

**FIRST ENGROSSMENT  
with Conference Committee Amendments  
ENGROSSED SENATE BILL NO. 2032**

Introduced by

Legislative Council

(Commerce and Labor Committee)

1 A BILL for an Act to create and enact a new chapter to title 54 of the North Dakota Century  
2 Code, relating to creation of a department of commerce; to amend and reenact sections  
3 4-14.1-03, 4-14.1-04, 6-12-02, subsection 6 of section 10-30-04, subsection 4 of section  
4 10-30.5-02, section 10-30.5-05, subsection 6 of section 10-30.6-04, subsection 3 of section  
5 20.1-02-17.1, sections 20.1-02-18.1, 21-11-02, 21-11-03, 21-11-04, 21-11-05, 21-11-06,  
6 24-03-21, subsection 4 of section 26.1-50-01, sections 26.1-50-02, 28-32-01, 40-57.1-04,  
7 49-10.1-17, subsection 4 of section 50-06-01.8, section 52-01-03, subsection 5 of section  
8 52-02.1-01, section 54-01.1-08, subsection 1 of section 54-06-04, section 54-21.2-03,  
9 subsection 1 of section 54-21.3-03, sections 54-21.3-04.1, 54-34-12, 54-34-15, 54-34.3-01,  
10 54-34.3-02, 54-34.3-03, 54-34.3-04, 54-34.3-05, 54-34.3-06, 54-34.3-08, 54-34.3-10,  
11 54-34.3-11, 54-34.4-01, 54-34.4-02, 54-34.4-04, subsection 15 of section 54-44.3-20, sections  
12 54-44.5-01, 54-44.5-02, 54-44.5-03, 54-44.5-05, 54-53-02, 55-01-01, 55-06-01, 57-38-29,  
13 57-38-30.3, 57-38-54, subsection 1 of section 57-38.5-01, section 57-38.5-08, and subsection 6  
14 of section 57-39.2-28 of the North Dakota Century Code, relating to merging the division of  
15 community services, department of economic development and finance, and tourism  
16 department into a department of commerce, income tax filing methods for individuals, and  
17 publication of statistics by the tax commissioner; to repeal section 54-34.3-09 of the North  
18 Dakota Century Code, relating to the department of economic development and finance; to  
19 provide for correction of statutory references; to provide an appropriation; and to provide an  
20 effective date.

21 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

22 **SECTION 1. AMENDMENT.** Section 4-14.1-03 of the 1999 Supplement to the North  
23 Dakota Century Code is amended and reenacted as follows:

**4-14.1-03. Agricultural products utilization commission - Composition -**

**Appointment.** The agricultural fuel tax fund must be administered by the agricultural products utilization commission. The commission consists of nine members, five of whom must be appointed by the governor for terms of two years each, arranged so that two terms expire in odd-numbered years and three terms expire in even-numbered years. Three members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state. The commissioner of agriculture shall appoint one member for a term of two years which expires in odd-numbered years. The member appointed by the commissioner must be actively engaged in farming in this state. Commission members may be reappointed to the commission. Terms of commissioners shall run from the first day of July. The director of the department of commerce division of economic development and finance, the president of North Dakota state university, and the commissioner of agriculture, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

**SECTION 2. AMENDMENT.** Section 4-14.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-14.1-04. Agricultural products utilization commission - Meetings - Personnel -**

**Reports.** The agricultural products utilization commission, which is ~~a division~~ an office of the department of commerce division of economic development and finance, shall meet as necessary and shall report to each session of the legislative assembly. The commission may secure office space, employ needed personnel for the performance of its duties, hire consultants, spend any funds appropriated to the commission, and contract with public entities or private parties for services.

**SECTION 3. AMENDMENT.** Section 6-12-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-12-02. (Effective for first four taxable years beginning after December 31, 1998)**

**Establishment - Organization.** Any financial institution or group of financial institutions may establish a corporation or a limited liability company to own and operate the housing development fund. Except as provided in this chapter, all authority regarding the articles of incorporation or articles of organization is the province of the governing board, which must include a representative of the Bank of North Dakota and a representative of the department of

1 commerce division of economic development and finance. The fund administrator shall  
2 maintain the fund as an account at the Bank of North Dakota. The governing board is  
3 responsible for adopting policies and procedures governing activities in connection with the  
4 fund. The governing board may not distribute more than seventy-five percent of the net profit of  
5 the fund in any of the first five years of operation.

6 **SECTION 4. AMENDMENT.** Subsection 6 of section 10-30-04 of the North Dakota  
7 Century Code is amended and reenacted as follows:

- 8 6. Cooperate with and avail itself of the facilities of the department of commerce  
9 division of economic development and finance and any other similar governmental  
10 agencies; to cooperate with and assist, and otherwise encourage, local  
11 organizations in the various communities of the state the purpose of which are the  
12 promotion, assistance, and development of the business prosperity and economic  
13 welfare of such communities and of this state.

14 **SECTION 5. AMENDMENT.** Subsection 4 of section 10-30.5-02 of the North Dakota  
15 Century Code is amended and reenacted as follows:

- 16 4. The ~~director~~ commissioner of the ~~department of economic development and~~  
17 ~~finance~~ commerce shall adopt rules, subject to the approval of the board of  
18 directors, necessary to implement the administration of the fund. The rules to  
19 implement the grant program must be developed to encourage local fundraising  
20 initiatives for developing locations for businesses financed by the corporation.

21 **SECTION 6. AMENDMENT.** Section 10-30.5-05 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **10-30.5-05. Management.** The ~~deputy~~ director of the finance ~~division~~ office of the  
24 department of commerce division of economic development and finance must be the chief  
25 executive officer of the corporation. The board of directors shall determine minimum  
26 qualifications of all other staff positions.

27 All investments, contracts, partnerships, limited liability companies, and business  
28 transactions of the corporation are the responsibility of the deputy director and the board of  
29 directors. The board may provide that normal operating costs anticipated in an approved  
30 budget may be incurred and paid without prior board approval.

1           **SECTION 7. AMENDMENT.** Subsection 6 of section 10-30.6-04 of the 1999  
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3           6.   Cooperate with and avail itself of the facilities of the department of ~~economic~~  
4           ~~development and finance~~ commerce and any other similar governmental agencies;  
5           and cooperate with, assist, and otherwise encourage local organizations in the  
6           various communities of the state, the purpose of which are the promotion,  
7           assistance, and development of the business prosperity and economic welfare of  
8           the communities and of this state.

9           **SECTION 8. AMENDMENT.** Subsection 3 of section 20.1-02-17.1 of the 1999  
10 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 11          3.   A detailed impact analysis from the state game and fish department shall be  
12          included with the acquisition proposal for board of county commissioner  
13          consideration in making recommendations. The analysis by the game and fish  
14          department shall include, but shall not be limited to, the recreational and wildlife  
15          impacts. In addition, the county agent of the affected county or counties shall  
16          prepare an impact analysis for board of county commissioner consideration which  
17          shall include the fiscal, social, and agricultural impacts of the proposed acquisition.  
18          The state game and fish department shall reimburse the county or counties for any  
19          expenses incurred by the county agent in preparing the analysis. The analyses  
20          shall also be forwarded to the department of commerce division of community  
21          services which shall furnish copies to all interested state agencies and political  
22          subdivisions, which agencies and political subdivisions shall have thirty days to  
23          review the analyses and return their comments to the division of community  
24          services. Upon expiration of the thirty-day period, all comments received by the  
25          division of community services shall be forwarded to the state game and fish  
26          department. The state game and fish department may, after consideration of such  
27          comments, file a final impact analysis with the division of community services and  
28          the board of county commissioners.

