

Fifty-sixth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO.

Introduced by

Representative Rose

1 A BILL for an Act to create and enact chapter 23-35 of the North Dakota Century Code, relating  
2 to public health law; to amend and reenact section 23-01-04.2, subsection 2 of section  
3 23-07.6-01, subdivision h of subsection 1 of section 40-01.1-04, and section 54-52-02 of the  
4 North Dakota Century Code, relating to references to public health law; to repeal chapters  
5 23-03, 23-04, 23-05, and 23-14 of the North Dakota Century Code, relating to public health law;  
6 and to provide a penalty.

### 7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 **SECTION 1. AMENDMENT.** Section 23-01-04.2 of the 1997 Supplement to the North  
9 Dakota Century Code is amended and reenacted as follows:

10 **23-01-04.2. ~~Legislative intent~~ Department rulemaking authority - Health**  
11 **vaccination charges - Health units.** ~~It is the intent of the~~ The legislative assembly intends  
12 that the state department of health adopt rules defining appropriate administration charges for  
13 vaccine provided by the department to physicians, private clinics, and hospitals. The  
14 department may adopt rules implementing public health units under chapter 23-35. Public  
15 health unit rules must include provisions to aid public health units in providing equality of access  
16 to basic personal health care services and to provide a procedure for distributing grants.

17 **SECTION 2. AMENDMENT.** Subsection 2 of section 23-07.6-01 of the North Dakota  
18 Century Code is amended and reenacted as follows:

19 2. "Local board" means a board of health as ~~described~~ defined under section  
20 23-05-01 ~~or a district board of health as described under section 23-14-04.~~

21 **SECTION 3.** Chapter 23-35 of the North Dakota Century Code is created and enacted  
22 as follows:

23 **23-35-01. Definitions.** As used in this chapter, unless the context otherwise requires:

24 1. "Board of health" means a district, county, or city board of health.

2. "Department" means the state department of health.
3. "Governing body" means, as applicable, a city commission, city council, board of county commissioners, or joint board of county commissioners.
4. "Health district" means an entity formed under section 23-35-04 or 23-35-05.
5. "Joint board of county commissioners" means the boards of county commissioners of two or more counties acting together in joint session.
6. "Local government" means, as applicable, a city or county.
7. "Local health officer" means the health officer of a public health unit.
8. "Public health unit" means, as applicable, the local organization established under this chapter to provide public health services in a city, county, or designated multicounty or city-county area.

**23-35-02. Public health units.** All land in the state must be in a public health unit.

The state health officer may issue rules defining the core functions a public health unit shall undertake.

**23-35-03. Boards of health.**

1. The department shall advise boards of health.
2. A local government's governing body shall establish a public health unit by creating and appointing a board of health, which in the case of the city, may be composed of the city's governing body. A board of health must have at least five members.
  - a. In the case of a board of health created by a joint board of county commissioners, each county in the health district must have at least one representative on the board, and each county of over fifteen thousand population must have an additional representative for each fifteen thousand population or major fraction of that number; and in a district of fewer than five counties, each county must have at least one representative on the district board of health, and the additional representatives selected to constitute the minimum five-member board must be equitably apportioned among the counties on a population basis.
  - b. In the case of a joint city-county health district composed of only one county and having at least one city over fifteen thousand population, each city having a population over fifteen thousand must have a representative on the district

1                   board of health for each fifteen thousand population or major fraction of that  
2                   number, and the remaining population of the county, exclusive of the  
3                   populations of cities with more than fifteen thousand each, must have a  
4                   representative on the district board of health for each fifteen thousand  
5                   population or major fraction of that number, or at least one member if the  
6                   remaining population is less than fifteen thousand.

7           3.   The initial members of any board of health appointed by a governing body must be  
8           appointed for terms as follows: at least one for one year, one for two years, one for  
9           three years, one for four years, and one for five years. If a board has more than  
10           five members, the members must be appointed for staggered terms. All  
11           subsequent appointments are for five-year terms. Each board member shall serve  
12           until a successor is appointed and qualified. If a vacancy occurs, the appointing  
13           government authority shall appoint a member for the remainder of the unexpired  
14           term. Each appointee shall qualify by filing the oath of office. A board of health  
15           may not be all male or all female. If the members of a governing body serve on the  
16           board of health, this subsection does not apply.

17           4.   A board of health shall meet at least quarterly. Special meetings may be held at  
18           any time at the call of the president.

