or ~~the~~ this state ~~of North Dakota~~ or any instrumentality or agency thereof.

6. Bank of North Dakota certificates of deposit.

7. ~~Building~~ North Dakota savings and loan association and commercial bank certificates of ~~North Dakota building and loan associations,~~ deposit to the extent that such certificates are fully insured or guaranteed by the United States or an instrumentality or agency thereof.

8. Short-term commercial and finance company paper traded on a national basis and issued by a corporation having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period, shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period.

9. Bonds, notes, or debentures of any corporation duly incorporated under the laws of any state of the United States rated as "A" or higher by a nationally recognized rating service approved by the board.

10. Nonrated bonds, notes, or debentures of any corporation duly incorporated under the laws of any state ~~of the United States~~ and whose principal business operations are carried on within ~~the~~ this state ~~of North Dakota~~, having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period, shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period.

11. Evidence of indebtedness issued by instrumentalities of this state, including evidence of indebtedness issued by the North Dakota housing finance agency.

12. Mortgage loans purchased from lenders or certificates of indebtedness representing pools of mortgage loans purchased from lenders if the mortgages are made to persons to finance the purchase or substantial rehabilitation of owner-occupied, single family residential dwellings, including mobile homes and manufactured housing. The loans purchased must be secured by mortgages on real property located in this state. "Lender" means any bank or trust company chartered in this state, any national banking association located in this state, any state or federal savings and loan association located in this state, and any federal housing

administration approved mortgagee or other mortgage lending institution engaged in home mortgage lending in this state.

13. Investments enumerated under chapter 15-03 as legal investments for the board of university and school lands.

14. Common or preferred stocks of any corporation organized under the laws of any state, but not more than twenty percent of the assets of each fund may be invested in common and preferred stocks.

As used in this section the term "net income" ~~shall mean~~ means income after deducting operating and maintenance expenses, all taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income and expense.

The term "fixed charges" ~~shall include~~ includes interest on funded and unfunded debt, amortization of debt discount and expense, and rentals for leased property.

Approved March 28, 1985

CHAPTER 287

SENATE BILL NO. 2074
(Legislative Council)
(Interim Industry, Business and Labor Committee)

HEALTH COUNCIL MEMBERSHIP

AN ACT to amend and reenact section 23-01-02 of the North Dakota Century Code, relating to health council membership.

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

SECTION 1. AMENDMENT. Section 23-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings. The health council ~~shall consist~~ consists of ~~eleven~~ fifteen members appointed by the governor in the following manner: Two persons shall be appointed from a list of four submitted by the state hospital association, two persons shall be appointed from a list of four submitted by the state medical association, one person shall be appointed from a list of two submitted by the state dental association, one person shall be appointed from a list of two submitted by the state optometric association, one person shall be appointed from a list of two submitted by the state nurses association, one person shall be appointed from a list of two submitted by the state pharmaceutical association, and there shall be appointed ~~three lay persons with broad civic interests representing varied segments of the population~~ seven persons who are consumers of health care services and not employed in the health care field. One health care consumer member must be a representative of the business community, one health care consumer member must be a representative of the agriculture community, one health care consumer member must be a representative of organized labor, and one health care consumer member must be a representative of elderly citizens. On the expiration of the term of any member, the governor, in the manner ~~hereinbefore~~ provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on ~~said~~ the council are about to expire. The officers of ~~said~~ the council shall be elected annually. The following persons shall serve in an advisory capacity to the health council: the state health officer, the attorney general, the director of institutions, the state fire marshal, the executive secretary of the state board of nursing, the executive

director of the ~~state social service board~~ department of human services, the executive director of the North Dakota Indian affairs commission, and ~~such~~ any other persons ~~as~~ the governor may designate. The council shall meet at least twice each year and at ~~such~~ other times as the council or its chairman may direct. The council shall have as standing committees a health committee and a hospital committee and ~~such~~ any other committees ~~as said~~ the council may find necessary. The health committee ~~shall consist~~ consists of one of the representatives of the state medical association, one of the representatives of the state hospital association, the representative of the state dental association, the representative of the state optometric association, the representative of the state nurses association, and two of the ~~representatives of civic interests~~ health care consumer members. The hospital committee ~~shall consist~~ consists of the representatives of the state hospital association, one of the representatives of the state medical association, the representative of the state nurses association, and two of the ~~representatives of civic interests~~ health care consumer members. The members of these committees shall be selected by the chairman of the health council from its own membership. The chairman shall have the responsibility of assigning to the special committees problems relating to the respective fields. The members of the council ~~shall~~ are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and their necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04 while attending council meetings, or in the performance of such special duties as the council may direct. ~~Such~~ The per diem and expenses shall be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section ~~shall~~ may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

Approved March 27, 1985

CHAPTER 288

SENATE BILL NO. 2423
(Parker)

PHYSICIAN RECORDS CONFIDENTIALITY

AN ACT to amend and reenact section 23-01-02.1 of the North Dakota Century Code, relating to the confidentiality of required reports for hospitals and extended care facilities.

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

SECTION 1. AMENDMENT. Section 23-01-02.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-02.1. Hospital utilization committees - Internal quality assurance review 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 or any physician or surgeon or group of physicians or surgeons operating a clinic or outpatient care facility in this state or to an internal quality assurance review committee of any hospital or extended care facility in this state are confidential and may be used by such committees and the members thereof only in the exercise of the proper functions of the committees. The proceedings and records of such a committee are not subject to subpoena or discovery or introduction into evidence in any civil action arising out of any matter which is the subject of consideration by the committee. Information, documents, or records otherwise available from original sources are not immune from discovery or use in any civil action merely because they were presented during the proceedings of such a committee, nor may any person who testified before such a committee or who is a member of it be prevented from testifying as to matters within that person's knowledge, but a witness cannot be asked about that witness' testimony before the committee. This section does not relieve any person of any liability which the person has incurred or may incur to a patient as a result of furnishing health care to the patient. 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 is, by reason of furnishing such

information, liable in damages to any person, or answerable for willful violation of a privileged communication. No member of such a committee is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the 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 30, 1985

CHAPTER 289

HOUSE BILL NO. 1554
(Hedstrom)

BURIAL OF PERSONS WITHOUT SURVIVORS

AN ACT to amend and reenact subdivisions c, d, and e of subsection 4 of section 23-06-03 of the North Dakota Century Code, relating to payments by county social service boards for burial of persons who died without survivors and without a sufficient estate to pay for burial.

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

SECTION 1. AMENDMENT. Subdivisions c, d, and e of subsection 4 of section 23-06-03 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

c. The cost of the grave box or vault, not to exceed the sum of ~~one hundred eighty~~ two hundred thirty-five 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 one hundred seventy-five dollars.

e. Any grave opening and closing expenses, not to exceed the sum of one hundred ~~twenty~~ seventy-five dollars.

Approved March 27, 1985

CHAPTER 290

SENATE BILL NO. 2446
(Lips)

PRE-NEED FUNERAL SERVICE CONTRACTS

AN ACT to amend and reenact section 23-06-03.1 of the North Dakota Century Code, relating to deposit of funds for 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 1983 Supplement to 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 - Penalty. Whenever payments are made to any person upon pre-need funeral service contracts, 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.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within the state of North Dakota.

Any person who willfully violates this section or any rule or order of the commissioner pursuant hereto is guilty of a class C felony. Each violative act constitutes a separate offense and a prosecution or conviction of any one offense shall not bar a prosecution or conviction for any other offense.

Approved March 28, 1985

CHAPTER 291

HOUSE BILL NO. 1555
(Riley, Moore)

COUNTY AUTHORITY OVER ENDANGERED GRAVESITES

AN ACT to create and enact a new section to chapter 23-06 of the North Dakota Century Code, relating to the authority of counties concerning endangered gravesites; 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 23-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Endangered gravesites - County action authorized. Notwithstanding any other provisions of this chapter, the county commissioners of each county may move graves or cremate the bodies in any graves which are located in the county and maintained by the county when the gravesites are in eminent danger of destruction by natural elements. The county commissioners shall, to the extent possible, give personal notice to a relative of a deceased person whose grave is to be moved or whose body is to be cremated if the identity of that person and the identity of the relative are known. The county commissioners shall provide at least thirty days' prior notice in a legal newspaper of the county of the commissioners' intended action to be taken pursuant to this section.

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

Approved March 22, 1985

CHAPTER 292

SENATE BILL NO. 2232
(Committee on Social Services and Veterans Affairs)
(At the request of the State Laboratories Department)

HOTEL FIRE PROTECTION

AN ACT to amend and reenact sections 23-09-03, 23-09-05, 23-09-06, and 23-09-07 of the North Dakota Century Code, relating to fire protection measures in hotels, motels, roominghouses, and lodginghouses; and to repeal section 23-09-04 of the North Dakota Century Code, relating to fire escapes in hotels and lodginghouses.