29          **SECTION 9. AMENDMENT.** Section 20.1-02-18.1 of the 1999 Supplement to the  
30 North Dakota Century Code is amended and reenacted as follows:

**20.1-02-18.1. Federal wildlife area acquisitions - Submission to county**

**commissioners, opportunity for public comment, and impact analysis required.** The governor, the director, or their designees, responsible under federal law for final approval of land, wetland, and water acquisitions by the United States department of the interior, its bureaus or agencies, for waterfowl production areas, wildlife refuges, or other wildlife or waterfowl purposes, shall submit the proposed acquisitions by certified mail with return receipt to the board of county commissioners of the county or counties in which the land, wetland, and water areas are located for the board's recommendations.

The board of county commissioners of the county affected, or a designee or designees of the board, shall, within twenty-one days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas. The board shall give public notice of the date, hour, and place where the public may comment on the proposed acquisitions. The notice must be published once each week for two successive weeks in the official newspaper of the county or counties in which the land and water areas are located. The notice must set forth the substance of the proposed action, and must include a legal description of the proposed acquisitions. The board of county commissioners shall make its recommendations by certified mail with return receipt within sixty days after receipt of an acquisition proposal.

A detailed impact analysis from the federal agency involved must be included with the acquisition proposal for board of county commissioner consideration in making recommendations. The analysis must include the recreational and wildlife impacts. In addition, the county agent of the affected county or counties shall prepare an impact analysis for board of county commissioner consideration which must include the fiscal, social, and agricultural impacts of the proposed acquisitions. The department of the interior shall reimburse the county or counties for any expenses incurred by the county agent in preparing the analysis. The analyses must also be forwarded to the department of commerce division of community services, which shall furnish copies to all interested state agencies and political subdivisions, which agencies and political subdivisions have thirty days to review the analyses and return their comments to the division of community services. Upon expiration of the thirty-day period, all comments received by the division of community services must be forwarded to the federal agency involved and to the state official or agency responsible for final acquisition approval. The federal agency may, after consideration of the comments, file a final impact analysis with

the governor, the board of county commissioners, and any other state official or agency responsible for final acquisition approval.

**SECTION 10. AMENDMENT.** Section 21-11-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**21-11-02. Application for loan - Form - Contents - Preference of applications.** Any privately or cooperatively owned enterprise for the purpose of securing a loan from this state for purposes of planning, constructing, acquiring, equipping, improving, or extending facilities for the conversion of North Dakota's natural resources into low cost power and the generation and transmission of such power, and the acquisition of real and personal property and water and mineral rights needed for such facilities, or any of such purposes, may file an application with the department of commerce division of economic development and finance. The application must be in the form required by the ~~department~~ division and must be accompanied by a complete and fully detailed outline and description of the applicant's plan of operation. In the consideration of applications the ~~department~~ division shall consider the following factors:

1. Preference must be given to applicants with the following qualifications:
  - a. Applicants who are experienced in the generation or transmission of power, and who at the time of application have access to alternate markets for the sale of such power.
  - b. Applicants who are residents of North Dakota, or private or cooperative enterprises incorporated under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person, corporation, or limited liability company owns part or all of the stock of the applicant or limited liability companies organized under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person, limited liability company, or corporation owns part or all of the membership interests of the applicant, or is engaged in a partnership or joint enterprise with the applicant.
2. The provisions of subsection 1 do not prohibit the ~~department~~ division from approving loans to applicants not possessing the qualifications therein described, if in the judgment of the ~~department~~ division such approval would better carry out the objectives of this chapter as stated in section 21-11-01.

3. Each application shall include information for the purpose of showing to the ~~department~~ division and may be approved only if the ~~department~~ division determines:

- a. That the facilities proposed to be financed by the loan will result in significant additional industrial or other economic activity in North Dakota which would not occur in the absence of a state loan.
- b. That the cost of power furnished by the facilities financed by the loan will be significantly lower than it would be without a loan made under this chapter.
- c. That the facilities financed will furnish power at the lowest possible cost to stimulate industrial development, benefit the general public, and expand the use of North Dakota fuel resources.

4. In considering applications the ~~department~~ division may establish additional reasonable criteria with respect to the financial qualification of individuals and organizations requesting loans.

**SECTION 11. AMENDMENT.** Section 21-11-03 of the North Dakota Century Code is amended and reenacted as follows:

**21-11-03. Processing of application - Fee - Purpose.** The department of commerce division of economic development and finance shall process each application and if it determines the applicant is eligible for the loan and has complied with all requirements, it shall request an application fee of not more than fifty thousand dollars. The fee must be deposited in a special and separate fund in the state treasury and must be expended by the ~~department~~ division of economic development and finance for purposes of investigating the applicant and evaluating the technical and economic feasibility of the plans and specifications as submitted by the applicant. The ~~department~~ division may consult or contract with any person or private, state, or federal department, agency, or entity, for purposes of that investigation or evaluation. All departments, agencies, institutions, and officials of this state and its political subdivisions shall provide to the ~~department~~ division of economic development and finance such aid, information, and assistance as it may request in regard to any matter relative to the applicant or such applicant's plans and specifications. The ~~department~~ division of economic development and finance may conduct any private or public hearing it may deem necessary in the course of that investigation or evaluation. Any unexpended portion of the funds received as an

1 application fee must be refunded to the applicant after the payment of all costs of investigation  
2 and evaluation of the application. There is hereby appropriated from each application fee these  
3 funds as may be necessary to pay all costs of investigation and evaluation and pay refunds as  
4 provided in this section.

5 **SECTION 12. AMENDMENT.** Section 21-11-04 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **21-11-04. Approval or rejection of application.** Upon completion of all investigations  
8 and evaluations of any matter relative to the applicant or the submitted application and plan, the  
9 department of commerce division of economic development and finance shall either reject the  
10 application as submitted, approve the application as submitted, or offer to approve the  
11 application if modified in accordance with any recommendation made by the commission as a  
12 result of any such investigation or evaluation. If the applicant fails or refuses to agree to those  
13 modifications, the application must be rejected.

14 **SECTION 13. AMENDMENT.** Section 21-11-05 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **21-11-05. Approved application filed with industrial commission.** Upon approval  
17 of the application, as submitted or modified, the department of commerce division of economic  
18 development and finance shall file the application, along with its report and recommendations,  
19 received by it as a result of any investigation and evaluation, with the ~~state~~ industrial  
20 commission. The department of ~~economic development and finance~~ commerce shall prepare  
21 and submit any necessary legislation for the appropriation of additional funds or the  
22 authorization of the issuance of bonds at the following session of the legislative assembly, or at  
23 a special session if called in accordance with the constitution.