19           5.   Except if the governing body serves as the board of health, at the first meeting  
20           after appointment, and annually, the members of a board of health shall organize  
21           by electing a president, a vice president, and other officers the board considers  
22           necessary. If there is a treasurer and the treasurer is not a public employee, the  
23           treasurer must be bonded in an amount fixed by the board. If the health officer is  
24           not appointed to the board, the health officer does not have a vote in matters of the  
25           board. The office of secretary and treasurer may be combined.

26           6.   Board members who are not public employees may be compensated at a rate not  
27           exceeding sixty-two dollars and fifty cents per day, but for no more than twenty-five  
28           days per year, and may be reimbursed for expenses incurred in the manner and in  
29           an amount not exceeding the amount provided for state officers.

30           **23-35-04. Health districts - Formation - Contracting for services.**

- 1       1. Upon the adoption of a resolution, the governing body may form a multicounty or a  
2       city-county health district.
- 3       2. Notwithstanding this chapter, a board of county commissioners, upon adoption of a  
4       resolution, may contract with a city within a county that has a public health unit  
5       approved by the department to provide health services to the county and in the  
6       cities throughout the county which do not have an approved public health unit. The  
7       contract must comply with section 54-40-08. When a contract is executed, any  
8       provision of this chapter relating to organizing district boards of health does not  
9       apply, and the city public health unit shall exercise all the necessary powers and  
10      duties under this chapter. The department shall treat a county with a contract  
11      under this subsection as a public health unit.

12      **23-35-05. Health districts - Expansion - Merger.**

- 13      1. Upon adoption of a resolution, a county contiguous to a health district or a city  
14      adjacent to a county that is a health district, that is not included in any health  
15      district, may request inclusion as a part of an existing health district. Upon receipt  
16      of a request to become part of an existing health district, the district board of health  
17      shall consider the request and, if the board approves the request by a majority  
18      vote, shall submit the matter to each county and city in the health district. If a  
19      majority of the governing bodies approve the request by a majority vote, the  
20      requesting county or city becomes a part of the health district.
- 21      2. Upon expansion of a health district under this section, the number of board  
22      members must be adjusted to allow the added county or city the same proportion  
23      of members allowed to member cities and counties of the existing health district as  
24      determined under this chapter.
- 25      3. Any two or more health districts may merge into a single health district upon a  
26      majority vote of the respective boards of health and a majority vote of the  
27      governing body of each respective city or county. The assets of each merging  
28      health district become the property of the newly created health district. Board  
29      membership of the new health district must be determined under section 23-35-03,  
30      unless otherwise decided by the board. The new health district maintains the  
31      same authority and powers of the previous health districts. The mill levy of the

1 newly created health district is not limited by the old mill levy but may not exceed  
2 the amount allowed under section 23-35-07.

- 3 4. Upon adoption of a health district plan by two or more counties, the joint board of  
4 county commissioners shall appoint a district board of health.

5 **23-35-06. Health districts - Dissolution - Withdrawal.**

- 6 1. After a health district has been in operation for two years, the district may be  
7 dissolved as provided for in this section. If a petition is filed with the county auditor  
8 of each county of a health district which is signed by qualified electors of the county  
9 equal to ten percent or more of the votes cast in that county for governor at the last  
10 general election, an election on the question of dissolution must be presented to  
11 the qualified electors in each county in the district at the next election held in each  
12 county in the district. If a majority of the votes cast on the question in a majority of  
13 the counties favor dissolution, the health district is dissolved on January first  
14 following the election. If a majority of the votes cast on the question in a majority of  
15 the counties are against dissolution, no other election on this issue may be held for  
16 two years.

- 17 2. After a health district has been in operation for two years, any county may withdraw  
18 from the district as provided in this section. If a petition is filed with the withdrawing  
19 county's auditor which is signed by qualified electors of the county equal to ten  
20 percent or more of the votes cast in that county for governor at the last general  
21 election, an election on the question of withdrawal must be presented to the  
22 qualified electors in the county at the next election in the county. If a majority of  
23 the votes cast on the question favor withdrawing from the district, the county is  
24 withdrawn from the district on January first following the election. If a majority of  
25 the votes cast on the question are against withdrawal, no other election on this  
26 issue may be held for two years.