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

SECTION 1. AMENDMENT. Section 23-09-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-03. ~~Fire escapes required in hotels or lodginghouses more than two stories high~~ Exiting requirements. Every hotel ~~or~~, motel, lodginghouse, ~~which is more than two stories high shall have a hall on each floor extending from one outside wall to the other, and unless such hotel or lodginghouse is equipped with interior fireproof stairways approved by the state fire marshal, there shall be at the end of each such hall an iron fire escape which shall~~ or roominghouse constructed in the state shall have adequate exiting as defined by the state building code in chapter 54-21.3 with the following exceptions:

1. ~~Connect all of the floors above the first floor,~~ All hotels, motels, roominghouses and lodginghouses in existence at the time of implementation of this section shall be required to continue with fire escapes previously provided for within this section providing that they are deemed adequate by the local fire authority having approval, or by the state fire marshal's office.

2. ~~Be so arranged that it can be reached by at least two openings from each floor;~~ If the hotel, motel, roominghouse, or lodginghouse is provided with exterior access balconies connecting the main entrance door of each unit to two stairways remote from each other.

~~3. Be well fastened and secured to the outside walls of the buildings;~~

~~4. Have a landing at each floor which is at least six feet (1.83 meters) long and three feet (.92 meters) wide and which is guarded by an iron railing which is at least three feet (.92 meters) high;~~

~~5. Connect all floor landings by iron stairs which are at least two feet (.61 meters) wide, have steps with a tread of at least six inches (152.4 millimeters), and be protected by a well secured handrail on both sides;~~

~~6. Reach to within ten feet (3.05 meters) of the ground; and~~

~~7. Be equipped with a drop ladder which is at least twelve inches (304.8 millimeters) wide and which reaches from the lower platform to the ground.~~

~~A perpendicular iron ladder may be used in lieu of the stairs described in subsection 5 if such ladder is placed at the extreme outside of the platform at least two feet (.61 meters) from the walls of the building and is equipped with round iron rungs placed not more than fifteen inches (381 millimeters) apart.~~

SECTION 2. AMENDMENT. Section 23-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-05. Fire escapes to be kept clear - Notice of location and use of fire escapes required. Access to fire escapes required under the provisions of this chapter shall be kept free and clear at all times of all obstructions of any and every nature. The proprietor of the hotel ~~or~~, motel, lodginghouse, or roominghouse shall:

~~1. Post and maintain in a conspicuous place in each hall and guest room on each floor other than the ground floor, if such hotel or lodginghouse is more than two stories high:~~

~~a. A printed notice, in characters not less than two inches (50.8 millimeters) high, calling attention and directing the way to the fire escape, and~~

~~b. A green light at the end of the hall and directly in front of the fire escape.~~

~~2. Post and maintain in a conspicuous place in every bedroom or sleeping apartment on other than the ground floor, if such hotel or lodginghouse is not more than two stories high, a printed notice, in characters not less than two inches (50.8 millimeters) high, calling attention to the rope fire escape and giving directions for its use, or if other than a rope fire escape is used, calling attention and directing the way to the same~~ provide for adequate

exit lighting and exit signs as defined in the state building code, chapter 54-21.3.

SECTION 3. AMENDMENT. Section 23-09-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-06. Chemical fire extinguishers - Standpipes. Each hotel, motel, roominghouse, and lodginghouse shall be provided with ~~at least one chemical~~ fire ~~extinguisher, approved~~ extinguishers as defined by the ~~National Board of Fire Underwriters, for every twenty-five hundred square feet [232.26 square meters] or less of floor area. Such extinguishers shall be placed in a convenient location in the public hallways outside of the sleeping rooms, and always shall be in condition for use. In lieu of such fire extinguishers, a lodginghouse or hotel may be equipped with not less than one and one-fourth inch [31.75 millimeters] standpipe with sufficient water pressure and hose connections and hose attached thereto of sufficient length to reach both ends of the hall in which the standpipe is located. The state fire marshal shall adopt and promulgate reasonable rules and regulations governing the minimum specifications for approved fire extinguishers~~ national fire protection association standard number ten in quantities as defined by the state building code and the state fire code. Standpipe and sprinkler systems shall be installed as required by the state building code and state fire code. Fire extinguishers, sprinkler systems, and standpipe systems shall conform with the adopted rules of the state fire marshal. A contract for sale or a sale of a fire extinguisher installation in a public building shall not be enforceable, if the fire extinguisher or extinguishing system is of a type not approved by the state fire marshal for such installation. No fire extinguisher of a type not approved by the state fire marshal shall be sold or offered for sale within the state.

SECTION 4. AMENDMENT. Section 23-09-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-07. Elevator shafts to be protected to prevent spread of fire. Every hotel which is equipped with a passenger or freight elevator shall cause the shaftway thereof to be enclosed with an iron sheeting as nearly airtight as is practicable and shall provide automatic floor traps at each door in the shaft. Such appliances shall be built in the most approved manner for the prevention or spread of fire by means of such shaft. All new construction of, remodeling of, or additions to hotels, motels, roominghouses, and lodginghouses equipped with passenger or freight elevators must comply with state building code fire protection requirements.

SECTION 5. REPEAL. Section 23-09-04 of the North Dakota Century Code is hereby repealed.

Approved March 29, 1985

CHAPTER 293

SENATE BILL NO. 2463
(Krauter, Wogsland, Parker, David)

BED AND BREAKFAST REGULATION

AN ACT to create and enact a new chapter to title 23, and a new section to chapter 23-09 of the North Dakota Century Code, relating to bed and breakfast facility regulation, and to hotels, lodginghouses, restaurants, and boardinghouses; and to amend and reenact section 19-02-24 of the North Dakota Century Code, relating to rooms in which food is stored not to be used for living quarters.

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

SECTION 1. A new chapter to title 23 of the North Dakota Century Code is hereby created and enacted to read as follows:

Bed and breakfast facilities - Powers of state laboratories department. The state laboratories department, prior to January 1, 1986, shall establish by rule the procedures for licensing, qualifying, classifying, inspecting, and regulating persons providing bed and breakfast facilities in private homes, including rules affecting the health and safety of the facility and the persons using the facility.

License fee. The annual license fee paid to the state laboratories department by proprietors of bed and breakfast facilities is five dollars.

Definitions. As used in this chapter:

1. "Bed and breakfast facility" means a private home which is used to provide accommodations for a charge to the public, with at most two lodging units for up to eight persons per night and in which no more than two family style meals per day are provided.

2. "Family style meal" means a meal ordered by persons staying at a bed and breakfast facility which is served from common food service containers, as long as any food

not consumed by those persons is not reused or fed to other people if the food is unwrapped.

SECTION 2. AMENDMENT. Section 19-04-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02-24. Rooms in which food stored, prepared, or sold not to be used for living quarters. No room or rooms used for the storage, display, preparation, use, or sale of food shall be used as a sleeping, dressing, or living room, nor shall any sleeping, dressing, or living room be adjacent to, nor shall it open into, any such place, nor shall dogs, cats, or other domestic animals be permitted to occupy such rooms. This section does not apply to bed and breakfast facilities for which rules have been adopted under section 1 of this Act.

SECTION 3. A new section to chapter 23-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exemption for bed and breakfast facilities. This chapter does not apply to bed and breakfast facilities for which rules have been adopted under section 1 of this Act.

Approved March 28, 1985

CHAPTER 294

SENATE BILL NO. 2303
(Senators Todd, Freborg)
(Representatives Retzer, Unhjem)

SMOKE DETECTION SYSTEMS IN RENTAL PROPERTY

AN ACT to create and enact a new section to chapter 23-13 of the North Dakota Century Code, relating to smoke detection systems in residential rental property; to amend and reenact section 23-13-04 of the North Dakota Century Code, relating to the construction of doors of public buildings; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 23-13-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-13-04. Doors of public buildings - Construction. All doors of ingress and egress in all schoolhouses and churches within the limits of any city and in all other buildings used for public assemblages of any character in this state, including theaters, public halls, city halls, courthouses, factories, hotels, and all other public buildings wherein numbers of persons are employed or are in the habit of meeting together for any purpose, shall be so constructed as to ~~open and swing outward. Doorways in such buildings shall not be less than four feet [1.22 meters] in width and shall have proper landings and stairways of at least equal width~~ conform with the requirements of the state building code as provided in chapter 54-21.3.