24 **SECTION 14. AMENDMENT.** Section 21-11-06 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **21-11-06. Disbursements of loan - Inspection fee.** If the industrial commission finds  
27 that the approved loan application has been filed and processed as required by this chapter  
28 and the proposed loan agreement is in proper legal form and the amount to be disbursed  
29 thereunder, with other previous disbursements, does not exceed the funds appropriated for that  
30 purpose, it shall authorize the execution of the loan agreement with the applicant by the director  
31 of the department of commerce division of economic development and finance on behalf of the



1 state. Prior to the disbursement of any funds pursuant to the loan agreement, the applicant  
2 shall deliver to the director of the division of economic development and finance a supervision  
3 fee in such amount as may be specified in the loan agreement, which fee must be deposited in  
4 a special fund in the state treasury. The fee must be expended by the ~~department~~ division of  
5 economic development and finance for the purpose of periodic inspection of the construction of  
6 such power generation or transmission facilities, and disbursements to the borrower under the  
7 loan agreement may be made only upon certification by the director or a person appointed by  
8 the director ~~that~~ which the construction is being carried on in accordance with the loan  
9 agreement and that the loan funds are due the borrower under the agreement. Upon the  
10 completion of the construction of the facilities, any unexpended balance of the inspection fee  
11 must be refunded to the borrower. There is hereby appropriated from each inspection fee  
12 those funds as may be necessary to provide for the inspections and refunds as provided in this  
13 section.

14 **SECTION 15. AMENDMENT.** Section 24-03-21 of the 1999 Supplement to the North  
15 Dakota Century Code is amended and reenacted as follows:

16 **24-03-21. Preparation of road maps - Publication of tourist information.** The  
17 commissioner shall prepare for general distribution; road maps of the state highway system and  
18 other roads as the commissioner determines necessary. Any tourist-oriented material printed  
19 on road maps must be prepared by the department of commerce division of tourism  
20 ~~department~~ at no cost to the department of transportation.

21 **SECTION 16. AMENDMENT.** Subsection 4 of section 26.1-50-01 of the 1999  
22 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 23 4. "Primary sector business" means an individual, corporation, limited liability  
24 company, partnership, or association that through the employment of knowledge or  
25 labor adds value to a product, process, or service which results in the creation of  
26 new wealth. Qualification as a primary sector business under this subsection must  
27 be determined by the department of commerce division of economic development  
28 and finance.

29 **SECTION 17. AMENDMENT.** Section 26.1-50-02 of the 1999 Supplement to the North  
30 Dakota Century Code is amended and reenacted as follows:

1           **26.1-50-02. Establishment - Organization.** Any insurer or group of insurers may  
2 establish a corporation or limited liability company to own and operate the North Dakota  
3 low-risk incentive fund. Except as provided in this chapter, all authority regarding the articles of  
4 incorporation or articles of organization is the province of the governing board, which must  
5 include a representative of the Bank of North Dakota and the director of the department of  
6 commerce division of economic development and finance. The Bank of North Dakota shall  
7 administer the fund; however, the governing board is responsible for adopting fund policies and  
8 procedures. The governing board may not distribute more than seventy-five percent of the net  
9 profit of the fund in any of the first five years of operation.

10           **SECTION 18. AMENDMENT.** Section 28-32-01 of the 1999 Supplement to the North  
11 Dakota Century Code is amended and reenacted as follows:

12           **28-32-01. (Effective through December 31, 2002) Definitions.** In this chapter,  
13 unless the context or subject matter otherwise provides:

- 14           1. "Adjudicative proceeding" means an administrative matter resulting in an agency  
15 issuing an order after an opportunity for hearing is provided or required. An  
16 adjudicative proceeding includes administrative matters involving a hearing on a  
17 complaint against a specific-named respondent; a hearing on an application  
18 seeking a right, privilege, or an authorization from an agency, such as a  
19 ratemaking or licensing hearing; or a hearing on an appeal to an agency. An  
20 adjudicative proceeding includes reconsideration, rehearing, or reopening. Once  
21 an adjudicative proceeding has begun, the adjudicative proceeding includes any  
22 informal disposition of the administrative matter under section 28-32-05.1 or  
23 another specific statute or rule, unless the matter has been specifically converted  
24 to another type or proceeding under section 28-32-05.1. An adjudicative  
25 proceeding does not include a decision or order to file or not to file a complaint, or  
26 to initiate an investigation, an adjudicative proceeding, or any other proceeding  
27 before the agency, or another agency, or a court. An adjudicative proceeding does  
28 not include a decision or order to issue, reconsider, or reopen an order that  
29 precedes an opportunity for hearing or that under another section of this code is  
30 not subject to review in an adjudicative proceeding. An adjudicative proceeding  
31 does not include rulemaking under this chapter.

- 1           2. "Administrative agency" or "agency" means each board, bureau, commission,  
2           department, or other administrative unit of the executive branch of state  
3           government, including one or more officers, or employees, or other persons  
4           directly or indirectly purporting to act on behalf or under authority of the agency.  
5           An administrative unit located within or subordinate to an administrative agency  
6           shall be treated as part of that agency to the extent it purports to exercise authority  
7           subject to this chapter. The term administrative agency does not include:
- 8           a. The office of management and budget except with respect to rules made  
9           under section 32-12.2-14, rules relating to conduct on the capitol grounds and  
10           in buildings located on the capitol grounds under section 54-21-18, ~~rules~~  
11           ~~relating to the state building code as authorized or required under section~~  
12           ~~54-21.3-03, rules relating to the Model Energy Code as required under~~  
13           ~~section 54-21.2-03~~, rules relating to the central personnel system as  
14           authorized under section 54-44.3-07, rules relating to state purchasing  
15           practices as required under section 54-44.4-04, rules relating to records  
16           management as authorized or required under chapter 54-46, and rules  
17           relating to the central microfilm unit as authorized under chapter 54-46.1.
  - 18           b. The adjutant general with respect to the division of emergency management.
  - 19           c. The council on the arts.
  - 20           d. The state auditor.
  - 21           e. The department of commerce with respect to the division of economic  
22           development and finance.
  - 23           f. The dairy promotion commission.
  - 24           g. The education factfinding commission.
  - 25           h. The educational telecommunications council.
  - 26           i. The board of equalization.
  - 27           j. The board of higher education.
  - 28           k. The Indian affairs commission.
  - 29           l. The industrial commission with respect to the activities of the Bank of North  
30           Dakota, the North Dakota housing finance agency, the North Dakota