27 **23-35-07. Health district funds.**

- 28 1. A district board of health shall prepare a budget for the next fiscal year at the time  
29 at which and in the manner in which a county budget is adopted and shall submit  
30 this budget to the board of county commissioners for approval. The amount  
31 budgeted and approved must be prorated in health districts composed of more

1 than one county among the various counties in the health district according to the  
2 assessed valuation of the respective counties in the health district. Within ten days  
3 after approval by the board of county commissioners, the district board of health  
4 shall certify the budget to the respective county auditors and the budget must be  
5 included in the levies of the counties. The budget may not exceed the amount that  
6 can be raised by a levy of five mills on the taxable valuation, subject to public  
7 hearing in each county in the district at least fifteen days before an action taken by  
8 the joint board of county commissioners. Action taken by the joint board of county  
9 commissioners must be based on the record, including comments received at the  
10 public hearing. A levy under this section is not subject to the limitation on the  
11 county tax levy for general and special county purposes. The amount derived by a  
12 levy under this section must be placed in the health district fund. The health district  
13 fund must be deposited with and disbursed by the treasurer of the district board of  
14 health. All counties in the health district quarterly shall remit and make settlements  
15 with the treasurer. Any funds remaining in the fund at the end of any fiscal year  
16 may be carried over to the next fiscal year.

- 17 2. The district board of health, or the president and secretary of the board when  
18 authorized or delegated by the board, shall audit all claims against the health  
19 district fund. The treasurer shall pay all claims from the health district fund. The  
20 district board of health shall approve or ratify all claims at the board's quarterly  
21 meetings.

22 **23-35-08. Boards of health - Powers and duties.** Except when in conflict with a local  
23 ordinance or a civil service rule within its jurisdiction, each board of health:

- 24 1. Shall keep records and make reports required by the department.  
25 2. Shall prepare and submit a public health unit budget.  
26 3. Shall audit, allow, and certify for payment expenses incurred by a board of health  
27 in carrying into effect this chapter.  
28 4. May accept and receive any contribution offered to aid in the work of the board or  
29 public health unit.  
30 5. May make rules regarding any nuisance, source of filth, and cause of sickness  
31 which are necessary for public health and safety.

- 1           6.   May establish by rule a schedule of reasonable fees that may be charged for  
2               services rendered. Services may not be withheld due to an inability to pay any  
3               fees established under this subsection.
- 4           7.   May make rules in health districts and county health units, as the case may be, and  
5               in the case of a city board of health may recommend to the city's governing body  
6               ordinances for the protection of public health and safety.
- 7           8.   May adopt quarantine and sanitary measures in compliance with chapter 23-07.6  
8               which are necessary when an infectious or contagious disease exists.
- 9           9.   May make and enforce an order in a local matter when an emergency exists.
- 10          10.   May inquire into any nuisance, source of filth, and cause of sickness.
- 11          11.   At any time, may enter and examine any place to ascertain the condition of the  
12               place as the condition relates to public health.
- 13          12.   Shall proceed as provided under this chapter to abate or remove any nuisance,  
14               source of filth, or cause of sickness when necessary to protect the public health.
- 15          13.   May supervise any matter relating to preservation of life and health of people in the  
16               public health unit's jurisdiction, including the supervision of any public water supply  
17               and sewage system.
- 18          14.   May isolate, kill, or remove any animal affected with a contagious or infectious  
19               disease when the animal poses a material risk to human health.
- 20          15.   Shall appoint a local health officer.
- 21          16.   May employ any person necessary to effectuate board rules and this chapter.
- 22          17.   May appoint an executive director who is subject to removal for cause by the  
23               board. The board may assign to the executive director the duties of the local  
24               health officer, and the executive director shall perform these duties under the  
25               direction of the local health officer.
- 26          18.   May contract with any person to provide the services necessary to carry out the  
27               purposes of the board of health.
- 28          19.   Shall designate the location of any local health officer's office and shall furnish the  
29               office with necessary equipment.

1       20.   Shall provide for personnel the board considers necessary. When a public health  
2           unit is served by a part-time local health officer, the board of health may appoint an  
3           executive director.

4       21.   Shall set the salary of the local health officer, the executive director, the executive  
5           officer, and any assistant local health officer and shall set the compensation of any  
6           other public health unit personnel.

7       22.   Shall pay for necessary travel of the local health officer, the local health officer's  
8           assistants, and other personnel in the manner and to the extent determined by the  
9           board.

10       **23-35-09. Abatement and removal of nuisance, source of filth, and cause of**  
11 **sickness.**

12       1.   When it is necessary for the protection of public health to abate or remove any  
13           nuisance, source of filth, or cause of sickness found on private property, the board  
14           of health shall serve notice on the owner or occupant of the property requiring the  
15           owner or occupant, at the owner's or occupant's expense, to remove or abate the  
16           nuisance, source of filth, or cause of sickness within thirty days. If the owner or  
17           occupant fails to comply with the notice to remove or abate or if the nuisance,  
18           source of filth, or cause of sickness exists on property of nonresident owners or on  
19           property the owners of which cannot be found, the board of health shall remove or  
20           destroy the nuisance, source of filth, or cause of sickness at the expense of the  
21           appropriate local government which shall charge the expense against the lot,  
22           piece, or parcel of land on which the work is done.