SECTION 2. A new section to chapter 23-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

Smoke detection systems for residential rental property - Penalty. All residential rental property with the exception of property covered by section 23-09-02.1 must be equipped with smoke detection systems or other approved alarm systems for the protection of occupants of the property. Systems must be installed and maintained in compliance with applicable national fire protection standards as defined by rules adopted by the state fire marshal. The state fire marshal and local fire departments shall provide information concerning the installation of smoke detection systems

to owners of residential rental properties. A system installed in a single family rental dwelling must be maintained and inspected by the tenant occupying the single family rental dwelling.

Nothing in this section shall be construed to alter the provisions of chapter 54-21.3 regarding smoke detection systems or alarm systems for newly constructed residences.

Any property owner who willfully fails to install a system as required by this section is guilty of a class B misdemeanor.

Approved March 27, 1985

CHAPTER 295

SENATE BILL NO. 2075
(Legislative Council)
(Interim Industry, Business and Labor Committee)

CERTIFICATE OF NEED

AN ACT to amend and reenact subsections 1, 4, 7, 8, 16, and 18 of section 23-17.2-02, subsection 1 of section 23-17.2-03, and subsection 3 of section 23-17.2-04 of the North Dakota Century Code, relating to definitions, threshholds, and scope of coverage of certificate of need review.

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

SECTION 1. AMENDMENT. Subsections 1, 4, 7, 8, 16, and 18 of section 23-17.2-02 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

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.~~

4. "Capital expenditure" means an expenditure of ~~one~~ seven 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.

7. "Expenditure minimum", when used in connection with annual operating costs, means ~~seventy-five~~ three hundred 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~~ rules 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.~~

16. "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~~ five 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~~ five 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.

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.~~

SECTION 2. AMENDMENT. Subsection 1 of section 23-17.2-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The department, pursuant to this chapter and rules of the health council, must review proposals subject to this chapter and must approve, disapprove, or revoke the certificate of need, as appropriate. The certificate of need program applies to:

   a. The obligation by or on behalf of a health care facility of any capital expenditure (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.~~

~~e.~~ 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~~ three hundred thousand dollars; or the termination of a health service which is associated with any capital expenditure.

~~d.~~ c. The acquisition by any person of major medical equipment that will be owned by or located in a health care facility.

~~e.~~ d. 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~~ the department finds, ~~within thirty days after receipt of a notice~~ that the equipment will be used primarily to provide services to ~~inpatients~~ persons who are admitted patients in a health care facility. This does not include use of equipment on ~~other than~~ a temporary basis as in the case of a natural disaster, a major accident, or equipment failure.

~~f.~~ e. 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.~~ f. An acquisition by donation, lease, transfer, or comparable arrangement must be reviewed if such acquisition would have been subject to review if purchased. An acquisition for less than fair market

value must be reviewed if the acquisition at fair market value would exceed the expenditure minimum.

However, health care facilities and health care services, for the purposes of this chapter, do not include health maintenance organizations, as defined in section 26.1-18-01, when the health maintenance organization, or other entity, is engaged in activities to determine the feasibility of developing and operating or expanding the operation of health maintenance organizations, or planning projects for the establishment of health maintenance organizations or for the significant expansion of the membership of, or areas served by, health maintenance organizations, or initial development of health maintenance organizations. "Planning projects" and "initial development" mean those activities as defined in the Health Maintenance Organization Act of 1973, as amended [Pub. L. 94-460; 90 Stat. 1948, 1950, 1955; and Pub. L. 95-559; 92 Stat. 2131, 2134; 42 U.S.C. 300 e-3].

SECTION 3. AMENDMENT. Subsection 3 of section 23-17.2-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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.~~

Approved March 27, 1985

CHAPTER 296

HOUSE BILL NO. 1063
(Legislative Council)
(Interim Industry, Business and Labor Committee)

HOSPICE PROGRAM LICENSING

AN ACT to license hospice programs.

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. "Bereavement" means the period of time during which the hospice patient's family experiences and adjusts to the death of the hospice patient.

2. "Department" means the state department of health.

3. "Hospice care team" means an interdisciplinary working unit including the hospice patient and the hospice patient's family, the attending physician, the medical director of the hospice program, a registered professional nurse as defined under chapter 43-12.1, a social worker licensed pursuant to chapter 43-41 providing medical social services, and trained hospice volunteers. Providers of special services, including a spiritual counselor, a pharmacist, a registered dietitian, or professionals in the field of mental health may be included on the interdisciplinary team as determined to be appropriate by the hospice program.

4. "Hospice patient" means a person diagnosed as terminally ill with a prognosis of an anticipated life expectancy of six months or less, who has received admission into the hospice program. The diagnosis and prognosis must be certified by the attending physician.

5. "Hospice patient's family" means the immediate kin of the patient, including a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, child, or stepchild. Additional relatives or individuals with significant

personal ties to the hospice patient may be included in the hospice patient's family for the purposes of this Act.

6. "Hospice program" means a coordinated program of home and inpatient care providing hospice services directly, or through agreement, using a hospice care team.

7. "Hospice services" means palliative and supportive medical, health, and other care provided to hospice patients and their families to meet the special needs arising out of the physical, emotional, spiritual, and social stresses experienced during the final stages of illness and during dying and bereavement so that when and where possible the hospice patient may remain at home, with homelike inpatient care utilized only if and while it is necessary.

8. "Palliative care" means treatment which is intended to achieve relief from, reduction of, or elimination of pain and other troubling symptoms, rather than treatment aimed at investigation and intervention for the purposes of cure or prolongation of life.

9. "Hospice service plan" means the plan detailing the specific hospice services offered by a hospice program, and the administrative and direct care personnel responsible for those services.

10. "Volunteer services" means the services provided by individuals who have successfully completed a training program developed by a licensed hospice program.

SECTION 2. Hospice program license required. No person may establish, conduct, or maintain a hospice program, or advertise or present itself to the public as a hospice program, without first obtaining a hospice program license from the department.

SECTION 3. Scope of license. A hospice program license is valid only for the premises, person, or facility named in the application for license and is not transferable or assignable. The license must be renewed annually. The license must be displayed in a conspicuous place inside the hospice program office.

SECTION 4. Application for license. An application for issuance or renewal of a hospice program license must be made to the department upon forms provided by the department. The application must contain information reasonably required by the department. The application must be accompanied by:

1. The hospice service plan which must include:

   a. Identification of the persons administratively responsible for the program, and any affiliation of the persons with a licensed home health agency,

hospital, skilled nursing home, intermediate care facility, or other health care provider.

b. The estimated average monthly patient census.

c. The proposed geographic area the hospice program will serve.

d. A listing of hospice services provided directly by the hospice, and hospice services provided indirectly through a contractual agreement.

e. The name and qualifications of persons or entities under contract to provide indirect hospice services.

f. The name and qualifications of persons providing direct hospice services, with the exception of volunteers.

g. A description of how the hospice program plans to use volunteers in the provision of hospice services.

h. A description of the hospice program's recordkeeping system.

2. A financial statement containing information determined to be appropriate by the department.

3. A uniform license fee determined by the department.

SECTION 5. Inspection of hospice program. Prior to the issuance or renewal of a hospice program license, the department shall inspect the hospice program for compliance with the standards established pursuant to this Act. To the maximum extent possible, the department shall coordinate inspections made under this Act with those made for the purposes of determining compliance with other licensing statutes or rules.

SECTION 6. Issuance of license - Renewal. Upon receipt of a completed application for issuance or renewal of a hospice program license, the department shall issue or renew a license if the department finds the applicant in compliance with this Act and the minimum standards established pursuant to this Act.

SECTION 7. Basic requirements for hospice program. A hospice program must comply with the following basic standards:

1. The hospice program's services must include physician services, nursing services, medical social services, counseling, and volunteer services. The services must be coordinated with those of the hospice patient's primary or attending physician.

2. The hospice program must coordinate its services with professional and nonprofessional services already in the community. The hospice program may contract for elements of its services; however, direct patient contact and overall coordination of hospice services must be maintained by the hospice care team. Any contract entered into between a hospice program and a health care facility or service provider must specify that the hospice program retains the responsibility for planning and coordinating hospice services and care on behalf of a hospice patient and the hospice patient's family. No hospice which contracts for any hospice service may charge fees for services provided directly by the hospice care team which duplicate contractual services provided to the individual hospice patient or family.

3. The hospice care team is responsible for the coordination of home and inpatient care.

4. The hospice program must have a medical director who is a physician licensed pursuant to chapter 43-17. The medical director has overall responsibility for medical policy in relation to the care and treatment of hospice patients and their families rendered by the hospice care team, and must consult and cooperate with the hospice patient's attending physician.