- 1                   municipal bond bank, the North Dakota mill and elevator association, and the  
2                   North Dakota farm finance agency.
- 3                   m.   The department of corrections and rehabilitation except with respect to the  
4                   activities of the division of adult services under chapter 54-23.4.
- 5                   n.   The pardon advisory board.
- 6                   o.   The parks and recreation department.
- 7                   p.   The parole board.
- 8                   q.   The state fair association.
- 9                   r.   The state department of health with respect to the state toxicologist.
- 10                  s.   The board of university and school lands except with respect to activities  
11                  under chapter 47-30.1.
- 12                  t.   The administrative committee on veterans' affairs except with respect to rules  
13                  relating to the supervision and government of the veterans' home and the  
14                  implementation of programs or services provided by the veterans' home.
- 15                  u.   The industrial commission with respect to the lignite research fund except as  
16                  required under section 57-61-01.5.
- 17                  v.   The secretary of state with respect to rules adopted for the presidential  
18                  preference contest under section 16.1-11-02.2.
- 19                  3.   "Agency head" means an individual or body of individuals in whom the ultimate  
20                  legal authority of the agency is vested by law.
- 21                  4.   "Complainant" means any person who files a complaint before an administrative  
22                  agency pursuant to section 28-32-05; and any administrative agency which, when  
23                  authorized by law, files such a complaint before such agency or any other agency.
- 24                  5.   "Hearing officer" means any agency head or one or more members of the agency  
25                  head when presiding in an administrative proceeding, or, unless prohibited by law,  
26                  one or more other persons designated by the agency head to preside in an  
27                  administrative proceeding, an administrative law judge from the office of  
28                  administrative hearings, or any other person duly assigned, appointed, or  
29                  designated to preside in an administrative proceeding pursuant to statute or rule.
- 30                  6.   "License" means a franchise, permit, certification, approval, registration, charter, or  
31                  similar form of authorization required by law.

- 1           7. "Order" means any agency action of particular applicability that determines the  
2           legal rights, duties, privileges, immunities, or other legal interests of one or more  
3           specific persons, but does not mean an executive order issued by the governor.
- 4           8. "Party" means each person named or admitted as a party or properly seeking and  
5           entitled as of right to be admitted as a party. An administrative agency may be a  
6           party. In a hearing for the suspension, revocation, or disqualification of an  
7           operator's license under title 39, the term may include each city and each county in  
8           which the alleged conduct occurred, but the city or county may not appeal the  
9           decision of the hearing officer.
- 10          9. "Person" includes an individual, association, partnership, corporation, limited  
11          liability company, state governmental agency or governmental subdivision, or an  
12          agency of such governmental subdivision.
- 13          10. "Relevant evidence" means evidence having any tendency to make the existence  
14          of any fact that is of consequence to the determination of the administrative action  
15          more probable or less probable than it would be without the evidence.
- 16          11. "Rule" means the whole or a part of an agency statement of general applicability  
17          that implements or prescribes law or policy, or the organization, procedure, or  
18          practice requirements of the agency. The term includes the adoption of new rules  
19          and the amendment, repeal, or suspension of an existing rule. The term does not  
20          include:
- 21           a. A rule concerning only the internal management of an agency which does not  
22           directly or substantially affect the substantive or procedural rights or duties of  
23           any segment of the public.
- 24           b. A rule that sets forth criteria or guidelines to be used by the staff of an agency  
25           in the performance of audits, investigations, inspections, and settling  
26           commercial disputes or negotiating commercial arrangements, or in the  
27           defense, prosecution, or settlement of cases, if the disclosure of the  
28           statement would:
- 29           (1) Enable law violators to avoid detection;
- 30           (2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the state.

- c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
- d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.
- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, that is explanatory and not intended to have the force and effect of law.

**(Effective January 1, 2003) Definitions.** In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any

informal disposition of the administrative matter under section 28-32-05.1 or another specific statute or rule, unless the matter has been specifically converted to another type or proceeding under section 28-32-05.1. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
  - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, ~~rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03,~~ rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
  - b. The adjutant general with respect to the division of emergency management.
  - c. The council on the arts.
  - d. The state auditor.

- 1 e. The department of commerce with respect to the division of economic
- 2 development and finance.
- 3 f. The dairy promotion commission.
- 4 g. The education factfinding commission.
- 5 h. The educational telecommunications council.
- 6 i. The board of equalization.
- 7 j. The board of higher education.
- 8 k. The Indian affairs commission.
- 9 l. The industrial commission with respect to the activities of the Bank of North
- 10 Dakota, the North Dakota housing finance agency, the North Dakota
- 11 municipal bond bank, the North Dakota mill and elevator association, and the
- 12 North Dakota farm finance agency.
- 13 m. The department of corrections and rehabilitation except with respect to the
- 14 activities of the division of adult services under chapter 54-23.4.
- 15 n. The pardon advisory board.
- 16 o. The parks and recreation department.
- 17 p. The parole board.
- 18 q. The state fair association.
- 19 r. The state department of health with respect to the state toxicologist.
- 20 s. The board of university and school lands except with respect to activities
- 21 under chapter 47-30.1.
- 22 t. The administrative committee on veterans' affairs except with respect to rules
- 23 relating to the supervision and government of the veterans' home and the
- 24 implementation of programs or services provided by the veterans' home.
- 25 u. The industrial commission with respect to the lignite research fund except as
- 26 required under section 57-61-01.5.
- 27 v. The secretary of state with respect to rules adopted for the presidential
- 28 preference contest under section 16.1-11-02.3.
- 29 3. "Agency head" means an individual or body of individuals in whom the ultimate
- 30 legal authority of the agency is vested by law.



- 1           4.    "Complainant" means any person who files a complaint before an administrative  
2               agency pursuant to section 28-32-05; and any administrative agency which, when  
3               authorized by law, files such a complaint before such agency or any other agency.
- 4           5.    "Hearing officer" means any agency head or one or more members of the agency  
5               head when presiding in an administrative proceeding, or, unless prohibited by law,  
6               one or more other persons designated by the agency head to preside in an  
7               administrative proceeding, an administrative law judge from the office of  
8               administrative hearings, or any other person duly assigned, appointed, or  
9               designated to preside in an administrative proceeding pursuant to statute or rule.
- 10          6.    "License" means a franchise, permit, certification, approval, registration, charter, or  
11               similar form of authorization required by law.
- 12          7.    "Order" means any agency action of particular applicability that determines the  
13               legal rights, duties, privileges, immunities, or other legal interests of one or more  
14               specific persons, but does not mean an executive order issued by the governor.
- 15          8.    "Party" means each person named or admitted as a party or properly seeking and  
16               entitled as of right to be admitted as a party. An administrative agency may be a  
17               party. In a hearing for the suspension, revocation, or disqualification of an  
18               operator's license under title 39, the term may include each city and each county in  
19               which the alleged conduct occurred, but the city or county may not appeal the  
20               decision of the hearing officer.
- 21          9.    "Person" includes an individual, association, partnership, corporation, limited  
22               liability company, state governmental agency or governmental subdivision, or an  
23               agency of such governmental subdivision.
- 24          10.   "Relevant evidence" means evidence having any tendency to make the existence  
25               of any fact that is of consequence to the determination of the administrative action  
26               more probable or less probable than it would be without the evidence.
- 27          11.   "Rule" means the whole or a part of an agency statement of general applicability  
28               that implements or prescribes law or policy, or the organization, procedure, or  
29               practice requirements of the agency. The term includes the adoption of new rules  
30               and the amendment, repeal, or suspension of an existing rule. The term does not  
31               include:

- a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
- b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
  - (1) Enable law violators to avoid detection;
  - (2) Facilitate disregard of requirements imposed by law; or
  - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
- c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
- d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.
- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, that is explanatory and not intended to have the force and effect of law.