23       2.   The governing body of the local government shall levy and assess against the  
24           property the cost of the removal or destruction of a nuisance, source of filth, or  
25           cause of sickness, and the member of the governing body who is responsible for  
26           streets shall return and file the assessment in the office of the auditor of the local  
27           government. The auditor shall publish, in the same manner as provided under  
28           section 40-22-06, the amount of the assessment together with a notice of the time  
29           and location the governing body will meet to consider the approval of the  
30           assessment. Each assessment must be recorded, collected, and paid as other  
31           taxes are recorded, collected, and paid.

1           3. Whenever a board of health determines it necessary for the preservation of public  
2           health to enter any building within the board's jurisdiction to examine, destroy,  
3           remove, or prevent any nuisance, source of filth, or cause of sickness and is  
4           refused entrance into the building, the local health officer, or a designated agent of  
5           the local health officer, may make a complaint under oath to a district judge within  
6           the jurisdiction of the board stating the facts in the case which the health officer, or  
7           a designated agent of the local health officer, has knowledge. The judge shall  
8           issue a warrant to the sheriff or other peace officer which commands the sheriff or  
9           other peace officer, under the direction of any member of the board of health who  
10          accompanies the sheriff or other peace officer, to destroy, remove, or prevent,  
11          between sunrise and sunset, the nuisance, source of filth, or cause of sickness.

12          **23-35-10. District boards of health - Acquiring and disposing of property.**

- 13          1. A district board of health may acquire by lease, purchase, construction, or gift for  
14          district health office use and control real and personal property for all purposes  
15          authorized by law or necessary to the exercise of the powers granted in this  
16          chapter. The district board of health may finance the purchase, construction, or  
17          equipping of a building on owned or leased property for the use and purpose for  
18          which the health district is formed and carry out the functions of the health district  
19          as provided by law, in either of the following ways:
- 20           a. The district board of health may issue and sell bonds in an aggregate amount  
21           not exceeding two times the authorized tax revenues of the district for the  
22           year in which the bonds are to be issued and sold; or
- 23           b. The district board of health may mortgage or otherwise encumber the building  
24           constructed in an amount not exceeding two times the authorized tax revenue  
25           of the district for the year in which the construction is to be commenced.
- 26          2. Bonds issued under this section and income under this section are exempt from  
27          any taxes except inheritance, estate, and transfer taxes. The indebtedness for  
28          which the bonds are issued, or for which a mortgage may be given as under this  
29          section, is neither an obligation or an indebtedness of this state nor of the counties  
30          or cities comprising the district board of health. Any indebtedness under this  
31          section may be foreclosed in any manner provided by law. The district board of

1 health may convey or transfer property acquired as provided under this section. If,  
2 upon dissolution of a health district, any balance remains in the health district fund  
3 after all obligations have been paid, the balance must be transferred to the general  
4 fund of the counties comprising the health district in proportion to the assessed  
5 valuation most recently used in preparing the health district budget under this  
6 chapter. If any county in the district votes to withdraw from the district, any assets  
7 and inventory of supplies and equipment located in the county for use in health  
8 district programs and services remain the property of the district for use elsewhere  
9 in the district.

10 **23-35-11. Budget.** A local government or health district, as the case may be, shall  
11 prepare a county public health unit budget for the next fiscal year at the time and in the manner  
12 a county budget is adopted and submit the budget to the board of county commissioners for  
13 approval, shall prepare a city public health unit budget for the next fiscal year and submit the  
14 budget to the governing body of the city for approval, or shall prepare a district budget as  
15 provided under this chapter. In the case of a city board of health, the board or a designee of  
16 the board shall certify the expenses to the city auditor for payment out of the general fund of the  
17 city. The governing body or a governing body's designee shall audit any expenses incurred in  
18 quarantining or disinfecting any property outside incorporated cities and shall pay for any  
19 expenses out of the general fund of the county.