5. The hospice program must provide the services of a registered nurse, as defined under chapter 43-12.1, to supervise and coordinate the palliative and supportive care for patients and families provided by the hospice care team.

6. The hospice program must identify a member of the hospice team who will be responsible for providing for coordination and administration of the hospice service plan for patients and families.

7. The hospice program must have a bereavement program to provide a continuum of supportive services for the family.

8. The hospice program must foster independence of the hospice patient and the hospice patient's family by providing training, encouragement, and support so that the patient and family can care for themselves as much as possible.

9. The hospice program may not impose the dictates of any value or belief system on hospice patients or their families.

10. The hospice program must clearly define admission criteria. Decisions on admission must be made by a hospice care team and are dependent upon the expressed

request of the patient; however, if the attending physician certifies that the patient is unable to request admission, a family member may voluntarily request and receive admission of the patient and family on the patient's behalf. Any request for admission must include written evidence of informed consent signed by the person making the request, which contains an explanation, in plain language of the nature and limitations of hospice care.

11. The hospice program must keep accurate, current, and confidential records on all hospice patients and their families. Upon reasonable notice, the records must be made available to duly authorized officers or employees of the department.

12. The hospice program must use the services of trained volunteers.

13. The hospice program must consist of both home care and inpatient care which incorporate the following characteristics:

    a. The home care component must be the primary form of care, and shall be available on a part-time, intermittent, regularly scheduled basis and on an on-call, around-the-clock basis according to patient and family need.

    b. The inpatient component may be used only if and while it is necessary. If feasible, inpatient care should closely approximate a homelike environment, and provide overnight family visitation within the facility.

SECTION 8. Rules and standards.

1. The department shall adopt rules establishing minimum standards for hospice programs, including:

    a. Compliance with the standards of section 7.

    b. The number and qualifications of persons providing direct hospice services.

    c. The qualifications of those persons or entities contracted with to provide indirect hospice services.

    d. Palliative and supportive care and bereavement counseling provided to hospice patients and their families.

    e. Hospice services provided on an inpatient basis.

f. Utilization review of hospice patient care.

g. The quality of care provided to hospice patients.

h. Procedures for the accurate and centralized maintenance of records on hospice services provided to hospice patients and their families.

i. The use of volunteers in the hospice program, and the training of those volunteers.

j. The rights of the hospice patient and the hospice patient's family.

2. To avoid duplication in rules, the department shall incorporate rules applicable to facilities licensed by the state as hospitals, skilled nursing homes, intermediate care facilities, and organizations licensed by the state as home health agencies which are also applicable to hospice programs in the rules to govern hospices. A person who seeks to license, establish, or operate a hospice program and who has a preexisting valid license to operate a hospital, skilled nursing home, intermediate care facility, or home health agency is in compliance with those rules which are applicable to both a hospice and the facility for which it has a license.

SECTION 9. Inspection and investigation authority. Any duly authorized officer or employee of the department may make necessary inspections and investigations to determine the state of compliance with the provisions of, and rules adopted pursuant to, this Act. The department may inspect any program which the department has reason to believe is offering or advertising itself as a hospice program without a license, but no inspection of any hospice program may be made without the permission of the owner or person in charge unless a warrant is first obtained authorizing inspection. Any application for issuance or renewal of a hospice program license constitutes permission for any inspection of the hospice program for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.

SECTION 10. Denial, suspension, or revocation of license. Denial, suspension, or revocation of a hospice program license by the department for noncompliance with this Act is governed by chapter 28-32.

Approved March 22, 1985

CHAPTER 297

HOUSE BILL NO. 1077
(Legislative Council)
(Interim Natural Resources Committee)

DAKOTA INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

AN ACT entering into the Dakota interstate low-level radioactive waste management compact; to designate North Dakota's representatives to the administrative body of the interstate compact; and to provide an appropriation.

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

SECTION 1. Dakota interstate low-level radioactive waste compact. The Dakota interstate low-level radioactive waste compact is hereby entered into with all jurisdictions legally joining the compact, in the form substantially as follows:

ARTICLE I. POLICY AND PURPOSE

There is created the Dakota interstate low-level radioactive waste management compact.

The party states recognize that low-level radioactive wastes are generated by activities and services that benefit the citizens of the states. The party states agree that each state is responsible for providing for the management of low-level radioactive waste generated within its borders, except for low-level radioactive waste generated as a result of defense activities of the federal government or federal research and development activities. The party states find that the Congress of the United States by enacting the Low-level Radioactive Waste Policy Act [Public Law 96-573; 94 Stat. 3347; 42 U.S.C. 2021b to 2021d], has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste. It is further recognized and is the policy of the party states that the protection of the health and safety of the citizens of the party states and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is also the policy of party states to this compact to require the reduction of the volume of low-level

radioactive waste requiring disposal within the region. It is the purpose of this compact to provide the means for such a cooperative effort between or among party states so that the protection of the citizens of the states and the maintenance of the viability of the states' environments and economies will be enhanced while sharing the responsibilities of low-level radioactive waste management.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context otherwise requires:

1. "Agreement state" means any state with which the United States nuclear regulatory commission has entered into an effective agreement under section 274(b) of the Atomic Energy Act of 1954, as amended and in effect on January 1, 1985.

2. "Commission" means the Dakota interstate low-level radioactive waste management commission.

3. "Compact" means the Dakota interstate low-level radioactive waste management compact.

4. "Decommissioning" means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.

5. "Eligible state" means a state qualified to be a party state to this compact as provided in article III.

6. "Facility" means a parcel of land, together with the structures, equipment, and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste.

7. "Generator" means any person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity and who is licensed by the United States nuclear regulatory commission or an agreement-status party state to produce or possess such waste. "Generator" does not include a person who provides a service by arranging for the collection, transportation, treatment, storage, or disposal of low-level radioactive waste generated outside the region.

8. "Host state" means a party state in which a regional facility is located or being developed.

9. "Institutional control period" means that period of time in which the facility license is transferred to the site

owner for long-term observation and maintenance following the postclosure period in compliance with appropriate regulations.

10. "Low-level radioactive waste" means radioactive waste that is neither high-level waste nor transuranic waste, nor spent nuclear fuel, nor byproduct material as defined in section 11e (2) of the Atomic Energy Act of 1954, as amended and in effect on January 1, 1985, and is classified by the federal government as low-level waste, consistent with existing law, but does not include waste generated as a result of atomic energy defense activities of the federal government, as defined in Pub. L. 96-573, or federal research and development activities.

11. "Operator" means a person who operates a regional facility.

12. "Party state" means any state which is a signatory party to this compact.

13. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision, or agency thereof, and any legal successor, representative agent or agency of the foregoing.

14. "Postclosure period" means that period of time after completion of closure of a disposal site during which the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site to assure that the disposal site will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.

15. "Region" means the combined geographical area within the boundaries of the party states.

16. "Regional facility" means a facility within any party state.

17. "State" includes the Commonwealth of Puerto Rico and the Virgin Islands.

18. "Storage" means the temporary holding of low-level radioactive waste for treatment or disposal.

19. "Waste management" means the storage, transportation, treatment, or disposal of low-level radioactive waste.

ARTICLE III. GENERAL PROVISIONS

1. North Dakota and South Dakota are eligible to become a party to this compact. Any state not eligible for membership in the compact may petition the commission for

eligibility. The commission may establish appropriate eligibility requirements. These requirements must include an eligibility fee and designation as a host state. A petitioning state becomes eligible for membership in the compact upon an affirmative majority approval by the commission, including one affirmative vote from each party state. Any state becoming eligible upon approval of the commission becomes a member of the compact in the same manner as any state eligible for membership at the time this compact enters into force.

2. This compact is effective after enactment into law by the legislatures of North Dakota and South Dakota and federal ratification. However, those provisions in article IV relating to the restrictions on importation and exportation of low-level radioactive waste are not effective until Congress has consented to this compact. Ratification of this compact by an eligible state in substantially the same language contained herein and in full agreement with the provisions contained herein is a complete and legally effective ratification.

3. Congress may withdraw its consent every five years. Failure of Congress to withdraw its consent affirmatively has the effect of renewing consent for an additional five-year period. The consent given to this compact by Congress extends to any future admittance of new party states under this article and to the power to ban the importation and exportation of low-level radioactive waste pursuant to the provisions of this compact.

4. A party state may withdraw from this compact by enacting a statute repealing its enacting legislation. Unless permitted earlier by unanimous approval of the commission, withdrawal takes effect five years after the governor of the withdrawing state has given notice in writing of withdrawal to the commission and the governor of each party state. Withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of the withdrawal.