**SECTION 19. AMENDMENT.** Section 40-57.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-57.1-04. Exemption from income tax - Notice to competitors - Limitations.**

Upon application by a project operator to the state board of equalization, the net income of a project may be exempt from state income tax for a period not exceeding five years from commencement of project operations. The application for the exemption must be reviewed as to the eligibility of the project by the department of commerce division of economic development and finance and its recommendations forwarded to the state board of equalization. The project operator shall provide notice to competitors in the manner prescribed by the state board of equalization. The board shall determine whether the granting of the exemption is in the best interest of the people of North Dakota and, if it so determines, approve the exemption. The board shall, after making its determination, certify the findings back to the applicant and to the tax commissioner. Nothing contained herein shall have the effect of exempting the project from filing an annual income tax return.

**SECTION 20. AMENDMENT.** Section 49-10.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**49-10.1-17. Agreements to restore Amtrak service.** The governor or the director of the department of transportation may make agreements in accordance with applicable federal law with the state of Montana and relevant federal agencies for the renewal of service on the Amtrak north coast Hiawatha route from Fargo to Spokane, Washington. The governor, the director of the department of transportation, or the ~~director of the department of economic development and finance~~ commissioner of commerce may enter agreements with any political subdivision, state, and federal agency for the restoration of daily service on the Amtrak empire builder route.

**SECTION 21. AMENDMENT.** Subsection 4 of section 50-06-01.8 of the North Dakota Century Code is amended and reenacted as follows:

4. The department of ~~economic development and finance~~ commerce, job service North Dakota, county social service boards, and any other state agency determined appropriate shall cooperate with the department to ensure the success of the program. Local government agencies are encouraged to cooperate with the department.

1           **SECTION 22. AMENDMENT.** Section 52-01-03 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **52-01-03. Disclosure of information.** Except as otherwise provided in this section,  
4 information obtained from any employing unit or individual pursuant to the administration of the  
5 North Dakota Unemployment Compensation Law and determinations as to the benefit rights of  
6 any individual must be held confidential and may not be disclosed or be open to public  
7 inspection in any manner revealing the individual's or employing unit's identity. Any claimant or  
8 claimant's legal representative must be supplied with information from the records of the job  
9 insurance division, to the extent necessary for the proper presentation of the claimant's claim in  
10 any proceeding under the North Dakota Unemployment Compensation Law with respect to the  
11 claim. Subject to restrictions as the bureau by rule may prescribe, the information may be  
12 made available to any agency of this or any other state, or any federal agency, charged with  
13 the administration of any unemployment compensation law or the maintenance of a system of  
14 public employment offices, or the bureau of internal revenue of the United States department of  
15 the treasury, and information obtained in connection with the administration of the employment  
16 service may be made available to persons or agencies for purposes appropriate to the  
17 operation of a public employment service. Upon a request, the bureau shall furnish to any  
18 agency of the United States charged with the administration of public works or assistance  
19 through public employment, and may furnish to any state agency similarly charged, the name,  
20 address, ordinary occupation, and employment status of each recipient of benefits and the  
21 recipient's rights to further benefits under the North Dakota Unemployment Compensation Law.  
22 The bureau may request the comptroller of the currency of the United States to cause an  
23 examination of the correctness of any return or report of any national banking association,  
24 rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection  
25 with the request, may transmit any report or return to the comptroller of the currency of the  
26 United States as provided in subsection c of section 3305 of the federal Internal Revenue  
27 Code. The bureau shall request and exchange information for purposes of income and  
28 eligibility verification to meet the requirements of section 1137 of the Social Security Act.

29           The bureau may provide the workers compensation bureau, the state commissioner of  
30 labor, the department of ~~economic development and finance~~ commerce, the state tax  
31 commissioner, and the North Dakota occupational information coordinating committee with

1 information obtained pursuant to the administration of the North Dakota Unemployment  
2 Compensation Law. Any information so provided may be used only for the purpose of  
3 administering the duties of the workers compensation bureau, the state commissioner of labor,  
4 the state department of ~~economic development and finance~~ commerce, the state tax  
5 commissioner, and the North Dakota occupational information coordinating committee. The  
6 bureau may provide any state agency or a private entity with the names and addresses of  
7 employing units for the purpose of jointly publishing or distributing publications or other  
8 information as provided in section 54-06-04.3. Any information so provided may only be used  
9 for the purpose of jointly publishing or distributing publications or other information as provided  
10 in section 54-06-04.3.

11 Whenever the bureau obtains information on the activities of a contractor doing  
12 business in this state of which officials of the secretary of state, workers compensation bureau,  
13 or the tax commissioner may be unaware and that may be relevant to duties of those officials,  
14 the bureau shall provide any relevant information to those officials for the purpose of  
15 administering their duties.

16 The bureau shall request and exchange information as required of the bureau under  
17 federal law with any specified governmental agencies. Any information so provided may be  
18 used only for the purpose of administering the duties of such governmental agencies.

19 **SECTION 23. AMENDMENT.** Subsection 5 of section 52-02.1-01 of the North Dakota  
20 Century Code is amended and reenacted as follows:

21 5. "Department" means the department of ~~economic development and finance~~  
22 commerce.

23 **SECTION 24. AMENDMENT.** Section 54-01.1-08 of the 1999 Supplement to the North  
24 Dakota Century Code is amended and reenacted as follows:

25 **54-01.1-08. Adoption of rules and regulations.** State agencies may consult with the  
26 department of commerce division of community services to establish regulations and  
27 procedures for implementation of the provisions of this chapter and to establish such  
28 regulations and procedures necessary to assure:

29 1. That the payments and assistance authorized by this chapter shall be administered  
30 in a manner which is fair and reasonable, and as uniform as practicable;

2. That a displaced person who makes proper application for a payment authorized by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and
3. That any displaced person aggrieved by a determination as to eligibility for a payment, or as to the amount of a payment, may have the application reviewed by the head or governing body of the state agency.

**SECTION 25. AMENDMENT.** Subsection 1 of section 54-06-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The following executive and administrative officers and departments shall submit to the governor and the secretary of state reports covering their operations for the two preceding fiscal years, except as otherwise provided by law, not later than the first day of December each year after the regular session of the legislative assembly:
  - a. Secretary of state.
  - b. State auditor.
  - c. Insurance commissioner.
  - d. Attorney general.
  - e. Agriculture commissioner.
  - f. Superintendent of public instruction.
  - g. State tax commissioner.
  - h. Public service commission.
  - i. Department of corrections and rehabilitation.
  - j. Department of transportation.
  - k. State department of health.
  - l. Department of human services.
  - m. Workers compensation bureau.
  - n. Office of management and budget.
  - o. State treasurer.
  - p. Commissioner of labor.
  - q. Department of banking and financial institutions.
  - r. ~~Department of economic development and finance.~~

~~s.~~ Game and fish department.

~~t.~~ s. Industrial commission.