20 **23-35-12. Local health officers.**

21 1. A local health officer shall serve a term of five years, subject to removal for cause  
22 by the governing body or the district board of health. The health officer must be a  
23 physician licensed to practice medicine in this state and need not be a resident of  
24 the public health unit. The appointee shall qualify by filing the constitutional oath of  
25 office in the manner provided for the members of the board of health. Whenever  
26 the state health officer believes a local health officer is failing to perform the duties  
27 of the position, the state health officer may report the case to the governing body of  
28 the appropriate local government or the district board of health. At the next  
29 meeting of the local government's governing body or district board of health, the  
30 governing body or district board of health shall declare the office vacant and shall  
31 appoint another physician to fill the unexpired term, or shall report the matter to the

board of health, and the board shall declare the office vacant and shall appoint another physician to fill the unexpired term.

2. Within its jurisdiction, a local health officer shall:

- a. Keep a record of the official acts of the local health officer.
- b. Enforce all laws and rules relating to preservation of life and health of the people of the county.
- c. Exercise the powers and duties of the board of health under the supervision of the board of health and the department.
- d. Make sanitary inspections of any place within the jurisdiction in which the local health officer believes there is a probability that a health-threatening condition exists.
- e. Investigate, subject to supervisory control of the department, public water and ice supplies that are suspected of contamination and initiate necessary condemnation proceedings.
- f. Enforce school cleanliness; inspect any school that may be overcrowded, poorly ventilated, or unsanitary; and when necessary, report cases of any unsanitary or unsafe school building to the board of health for investigation.
- g. Take any action necessary for the protection of public health.
- h. Determine when quarantine and disinfection is necessary for the safety of the public. The local health officer may establish quarantines consistent with procedures provided under chapter 23-07.6 and perform any acts required for disinfection when necessary.
- i. Maintain an office within the jurisdiction of the public health unit consistent with any terms of appointment.
- j. Select and discharge any assistant health officer in the public health unit, consistent with any terms of appointment.

3. Any member of the local government's law enforcement, any civil officer of the local government, and any citizen shall aid the local health officer in the discharge of official duties. Upon the local health officer's request, law enforcement shall serve any notice issued by the local health officer and perform any other duties the local health officer may require.

1       **23-35-13. Penalty.** A person who violates any lawful order, direction, prohibition,  
2 ordinance, or rule prescribed by any board of health or health officer or any rule lawfully  
3 adopted under this chapter is guilty of a class B misdemeanor.

4       **SECTION 4. AMENDMENT.** Subdivision h of subsection 1 of section 40-01.1-04 of the  
5 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 6           h. Use of other statutory tools relating to social and economic development, land  
7 use, transportation and roads, health, law enforcement, administrative and  
8 fiscal services, recording and registration services, educational services,  
9 environmental quality, water, sewer, solid waste, flood relief, parks and open  
10 spaces, hospitals, public buildings, or other county functions or services,  
11 including creation of cooperative county job development authorities pursuant  
12 to section 11-11.1-03, multicounty health units pursuant to ~~sections~~  
13 ~~23-14-01.1 through 23-14-01.6~~ chapter 23-35, regional planning and zoning  
14 commissions pursuant to section 11-35-01, boards of joint county park  
15 districts pursuant to chapter 11-28 or a combination of boards of park  
16 commissioners with a city pursuant to chapter 40-49.1, or multicounty social  
17 service districts pursuant to chapter 50-01.1.

18       **SECTION 5. AMENDMENT.** Section 54-52-02 of the 1997 Supplement to the North  
19 Dakota Century Code is amended and reenacted as follows:

20       **54-52-02. Formulation of plan - Exclusion of employees covered by plans in**  
21 **existence.** All departments, boards, institutions, commissions, or agencies of the state of North  
22 Dakota, the Garrison diversion conservancy district, district health units, the supreme court, and  
23 the district courts, hereinafter referred to as agency, shall participate in a retirement system  
24 which will provide for the payment of benefits to state employees or to their beneficiaries  
25 thereby enabling the employees to care for themselves and their dependents and which by its  
26 provisions will improve state employment, reduce excessive personnel turnover, and offer  
27 career employment to high-grade men and women. However, a city health department  
28 providing health services in a ~~county and city~~ city-county health district formed under ~~section~~  
29 ~~23-14-01.1~~ chapter 23-35 is not required to participate in the public employees retirement  
30 system but may participate in the public employees retirement system under section

1 54-52-02.1. Employees presently covered by a pension plan or retirement plan to which the  
2 state is contributing, except social security, are not eligible for duplicate coverage.

3 **SECTION 6. REPEAL.** Chapters 23-03, 23-04, 23-05, and 23-14 of the North Dakota  
4 Century Code are repealed.