5. A party state that fails to comply with the terms of this compact or fulfill its obligations hereunder may, after notice and hearing, have its privileges suspended or its membership in the compact revoked by the commission. Revocation takes effect one year from the date the party state receives written notice from the commission of its action. The commission may require the party state to pay to the commission, for a period not to exceed five years from the date of notice of revocation, an amount determined by the commission to ensure the continued availability of safe and economical waste management facilities for all remaining party states. Such state shall also pay an amount equal to that which the party

state had contributed to the annual budget of the commission if that party state would have remained a member of the compact. All legal rights established under this compact of any party state which has its membership revoked shall cease upon the effective date of revocation. However, any legal obligations of a party state arising prior to the effective date of revocation do not cease until they have been fulfilled. Written notice of revocation of any state's membership in the compact must be transmitted immediately following the vote of the commission to the governor of the affected party state, all other governors of the party states, and the Congress of the United States.

6. If a party state withdraws from this compact or if its membership is revoked pursuant to this article, that state's representatives to the commission cease to be members when the withdrawal or revocation takes effect.

7. The withdrawal of a party state from this compact under this article or the revocation of a state's membership in this compact under this article does not affect the applicability of this compact to the remaining party states.

ARTICLE IV. THE COMMISSION

1. There is hereby created the Dakota interstate low-level radioactive waste management commission.

2. Each party state shall designate officials of that state as the persons responsible for administration of this compact. The officials so designated shall be known as commissioners. Each party state shall designate two commissioners, except that if a party state becomes a host state for a disposal facility it shall designate three commissioners to serve during the period that its facility is operating. A host state's third commissioner must be designated by the host state as soon as is practicable after the commission has approved the host state's proposal to host a facility under article V. The governor of each party state shall notify the governor of any other party state in writing of the identities of that state's initial commissioners and one alternate for each commissioner, the alternate to act on behalf of the commissioner only in the commissioner's absence. If a commissioner or alternate is replaced after the commission is formed, the governor shall notify the commission of the replacement. Each party state shall determine how and for what term any alternate may be appointed to perform each member's duties.

3. Each commission member is entitled to one vote. Unless otherwise provided, no action of the commission is binding unless a majority of the total membership cast its votes

in the affirmative. The commission shall elect annually from among its members a chairman and other officers as it deems appropriate. The commission shall adopt and publish policy statements, bylaws, and rules necessary for the performance of its duties and powers under this compact.

4. The commission shall meet at least once a year and shall also meet upon the call of the chairman or upon the call of two or more members. Meetings of the commission may be held in any place within the region reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations may be found. Reasonable public notice and opportunity for comment must be given with respect to any meeting. All meetings of the commission must be open to the public, except any meeting that deals with sensitive personnel issues or which involves attorney-client communications, to the extent a meeting dealing with sensitive personnel issues or attorney-client communications can be closed by law of the state in which the meeting is held. All commission actions and decisions must be appropriately recorded.

5. The commission is responsible for the expenses of members of the commission.

6. The commission shall set and approve its first annual budget as soon as practicable after its initial meeting. Each party state shall equally contribute to the commission budget on an annual basis for administrative costs an amount not to exceed fifty thousand dollars until surcharges collected from users of a facility are sufficient to cover the annual budget of the commission. Any state hosting a facility within the region shall levy a surcharge on each user of the facility, based on each user's low-level radioactive waste volume and characteristics, in an amount sufficient to cover the annual budget of the commission and to reimburse party states for contributions made for defraying the administrative costs of the commission. A host state collecting this surcharge may retain a portion of the amount collected sufficient to cover its administrative costs of collection.

7. The commission shall keep accurate accounts of all receipts and disbursements. The commission shall engage an independent certified public accountant annually to audit all receipts and disbursements of commission funds and submit an audit report to the commission.

8. The commission may accept for any of its purposes and functions donations, grants of money, equipment, supplies, materials, and services from any state or the federal government or any subdivision or agency thereof, or interstate agency, or from any person. The nature,

amount, and condition attendant upon any acceptance pursuant to this subsection together with the identity of the donor, grantor, or lender, must be detailed in commission records.

9. The commission is not responsible for any costs associated with:

   a. The licensing and construction of any facility;

   b. The operation of any facility;

   c. The stabilization and closure of any facility;

   d. The postclosure observation and maintenance of any facility;

   e. The extended institutional control and postclosure observation and maintenance of any facility; or

   f. Transportation of low-level radioactive waste within the region or to a facility outside the region.

10. The commission may establish committees for the purpose of advising the commission on matters pertaining to the management of low-level radioactive waste.

11. The commission may employ a staff to carry out its duties and functions. The commission may contract with any person to assist the commission.

12. The commission is a legal entity separate and distinct from the party states, capable of acting in its own behalf, and is liable for its actions. Liability of the commission does not extend to the party states. Members of the commission and their staff are not personally liable for actions taken by them in their official capacity.

13. Generators, transporters of low-level radioactive waste, owners of facilities and operators of facilities, are liable for their acts, omission, conduct, or relationships in accordance with all laws relating to those activities. These liabilities continue through the postclosure period and the institutional control period of the regional facility. However, during the institutional control period, such liability is secondary to any fund set aside by the commission or the host state for use during the institutional control period.

14. The commission has the power to sue. The commission may appear as an intervenor or party in interest before any court of law, federal, state, or local agency, board, or commission that has jurisdiction over the management of

low-level radioactive wastes. The authority to intervene or otherwise appear may be exercised only after an affirmative majority vote of the commission. In order to represent its views, the commission may arrange for any expert testimony, reports, evidence, or other participation as it deems necessary.

15. The commission may provide a means of compensation for persons injured or property damaged during the institutional control period due to the waste management nature of the regional facility. This voluntary obligation may be met by a special fund, insurance, or other means.

    a. For purposes of this section, the commission may impose a waste management surcharge to be collected by the operator of the regional facility from all users of the facility; to establish a separate insurance entity, formed by but separate from the commission itself or any party state, and under terms and conditions as it decides and exempt from party state insurance regulation; or to take any other measure to implement the provisions of this section.

    b. The existence of any fund or other means of compensation does not imply any liability by the commission, the nonhost party state or states, or any of their officials and staff, which are exempted from liability by other provisions of this compact. Claims or suits for compensation must be directed against the fund, the insurance company, or other entity, unless the commission, by rule, directs otherwise.

16. Any commission fund, insurance, or other means of compensation may also be available for third party relief during the operational and postclosure periods, as the commission may direct, but only to the extent that no other funds, insurance, tort compensation, or other means are available from the host state or other entities, under article V or otherwise. Any commission contribution or fund may not be used for cleanup or restoration of the regional facility and its environs during the operational and postclosure period.

17. The commission may enter into agreements with any person for the right of access to facilities outside the region for low-level radioactive waste generated within the region. An agreement to export low-level radioactive waste requires an affirmative majority approval by the commission, including an affirmative majority vote by the commissioners of any host state that may be affected.

18. The commission may authorize siting and establishment of a monitorable depository for exclusive disposal of low-level

radioactive waste generated within the member states. This authority may be exercised only under the provisions outlined in this compact.

19. The commission may authorize a multistate or multicompact low-level radioactive waste disposal site that must remain under the ownership and control of the host state and under the continuing authority of the commission. This authority may be exercised only under the provisions outlined in this compact.

20. The commission may contract with nonparty states, or other interstate compacts on low-level radioactive waste disposal, or generators therein to accept for disposal low-level radioactive waste generated outside the region. These contracts must provide that the nonparty state or other interstate compact agrees to provide right of access to facilities operated by the nonparty state or other interstate compact for low-level radioactive waste generated within the borders of the party states following termination of operations of any low-level radioactive waste disposal facility within the borders of the party states.

21. The commission may examine any necessary financial records of an operator of a regional facility pertaining to any assessment or collection of any charge or surcharge by an operator on behalf of the commission or a host state.

22. The commission shall receive and act on the application of a nonparty state to become an eligible state in accordance with article III.

23. The commission shall submit an annual report to the governors of the party states regarding the activities of the commission.

24. The commission may develop a regional waste management plan to ensure safe and effective transportation, disposal, and management of low-level radioactive waste within the region.

25. Upon request of party states, the commission shall mediate disputes that arise between the party states regarding this compact.

26. Any person or party state aggrieved by a final decision of the commission may obtain judicial review of the decision in the United States district court in the district where the commission maintains its headquarters by filing in that court a petition for review within sixty days after the commission's final decision.

ARTICLE V. HOST STATE RIGHTS AND RESPONSIBILITIES

1. A party state may volunteer to become a host state and the commission may designate that state as a host state upon a majority vote of its members. The governor of a party state so volunteering shall submit that state's proposal to host a facility to the commission for its approval. Neither the commission nor any party state may approve or license a second disposal facility as long as any approved licensed disposal facility is operating within the region.