~~tt.~~ t. Job service North Dakota.

~~vv.~~ u. Board of university and school lands.

**SECTION 26. AMENDMENT.** Section 54-21.2-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-21.2-03. Energy conservation standards.** The standards for energy conservation in new building construction, for thermal design conditions and criteria for buildings, and for adequate thermal resistance in regard to the design and selection of mechanical, electrical service, and illumination systems and equipment which will enable the effective use of energy in new buildings, must at least equal the energy conservation code based on the Council of American Building Officials Model Energy Code, 1989 Edition. ~~The office of management and budget~~ department of commerce shall adopt rules to implement, update, and amend the Model Energy Code.

**SECTION 27. AMENDMENT.** Subsection 1 of section 54-21.3-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state building code consists of the Uniform Building Code with any existing supplements and the Uniform Mechanical Code with any existing supplements as referenced by the Uniform Building Code, except that section 504(f) of the Uniform Mechanical Code is amended to read as follows:

Section 504(f). LPG Appliances.

Liquefied petroleum gas burning appliances, both automatically and manually controlled, may be installed in basements or similar locations only if (a) the appliances are of an American gas association-approved type and installed in accordance with national fire protection association pamphlets 54 and 58, (b) automatically controlled appliances are equipped with safety shutoff devices of the complete shutoff type, and (c) gas piping has been pressure tested and proven to be gastight.

~~The director of the office of management and budget~~ department of commerce shall adopt rules to implement and periodically update the code and may adopt rules to amend the code.

1           **SECTION 28. AMENDMENT.** Section 54-21.3-04.1 of the 1999 Supplement to the  
2 North Dakota Century Code is amended and reenacted as follows:

3           **54-21.3-04.1. Accessibility standards.** Notwithstanding section 54-21.3-04, every  
4 building or facility subject to the federal Americans with Disabilities Act of 1990 [Pub. L.  
5 101-336; 104 Stat. 327] must conform to the accessibility standards of the Americans with  
6 Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix  
7 to title 28, Code of Federal Regulations, part 36 [28 CFR 36]. State and political subdivision  
8 entities may not claim the exceptions to the requirement that elevators be installed in certain  
9 buildings as those exceptions are stated in exception 1 to section 4.1.3(5) and in section  
10 4.1.6(1)(k)(i) in the Americans with Disabilities Act Accessibility Guidelines for Buildings and  
11 Facilities found in the appendix to 28 CFR 36. A structural change to an existing state or  
12 political subdivision building or facility is not required if another method is effective in achieving  
13 compliance with regulations adopted under Public Law 101-336. For public accommodations,  
14 an alternative to a structural change in existing buildings or facilities is permitted only after it  
15 has been documented, in accordance with regulations adopted under Public Law 101-336, that  
16 a particular structural change is not readily achievable. A state agency or the governing body  
17 of a political subdivision shall require from any person preparing plans and specifications for a  
18 building or facility subject to the Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104  
19 Stat. 327], a statement that the plans and specifications are, in the professional judgment of  
20 that person, in conformance with the Americans with Disabilities Act Accessibility Guidelines for  
21 Buildings and Facilities found in the appendix to 28 CFR 36, subject to the exception stated in  
22 this section. A statement of conformance must be submitted to the department of commerce  
23 division of community services for recording.

24           **SECTION 29. AMENDMENT.** Section 54-34-12 of the 1999 Supplement to the North  
25 Dakota Century Code is amended and reenacted as follows:

26           **54-34-12. ~~Department~~ Division of economic development and finance to establish**  
27 **venture capital network - Duties and functions.** The department of commerce division of  
28 economic development and finance may establish, from funds appropriated to or otherwise  
29 available to the department of commerce, the venture capital network as a clearinghouse for  
30 information on informal risk capital investment opportunities in the state. The ~~department~~  
31 division of economic development and finance may:



1. Enter ~~into~~ service contracts on a competitive bid basis with public and private agencies, institutions, organizations, and individuals for the purpose of establishing and operating the venture capital network.
2. Receive and approve contract proposals for the purpose of establishing the venture capital network.
3. Solicit the support and contributions of public and private agencies, organizations, institutions, and individuals.
4. Accept and administer contributions for the purpose of operating the venture capital network.
5. Advertise and promote the venture capital network.

**SECTION 30. AMENDMENT.** Section 54-34-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-34-15. Private sponsor.** The department of commerce division of economic development and finance may endeavor to locate a private sector sponsor or group of sponsors to assume administration of the venture capital network.

**SECTION 31. AMENDMENT.** Section 54-34.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-01. Department of commerce division of economic development and finance established - Mission.** The ~~North Dakota~~ department of commerce division of economic development and finance is established to assume the functions, powers, and duties of the department of economic development ~~commission~~ and finance with respect to programs and other efforts intended to enhance the economic development of the state. The mission of the ~~department~~ division is to develop strategies and programs to:

1. Facilitate the growth, diversification, and expansion of existing enterprises and the attraction and creation of new wealth-generating enterprises in the state;
2. Promote economic diversification and innovation within the basic industries and economic sectors of this state, including strategies and programs designed to specialize and focus the state's economy on advanced agriculture and food processing, energy byproduct development, export services and tourism, and advanced manufacturing;

3. Promote increased productivity and value-added products, processes, and services in the state, and the export of those goods and services by North Dakota enterprises to the nation and to the world;
4. Maintain and revitalize economically depressed rural areas by working in close collaboration with local communities and by encouraging communities to enter into cooperative relationships for more efficient and effective education, health care, government service, and infrastructure maintenance;
5. Forge a supportive partnership with the Bank of North Dakota, the board of higher education and the state's institutions of higher education, regional planning councils, local development organizations and authorities, the Myron G. Nelson Fund, Incorporated, the state's nonprofit development corporations, and other appropriate private and public sector organizations in achieving the economic goals of the state; and
6. Identify those statutes, administrative rules, and policies that impede the attraction, creation, and expansion of businesses and job creation in this state.

**SECTION 32. AMENDMENT.** Section 54-34.3-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-02. Definitions.** As used in ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of ~~economic development and finance~~ commerce.
2. "Director" means the director of the department of commerce division of economic development and finance.
3. "Division" means the department division of economic development and finance.

**SECTION 33. AMENDMENT.** Section 54-34.3-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-03. ~~Department~~ Division structure.** The ~~department~~ division consists of:

1. A ~~division of finance~~ office; and
2. An international trade office; and

- 1           3.   Other ~~divisions~~ offices that the director organizes and establishes as necessary to  
2           carry out most efficiently and effectively the mission and duties of the ~~department~~  
3           division.