2. If the commission approves a proposal by a party state to become a host state, that state shall then accept final authority and responsibility, including final approval, of the site and the facility. Final approval must be based on all of the following criteria:

   a. The capability of the applicant to obtain a license from the applicable authority.

   b. The economic efficiency of the proposed regional facility, including the total estimated disposal and treatment costs per cubic foot [28.32 liters] of low-level radioactive waste.

   c. Financial assurances.

   d. An environmental impact report on the selected site, to be prepared by the United States geological survey pursuant to a contract with that agency or, if no such contract agreement is forthcoming, pursuant to a contract with any other appropriate, equivalent public or private entity having sufficient expertise. The report must meet the requirements of the nuclear regulatory commission's health and safety standards, procedural requirements, and environmental reviews.

   e. Accessibility to all party states.

   f. Other criteria as shall be determined by the state to be necessary for the selection of the best low-level radioactive waste disposal applicant, based on the health, safety, and welfare of the citizens in the region and the party states.

3. A host state may not abdicate its proprietary role, but may transfer its operational functions to a separate commercial enterprise.

4. A host state may fulfill the federal requirements necessary to become an agreement state and may acquire and accept ownership of the real property associated with the facility. It is the policy of this compact and must be the policy of the commission to encourage any host state to become an agreement state. Host state involvement with a facility must include the option of either host state

operation of the facility or private operation of the facility by agreement.

5. A host state shall ensure that any facility within its jurisdiction acquires and maintains all necessary United States nuclear regulatory commission permits and licenses. A host state may regulate and license any facility within its borders. Regulation and licensing may include restrictions on the type and quantity of low-level radioactive waste a facility within its borders may accept.

6. The host state shall approve or disapprove any fees, charges, or surcharges to be levied by a facility operator or the political subdivision where the facility is located against generators or transporters using the facility.

7. The host state may examine all records of operators of regional facilities pertaining to operating costs, profits, or assessment or collection of any fee, charge, or surcharge.

8. A host state shall ensure through enforcement procedures the safe operation, and closure and postclosure observation and maintenance of a facility, and shall ensure institutional control of a facility, including adequate financial assurances by any operator and adequate emergency response procedures. It shall periodically review and report to the commission on the status of the postclosure and institutional control funds and the remaining useful life of the facility.

9. A host state shall solicit comments from each party state and the commission regarding the siting, operation, financial assurances, closure, postclosure observation and maintenance, and institutional control of a regional facility. A host state shall ensure that all applications for permits and licenses required for development and operation of a regional facility are processed within a reasonable period of time.

10. The responsibility for ensuring compensation and cleanup during the operational and postclosure periods rests with the host state if appropriate legal action against low-level radioactive waste generators, transporters, or operators associated with the facility provides insufficient funding for such purposes. The host state shall require availability of funds and procedures for compensation of injured persons, including facility employees, and property damage, except any possible claims for diminution of property values, due to the existence and operation of a regional facility, and for cleanup and restoration of the facility and surrounding areas. The host state may satisfy and limit this obligation by

requiring bonds, insurance, compensation funds, or any other means to be imposed either on the facility operator or assumed by the state itself, or both. This subsection does not alter the liability of any person under applicable state and federal laws or the ability of the host state to use for remedial action under its laws any financial assurance established with respect to the facility.

11. Fees, charges, and surcharges must be imposed equitably by a host state upon all party state users of a regional facility.

12. This compact does not affect relations or agreements between a host state and a nonparty state or nonparty state users unless a relationship or agreement has a direct effect on a nonhost party state, at which time the commission may approve or disapprove those aspects of the relationship or agreement that directly affect the nonhost party state.

13. Each party state agrees that decisions regarding low-level radioactive waste management facilities in their region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

14. Fees must be reasonable and sufficient to cover all costs related to the development, operation, closure, postclosure observation and maintenance, and institutional control of the regional facility. The host state shall determine a schedule for contributions to the postclosure observation and maintenance and institutional control funds.

15. A host state may impose a state surcharge per unit of low-level radioactive waste received at any regional facility within its borders. The state surcharge is in addition to the fees charged for waste management. The surcharge must be sufficient to cover all reasonable costs associated with administration and regulation of the facility.

16. Except as otherwise provided, this subsection does not limit the ability of the host state, or the political subdivision in which the regional facility is situated, to impose surcharges for purposes including, but not limited to, host state and host community compensation and host state and host community development incentives. These surcharges must be reasonable.

17. A host state may not take action to close any regional facility located within its borders for a period of twenty years or the design life of the facility, whichever is

longer, unless the facility is closed for reasons of public peace, health, safety, or welfare or for emergency purposes under the provisions of this article. The host state may transfer its responsibility for long-term care of a closed site to the United States department of energy pursuant to subtitle D, section 151 of the Nuclear Waste Policy Act of 1982.

18. A host state, through enforcement and appropriate financial arrangements, shall ensure that a regional facility located within its borders which is permanently closed is properly decommissioned. A host state, similarly, shall provide for the care of a closed or decommissioned regional facility within its borders so that the public health and safety of the state and region are ensured.

19. A host state intending to close a regional facility located within its borders shall notify the commission in writing of its intention and the reasons. Notification must be given to the commission at least five years prior to the intended date of closure. This subsection does not prevent an emergency closing of a regional facility by a host state to protect its air, land, and water resources and the health and safety of its citizens. However, a host state that has an emergency closing of a regional facility shall notify the commission in writing within three working days of its action and shall, within thirty working days of its action, demonstrate justification for the closing.

20. If a regional facility is closed before an additional or new facility becomes operational, low-level radioactive waste generated within the region may be shipped to any location agreed on by the commission until a new regional facility is operational.

ARTICLE VI. PARTY STATES' RIGHTS AND RESPONSIBILITIES

1. No state holding membership in any other regional compact for the management of low-level radioactive waste may become a member of this compact.

2. Until a party state has volunteered to become a host state and the commission and the host state have authorized a low-level radioactive waste disposal facility that accepts low-level radioactive waste from outside the region pursuant to article IV, it is unlawful for any person to import low-level radioactive waste into the region from outside the region except for purposes of transport through the region, which transport shall follow all applicable laws of involved party states.

3. If a party state volunteers to become a host state and a regional facility subsequently becomes operational, it is

unlawful for any person to export from the region low-level radioactive waste that is generated within the region, unless so authorized pursuant to article IV.

4. Facilities located in any party state, other than facilities established or maintained by individual low-level radioactive waste generators for the management of their own low-level radioactive waste, shall accept low-level radioactive waste generated in any party state if the low-level radioactive waste has been packaged and transported according to applicable laws and regulations.

5. All laws and regulations, or parts thereof, of any party state or subdivision or instrumentality thereof which are in conflict with this compact are superseded to the extent of the conflict. However, the provisions of chapter 240 of the 1984 Session Laws of South Dakota may not be construed to be in conflict with any provisions of this compact and may not be superseded by it. Any legal right, obligation, violation, or penalty arising under such laws or regulations prior to the enactment of this compact, or not in conflict with it, is not affected by the provisions of the compact.

6. No party state may enact any law or regulation or attempt to enforce any measure which is inconsistent with this compact. No law or regulation of a party state or subdivision or instrumentality thereof may be applied so as to restrict or make more costly or inconvenient access to any regional facility by the generators or transporters of another party state than for the generators or transporters of the state where the facility is situated.

7. This compact does not prevent onsite disposal of waste by a generator.

8. No law, ordinance, or regulation of any party state or any subdivision or instrumentality thereof may prohibit, suspend, or unreasonably delay, limit, or restrict the operation of a siting or licensing agency in the designation, siting, or licensing of a regional facility. Any such provision in existence at the time of ratification of this compact is superseded.

9. Each party state is responsible for its own enforcement of any applicable federal and state laws and regulations pertaining to the packaging and transportation of low-level radioactive waste generated within or passing through its borders and shall adopt practices that will ensure that low-level radioactive waste shipments originating within its borders and destined for a regional facility conform to applicable packaging and transportation laws and regulations.

10. Any low-level radioactive waste shipment originating within any state and destined for a facility within a host state shall conform to the applicable packaging and transportation requirements and regulations of the host state. These requirements and regulations must include all of the following:

    a. Maintenance of an inventory of all generators within the state that have shipped or expect to ship low-level radioactive waste to facilities in another party state.

    b. Periodic unannounced inspection of the premises of generators and the waste management activities thereon.

    c. Regulation of the containers in which low-level radioactive waste may be shipped and implementation of requirements that generators use only the type of container authorized by the state.

    d. Assurance that inspections of carriers which transport low-level radioactive waste are conducted by proper authorities and appropriate enforcement action is taken for violations.

    e. After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, pursuit of appropriate action to assure that such violations do not recur. This action may include inspection of every individual low-level radioactive waste shipment by that generator or a requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility.

11. A party state may impose fees upon generators and transporters to recover the cost of inspections and other practices under this article. This article does not limit any party state's authority to impose additional or more stringent standards on generators or transporters than those required under this article.

12. Once a party state has served as a host state and has decommissioned its facilities under this compact, it may not be expected to serve again as host state until every party state has served. Nothing in this compact prevents a party state that has served as a host state from revolunteering to host a new facility.

ARTICLE VII. ADDITIONAL PROVISIONS

1. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared by a court to be contrary to the constitution of

any participating state or of the United States or its applicability to any person or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any person or circumstance is not affected thereby. If any provision of this compact is held contrary to the constitution of any state participating therein, the compact remains in full force and effect as to the state affected as to all severable matters.

2. Nothing in this compact abrogates or limits the applicability of any Act of Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by Congress.

3. Nothing in this compact abrogates or limits the regulatory responsibility or authority of the United States nuclear regulatory commission or of an agreement state under section 274 of the Atomic Energy Act of 1954, as amended and in effect on January 1, 1985.

SECTION 2. State commission members. The governor shall appoint the state health officer and one other person in the governor's discretion as this state's representatives on the Dakota interstate low-level radioactive waste management commission. The state members of this commission may designate alternates to act on their behalf. The term of the member appointed by the governor is two years.

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 $50,000, or so much thereof as may be necessary, to the state department of health for the purpose of paying the state's share of the administrative expenses of the Dakota interstate low-level radioactive waste management commission for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 4, 1985

CHAPTER 298

HOUSE BILL NO. 1078
(Legislative Council)
(Interim Natural Resources Committee)

ROCKY MOUNTAIN INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE

AN ACT to enter into the Rocky Mountain interstate compact on low-level radioactive waste; to designate North Dakota's member of the administrative board under this compact; and to provide a contingent effective date.

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

SECTION 1. **Rocky Mountain interstate compact on low-level radioactive waste.** The Rocky Mountain interstate compact on low-level radioactive waste is hereby entered into with all jurisdictions legally joining the compact, in the form substantially as follows:

ARTICLE I. FINDINGS AND PURPOSE

1. The party states agree that each state is responsible for providing for the management of low-level radioactive waste generated within its borders, except for low-level radioactive waste generated as a result of defense activities of the federal government or federal research and development activities. Moreover, the party states find that the Congress of the United States, by enacting the "Low-level Radioactive Waste Policy Act" [Pub. L. 96-573], has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

2. It is the purpose of the party states, by entering into an interstate compact, to establish the means for cooperative effort in managing low-level radioactive waste; to ensure the availability and economic viability of sufficient facilities for the proper and efficient management of low-level radioactive waste generated within the region while preventing unnecessary and uneconomic proliferation of such facilities; to encourage reduction of the volume of low-level radioactive waste requiring disposal within the region; to restrict management within the region of low-level radioactive waste generated outside the region; to distribute the costs, benefits, and obligations of low-

level radioactive waste management equitably among the party states; and by these means to promote the health, safety, and welfare of the residents within the region.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise:

1. "Board" means the Rocky Mountain low-level radioactive waste board.

2. "Carrier" means a person who transports low-level radioactive waste.

3. "Disposal" means the isolation of low-level radioactive waste from the biosphere, with no intention of retrieval, such as by land burial.

4. "Facility" means any property, equipment, or structure used or to be used for the management of low-level radioactive waste.

5. "Generate" means to produce low-level radioactive waste.

6. "Host state" means a party state in which a regional facility is located or being developed.

7. "Low-level radioactive waste" means radioactive waste, other than:

   a. Waste generated as a result of defense activities of the federal government or federal research and development activities;

   b. High-level radioactive waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;

   c. Waste material containing transuranic elements with contamination levels greater than ten nanocuries per gram of waste material;

   d. Byproduct material as defined in Section 11 e. (2) of the "Atomic Energy Act of 1954", as amended on November 8, 1978; or

   e. Wastes from mining, milling, smelting, or similar processing of ores and mineral-bearing material primarily for minerals other than radium.

8. "Management" means collection, consolidation, storage, treatment, incineration, or disposal.

9. "Operator" means a person who operates a regional facility.

10. "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

11. "Region" means the combined geographical area within the boundaries of the party states.

12. "Regional facility" means a facility within any party state which:

    a. Has been approved as a regional facility by the board; or

    b. Is the low-level radioactive waste facility in existence on January 1, 1982, at Beatty, Nevada.

ARTICLE III. RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS

1. There must be regional facilities sufficient to manage the low-level radioactive waste generated within the region. At least one regional facility must be open and operating in a party state other than Nevada within six years after this compact becomes law in Nevada and in one other state.

2. Low-level radioactive waste generated within the region must be managed at regional facilities without discrimination among the party states; provided, however, that a host state may close a regional facility when necessary for public health or safety.

3. Each party state which, according to reasonable projections made by the board, is expected to generate twenty percent or more in cubic feet, except as otherwise determined by the board, of the low-level radioactive waste generated within the region has an obligation to become a host state in compliance with subsection 4 of this article.

4. A host state, or a party state seeking to fulfill its obligation to become a host state, shall:

    a. Cause a regional facility to be developed on a timely basis as determined by the board, and secure the approval of such regional facility by the board as provided in article IV before allowing site preparation or physical construction to begin;

    b. Ensure by its own law, consistent with any applicable federal law, the protection and preservation of public health and safety in the siting, design, development, licensure or other regulation, operation, closure, decommissioning, and long-term care of the regional facilities within the state;

c. Subject to the approval of the board, ensure that charges for management of low-level radioactive waste at the regional facilities within the state are reasonable;

d. Solicit comments from each other party state and the board regarding siting, design, development, licensure or other regulation, operation, closure, decommissioning, and long-term care of the regional facilities within the state and respond in writing to such comments;

e. Submit an annual report to the board which contains projections of the anticipated future capacity and availability of the regional facilities within the state, together with other information required by the board; and

f. Notify the board immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the board.

5. Once a party state has served as a host state, it is not obligated to serve again until each other party state having an obligation under subsection 3 of this article has fulfilled that obligation. Nevada, already being a host state, is not obligated to serve again as a host state until every other party state has so served.

6. Each party state:

a. Agrees to adopt and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional facility to conform to packaging and transportation requirements and regulations. These procedures include:

(1) Periodic inspections of packaging and shipping practices.

(2) Periodic inspections of low-level radioactive waste containers while in the custody of carriers.

(3) Appropriate enforcement actions with respect to violations.

b. Agrees that after receiving notification from a host state that a person in the party state has violated packaging, shipping, or transporting requirements or regulations, it shall take appropriate action to ensure that violations do not recur. Appropriate

action may include the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected.

c. May impose fees to recover the cost of the practices provided for in subdivisions a and b of this subsection.

d. Shall maintain an inventory of all generators within the state that may have low-level radioactive waste to be managed at a regional facility.

e. May impose requirements or regulations more stringent than those required by this subsection.

ARTICLE IV. BOARD APPROVAL OF REGIONAL FACILITIES

1. Within ninety days after being requested to do so by a party state, the board shall approve or disapprove a regional facility to be located within that state.

2. The board may approve a regional facility only if the board determines that:

a. There will be, for the foreseeable future, sufficient demand to render operation of the proposed facility economically feasible without endangering the economic feasibility of operation of any other regional facility; and

b. The facility will have sufficient capacity to serve the needs of the region for a reasonable period of years.

ARTICLE V. SURCHARGES

1. The board shall impose a "compact surcharge" per unit of low-level radioactive waste received at any regional facility. The surcharge must be adequate to pay the costs and expenses of the board in the conduct of its authorized activities and may be increased or decreased as the board deems necessary.

2. A host state may impose a "state surcharge" per unit of waste received at any regional facility within the state. The host state may fix and change the amount of the state surcharge subject to approval by the board. Money received from the state surcharge may be used by the host state for any purpose authorized by its own law, including costs of licensure and regulatory activities related to the regional facility, reserves for decommissioning and long-term care of the regional facility, and local impact assistance.

ARTICLE VI. THE BOARD

1. The Rocky Mountain low-level radioactive waste board, which is not an agency or instrumentality of any party state, is created.

2. The board consists of one member from each party state. Each party state shall determine how and for what term its member is appointed, and how and for what term any alternate may be appointed to perform that member's duties on the board in the member's absence.