4           **SECTION 34. AMENDMENT.** Section 54-34.3-04 of the 1999 Supplement to the North  
5   Dakota Century Code is amended and reenacted as follows:

6           **54-34.3-04. ~~Department director~~ Appointment Director - Compensation - Duties.**

7   A director shall supervise and control the ~~department~~ division. ~~The governor shall appoint as~~  
8   ~~director a person who is qualified by training, knowledge, and experience that is necessary to~~  
9   ~~ensure a high degree of professional competency in carrying out the duties of the director as~~  
10   ~~enumerated in this section. The director shall serve at the will of the governor and shall receive~~  
11   ~~a salary set by the governor within the limits of legislative appropriations.~~ The director shall:

- 12           1.   Manage the internal operations of the ~~department~~ division and establish policies  
13           that promote the orderly and efficient administration of the ~~department~~ division;  
14           2.   Appoint personnel as may be determined necessary to carry out ~~sections~~  
15           ~~54-34.3-01 through 54-34.3-08~~ this chapter and fix their compensation within the  
16           limits of legislative appropriations;  
17           3.   Assume central responsibility to develop, implement, and coordinate within state  
18           government a comprehensive program of economic development consistent with  
19           the mission of the ~~department~~ division;  
20           4.   Coordinate that program of economic development with all other appropriate state  
21           and local government departments, agencies, institutions, and organizations that  
22           perform research, develop and administer programs, gather statistics, or perform  
23           other functions relating to economic development, and those government entities  
24           shall advise, cooperate, and provide reasonable assistance to the director in  
25           carrying out ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter;  
26           5.   Advise, and cooperate with, departments and agencies of the federal government  
27           and of other states, private business and agricultural organizations and  
28           associations, research institutions, and any individual or other private or public  
29           entity, and call upon those entities or individuals for consultation and assistance in  
30           their respective fields of endeavor or interest in order that the ~~department~~ division

and the state may benefit from up-to-date technical advice, information, and assistance;

6. Cooperate with individuals and both public and private entities, including the state's congressional delegation, in identifying and pursuing potential sources of funding and to receive those funds to be expended for purposes consistent with ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter;

7. Have authority to enter into contracts upon terms and conditions as determined by the director to be reasonable and to effectuate the purposes of ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter; and

8. ~~Report at least annually to an interim committee designated by the legislative council on performance of all divisions of the department of economic development and finance. The report must include the amount of success and satisfaction the department of economic development and finance has in meeting business client, economic developer, and community client needs and expectations. The report must also include a comparison of dollars spent to the economic benefits created of all programs administered or supervised by the director; and~~

9. Have authority to do any and all other things necessary and proper to carry out ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter.

**SECTION 35. AMENDMENT.** Section 54-34.3-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-05. ~~Division of finance~~ Finance office - Deputy director.** The director shall appoint a deputy director who shall administer the ~~division of finance~~ office. The deputy director shall serve at the will of the director and receive a salary set by the director within the limits of legislative appropriations. The purpose of the ~~division of finance~~ office is to identify and coordinate sources of capital and financial assistance, including lending programs of the Bank of North Dakota, and administer programs of financial assistance placed under the administration of the ~~division~~ office, to business and industry, local governments, and other entities and individuals in the state consistent with the mission of the ~~department~~ office. The ~~division of finance~~ office shall:

1. Administer other programs of financial assistance assigned to it by law or otherwise.

2. Perform such other duties as assigned to it by the director.

**SECTION 36. AMENDMENT.** Section 54-34.3-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-06. ~~Divisions~~ Division offices.** The director shall organize and establish other ~~divisions~~ offices as necessary to carry out most efficiently and effectively the mission and duties of the ~~department~~ division, except that the ~~department~~ division must contain:

1. ~~An office of~~ A North Dakota American Indian business development office to assist North Dakota tribal and individual economic development representatives and North Dakota American Indian entrepreneurs with access to state and federal programs designed to assist them.
2. ~~An office of~~ A North Dakota women's business development office to develop and administer the North Dakota women's business program, to establish and fund the women's business leadership council, certify women-owned businesses for federal or state contracting and to recruit, train, and assist women entrepreneurs to develop and diversify their businesses. The office must have an administrator and staff sufficient to implement ~~its~~ the office's programs.

**SECTION 37. AMENDMENT.** Section 54-34.3-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-08. Patents.** The ~~department~~ division of economic development and finance, the North Dakota development fund, incorporated, and the North Dakota agricultural products utilization commission may hold or assign for remuneration all or a portion of their interest in patents or royalty rights acquired in the course of their operation and performance of duties as provided by law.

**SECTION 38. AMENDMENT.** Section 54-34.3-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-10. Commission on the status of women - Appointment - Expenses - Duties.** There is established a commission on the status of women. ~~The~~ This commission consists of five members. The governor shall appoint each member for a term of four years, staggered so that the term of at least one member expires July first of each year. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as original appointments, except that the appointment may be made for only the remainder of the

1 unexpired term. The members are entitled to be paid for mileage and actual expenses incurred  
2 in attending meetings and in performance of their official duties in amounts provided by law for  
3 other state officers and employees. ~~The~~ This commission shall coordinate activities and serve  
4 as a clearinghouse and an advisory group to the ~~department~~ division for information relating to  
5 economic development programs that focus on career development for women. ~~The~~ This  
6 commission shall prepare for and perform followup duties in connection with state, regional,  
7 and national conferences, encourage interest, participation, and cooperation with state  
8 departments, agencies, and other organizations in developing needed services, facilities, and  
9 opportunities, and provide consultant help to local organizations created for the purpose of  
10 coordinating activities for the economic and career development of women.

11 **SECTION 39. AMENDMENT.** Section 54-34.3-11 of the 1999 Supplement to the North  
12 Dakota Century Code is amended and reenacted as follows:

13 **54-34.3-11. Mutual fund capital pool - Authorization.** The ~~department~~ division of  
14 economic development and finance, in conjunction with the agricultural products utilization  
15 commission, may establish a mutual fund capital pool to attract farm and nonfarm investments  
16 in value-added processing projects.

17 **SECTION 40. AMENDMENT.** Section 54-34.4-01 of the 1999 Supplement to the North  
18 Dakota Century Code is amended and reenacted as follows:

19 **54-34.4-01. ~~Tourism department~~ Division of tourism - Director.**

20 4- The division of tourism ~~department~~ is established to foster and promote tourism to,  
21 and within, the state and the full development of the state's tourism resources, and  
22 to serve as a planning and coordinating agency for tourism-related programs of the  
23 state and the state's political subdivisions.

24 2- ~~The governor shall appoint a director of the tourism department who shall serve at~~  
25 ~~the will of the governor.~~ The director shall supervise and control the division of  
26 tourism ~~department~~.