3. Each party state is entitled to one vote. A majority of the board constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the board is necessary for the board to take any action.

4. The board shall meet at least once a year and otherwise as its business requires. Meetings of the board may be held in any place within the region deemed by the board to be reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations may be found. Reasonable public notice and opportunity for comment must be given with respect to any meeting; provided, however, that nothing in this subsection precludes the board from meeting in executive session when seeking legal advice from its attorneys or when discussing the employment, discipline, or termination of any of its employees.

5. The board shall pay necessary travel and reasonable per diem expenses of its members, alternates, and advisory committee members.

6. The board shall organize itself for the efficient conduct of its business. It shall adopt and publish rules consistent with this compact regarding its organization and procedures. In special circumstances the board, with unanimous consent of its members, may take actions by telephone; provided, however, that any action taken by telephone must be confirmed in writing by each member within thirty days. Any action taken by telephone must be noted in the minutes of the board.

7. The board may use for its purposes the services of any personnel or other resources which may be offered by any party state.

8. The board may establish its offices in space provided for that purpose by any of the party states or, if space is not provided or is deemed inadequate, in any space within the region selected by the board.

9. Consistent with available funds, the board may contract for necessary personnel services and may employ staff necessary to carry out its duties. Staff must be employed without regard for the personnel, civil service, or merit system laws of any of the party states and shall serve at the pleasure of the board. The board may provide appropriate employee benefit programs for its staff.

10. The board shall establish a fiscal year that conforms to the extent practicable to the fiscal years of the party states.

11. The board shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the board must be conducted by an independent certified public accountant, and the audit report must be made a part of the annual report of the board.

12. The board shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

13. Upon legislative enactment of this compact, each party state shall appropriate seventy thousand dollars to the board to support its activities prior to the collection of sufficient funds through the compact surcharge imposed pursuant to subsection 1 of article V of this compact.

14. The board may accept any donations, grants, equipment, supplies, materials, or services, conditional or otherwise, from any source. The nature, amount, and condition, if any, attendant upon any donation, grant, or other resources accepted pursuant to this subsection, together with the identity of the donor or grantor, must be detailed in the annual report of the board.

15. In addition to the powers and duties conferred upon the board pursuant to other provisions of this compact, the board:

    a. Shall submit communications to the governors and to the presiding officers of the legislative assemblies of the party states regarding the activities of the board, including an annual report to be submitted by December fifteenth.

    b. May assemble and make available to the governments of the party states and to the public through its members information concerning low-level radioactive waste management needs, technologies, and problems.

    c. Shall keep a current inventory of all generators within the region, based upon information provided by the party states.

d. Shall keep a current inventory of all regional facilities, including information on the size, capacity, and location of specific low-level radioactive wastes capable of being managed and the projected useful life of each regional facility.

e. May keep a current inventory of all low-level radioactive waste facilities in the region, based upon information provided by the party states.

f. Shall ascertain on a continuing basis the needs for regional facilities and capacity to manage each of the various classes of low-level radioactive waste.

g. May develop a regional low-level radioactive waste management plan.

h. May establish such advisory committees as it determines necessary for the purpose of advising the board on matters pertaining to the management of low-level radioactive waste.

i. May contract as it deems appropriate to accomplish its duties and effectuate its powers, subject to its projected available resources; but no contract made by the board shall bind any party state.

j. Shall make suggestions to appropriate officials of the party states to ensure that adequate emergency response programs are available for dealing with any exigency that might arise with respect to low-level radioactive waste transportation or management.

k. Shall prepare contingency plans, with the cooperation and approval of the host state, for management of low-level radioactive waste in the event any regional facility should be closed.

l. May examine all records of operators of regional facilities pertaining to operating costs, profits, or the assessment or collection of any charge, fee, or surcharge.

m. Shall have the power to sue.

n. When authorized by unanimous vote of its members, may intervene as of right in any administrative or judicial proceeding involving low-level radioactive waste.

ARTICLE VII. PROHIBITED ACTS AND PENALTIES

1. It is unlawful for any person to dispose of low-level radioactive waste within the region, except at a regional facility; provided, however, that a generator who, prior

to January 1, 1982, had been disposing of only the generator's own waste on the generator's own property may, subject to applicable federal and state law, continue to do so.

2. After January 1, 1986, it is unlawful for any person to export low-level radioactive waste, which was generated within the region, outside the region unless authorized to do so by the board. In determining whether to grant such authorization, the factors to be considered by the board include:

   a. The economic impact of the export of the low-level radioactive waste on the regional facilities;

   b. The economic impact on the generator of refusing to permit the export of the low-level radioactive waste; and

   c. The availability of a regional facility appropriate for the disposal of the low-level radioactive waste involved.

3. After January 1, 1986, it is unlawful for any person to manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region or unless authorized to do so both by the board and by the state in which the management takes place. In determining whether to grant authorization, the factors to be considered by the board include:

   a. The impact of importing low-level radioactive waste on the available capacity and projected life of the regional facilities;

   b. The economic impact on the regional facilities; and

   c. The availability of a regional facility appropriate for the disposal of the type of low-level radioactive waste involved.

4. It is unlawful for any person to manage at a regional facility any radioactive waste other than low-level radioactive waste, unless authorized to do so both by the board and the host state. In determining whether to grant the authorization, the factors to be considered by the board include:

   a. The impact of allowing such management on the available capacity and projected life of the regional facilities;

b. The availability of a facility appropriate for the disposal of the type of low-level radioactive waste involved;

c. The existence of transuranic elements in the low-level radioactive waste; and

d. The economic impact on the regional facilities.

5. Any person who violates subsection 1 or 2 of this article is liable to the board for a civil penalty not to exceed ten times the charges that would have been charged for disposal of the low-level radioactive waste at a regional facility.

6. Any person who violates subsection 3 or 4 of this article is liable to the board for a civil penalty not to exceed ten times the charges that were charged for management of the low-level radioactive waste at a regional facility.

7. The civil penalties provided for in subsections 5 and 6 of this article may be enforced and collected in any court of general jurisdiction within the region where necessary jurisdiction is obtained by an appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

8. Out of any civil penalty collected for a violation of subsection 1 or 2 of this article, the board shall pay to the appropriate operator a sum sufficient in the judgment of the board to compensate the operator for any loss of revenue attributable to the violation. Such compensation may be subject to state and compact surcharges as if received in the normal course of the operator's business. The remainder of the civil penalty collected shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

9. Any civil penalty collected for a violation of subsection 3 or 4 of this article must be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

10. Violations of subsection 1, 2, 3, or 4 of this article may be enjoined by any court of general jurisdiction within the region where necessary jurisdiction is obtained in any appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by

the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

11. No state attorney general is required to bring any proceeding under any subsection of this article, except upon that person's consent.

ARTICLE VIII. ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION

1. Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming are eligible to become parties to this compact. Any other state may be made eligible by unanimous consent of the board.

2. An eligible state may become a party state by legislative enactment of this compact or by executive order of its governor adopting this compact; provided, however, a state becoming a party by executive order ceases to be a party state upon adjournment of the first general session of its legislative assembly convened thereafter, unless before adjournment the legislative assembly has enacted this compact.

3. This compact is effective when it has been enacted by the legislative assemblies of two eligible states in substantially similar form. However, subsections 2 and 3 of article VII are not effective until Congress has by law consented to this compact. Every five years after consent has been given, Congress may by law withdraw its consent.

4. A state that has become a party state by legislative enactment may withdraw by legislation repealing its enactment of this compact; but no repeal is effective until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state must remain available to receive low-level radioactive waste generated within the region until five years after the effective date of the withdrawal; provided, however, this provision does not apply to the existing facility in Beatty, Nevada.

5. A party state may be excluded from this compact by a two-thirds vote of the members representing the other party states, acting in a meeting, on the ground that the state to be excluded has failed to carry out its obligations under this compact. An exclusion may be terminated upon a two-thirds vote of the members acting in a meeting.

ARTICLE IX. CONSTRUCTION AND SEVERABILITY

1. The provisions of this compact must be broadly construed to carry out the purposes of this compact.

2. Nothing in this compact affects any judicial proceeding pending on the effective date of this compact.

3. If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, is not affected.

SECTION 2. **State board member.** The state health officer is this state's member of the board. The state health officer may designate an alternate from the state department of health to act on the state health officer's behalf.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 1987, unless the state of South Dakota, pursuant to chapter 240, 1984 Session Laws of South Dakota, has ratified and approved the Dakota interstate low-level radioactive waste compact as created by, and in substantially form and substance as, House Bill No. 1077 as enacted by the forty-ninth legislative assembly of North Dakota, in which event this Act does not become effective.

Approved March 29, 1985