27 **SECTION 41. AMENDMENT.** Section 54-34.4-02 of the 1999 Supplement to the North  
28 Dakota Century Code is amended and reenacted as follows:

29 **54-34.4-02. Duties of director.** The director of the department of commerce division  
30 of tourism ~~department~~, within the limits of legislative appropriations, shall:

31 1. Implement the state's tourism policy;

2. Prepare and update annually a tourism master plan for the development of tourism in the state which identifies the state's tourism resources, estimates the impact of tourism on the state's economy, and proposes a five-year plan for activities of the division;
3. Measure and forecast visitor volume, receipts, and related social and economic impacts;
4. Work with the private sector and local, state, and federal agencies to develop the state's tourism-related infrastructure, facilities, services, and attractions, including the state's highways and parks;
5. Organize and coordinate programs designed to promote tourism to, and within, the state through various means. Those means may include:
  - a. Display advertising in magazines and newspapers;
  - b. Advertising on radio and television or other advertising media;
  - c. Publishing pamphlets, brochures, and other graphic and pictorial materials; and
  - d. Aiding and assisting representatives of the media to ensure greater coverage of the state's visitor attractions;
6. Participate in travel shows;
7. Supervise and administer visitor information centers that receive funding from the state;
8. Develop opportunities for professional and technical education and training in the visitor industry;
9. Foster an understanding among the state's residents of the economic importance to the state of hospitality and tourism;
10. Cooperate with local, state, and federal agencies and organizations and the private sector for the promotion and development of tourism to, and within, the state;
11. Provide advice and technical assistance to local, public, and private tourism organizations in promoting and developing tourism; and
12. Monitor the policies and programs of state agencies that significantly affect the visitor industry, notify those agencies of the effects of their actions on travel to, and

within the state, and if necessary recommend programs or policy changes to those agencies.

**SECTION 42. AMENDMENT.** Section 54-34.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-34.4-04. North Dakota motion picture development office - Advisory board.**

The North Dakota motion picture development office is a part of the department of commerce division of tourism ~~department~~. The office shall promote North Dakota as a location for shooting films, television shows, documentaries, and commercials, and shall provide technical expertise to persons desiring to use the state as a filming location. The director of the division of tourism ~~department~~ ~~shall~~ may appoint staff necessary to fulfill the functions and duties of the office and ~~shall~~ may appoint an advisory board of no more than ten members to assist in advising the office and to provide technical expertise to offer prospective film companies seeking locations and advice. The board shall serve without compensation, except reimbursement for actual and necessary expenses at the same rate as allowed other state officers to be paid from funds available to the office within the limits of legislative appropriations.

**SECTION 43.** A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Cabinet" means the North Dakota commerce cabinet.
2. "Commissioner" means the commissioner of commerce.
3. "Department" means the department of commerce.
4. "Foundation" means the North Dakota economic development foundation.

**Department of commerce - Divisions.** The North Dakota department of commerce is created. All records, materials, supplies, and equipment used by the division of community services, department of economic development and finance, and the department of tourism are transferred to the department.

1. The department must consist of:
  - a. A division of community services;
  - b. A division of economic development and finance;
  - c. A division of tourism;



d. A division of workforce development; and

e. Any division the commissioner determines necessary to carry out this chapter.

2. The commissioner shall appoint the director of any division created by the commissioner under subsection 1. Effective August 1, 2003, the commissioner shall appoint the directors of the division of community services, division of economic development and finance, and division of workforce development. Effective August 1, 2005, the commissioner shall appoint the director of the division of tourism. Each director appointed by the commissioner serves at the pleasure of the commissioner and is entitled to receive a salary set by the commissioner within the limits of legislative appropriation. Until August 1, 2003, the governor shall appoint the directors of the division of community services, division of economic development and finance, and division of workforce development and until August 1, 2005, the governor shall appoint the director of the division of tourism. The individuals appointed by the governor shall serve at the pleasure of the governor and are entitled to receive a salary set by the governor within the limits of legislative appropriations.

**Commissioner of commerce - Duties.** With the advice and counsel of the North Dakota development foundation, the governor shall appoint a commissioner to supervise, control, and administer the department. The commissioner serves at the pleasure of the governor and receives a salary set by the governor within the limits of legislative appropriations.  
The commissioner:

1. Shall file an oath of office in the usual form before commencing to perform the duties of the commissioner;

2. Shall serve as chairman of the cabinet;

3. Shall prepare the cabinet's list identifying economic development moneys included in budget requests of cabinet agencies;

4. Shall appoint personnel as may be determined necessary to carry out the duties of the department;

5. Shall manage the operations of the department and oversee each of the divisions;

- 1           6.   Shall assume central responsibilities to develop, implement, and coordinate a  
2               working network of commerce service providers;
- 3           7.   Shall coordinate the department's services with commerce-related services of  
4               other state agencies;
- 5           8.   Shall advise and cooperate with departments and agencies of the federal  
6               government and of other states; private businesses, agricultural organizations, and  
7               associations; and research institutions; and with any individual or other private or  
8               public entity;
- 9           9.   May enter contracts upon terms and conditions as determined by the  
10           commissioner to be reasonable and to effectuate the purposes of this chapter;
- 11          10.   Shall report between the first and tenth legislative days of each regular legislative  
12           session to a standing committee of each house of the legislative assembly as  
13           determined by the legislative council and shall report annually to the foundation:
  - 14           a.   On the department's goals and objectives since the last report;
  - 15           b.   On the department's goals and objectives for the period until the next report;
  - 16           c.   On the department's long-term goals and objectives;
  - 17           d.   On the department's activities and measurable results occurring since the last  
18               report; and
  - 19           e.   On commerce benchmarks, including the average annual wage in the state,  
20               the gross state product exclusive of agriculture, and the number of primary  
21               sector jobs in the state;
- 22          11.   Shall adopt rules necessary to implement this chapter; and
- 23          12.   May take any actions necessary and proper to implement this chapter.

24           **North Dakota economic development foundation - Executive committee -**

25   **Purpose.** The North Dakota economic development foundation is created.

- 26           1.   The foundation is composed of a minimum of fifteen and a maximum of thirty  
27               members appointed by the governor for two-year terms, except the governor shall  
28               appoint approximately one-half of the initial foundation members to one-year terms  
29               in order to initiate a cycle of staggered terms. Appointment of the foundation  
30               members must ensure a cross section of business, tourism, and economic

development representation, and must ensure that at least one member represents rural concerns.

2. The foundation members shall elect an executive committee with a minimum of five and a maximum of seven foundation members. The executive committee members shall elect a chairman, vice chairman, and a secretary.

3. The foundation shall seek funding for administrative expenses from private sector sources and shall seek and distribute private sector funds for use in commerce-related activities in the state.

4. The purpose of the foundation is to:

a. Provide the governor advice and counsel in selecting the commissioner;

b. Serve in an advisory role to the commissioner;

c. Develop a strategic plan for economic development in the state and set accountability standards, measurements, and benchmarks to evaluate the effectiveness of the department in implementing the strategic plan;

d. Develop a strategic plan for the development of value-added agriculture in the state; and

e. Monitor tourism and economic development activities and initiatives of the department.

**Compensation and reimbursement of foundation members.** The foundation may establish the level of compensation to which a foundation member is entitled. A foundation member is entitled to reimbursement for mileage and expenses as provided for state officers.

**Commerce cabinet.** The North Dakota commerce cabinet is created. The cabinet is composed of the directors of each of the department divisions and of the executive heads, or other authorized representatives, of the state board for vocational and technical education, the state board of higher education, the Bank of North Dakota, the department of agriculture, the workers compensation bureau, the department of transportation, job service North Dakota, the game and fish department, and of any other state agency appointed by the commissioner. The commissioner is the chairman of the cabinet and shall determine which agencies are members of the cabinet. The cabinet shall:

1. Coordinate and communicate economic development and tourism efforts of the agencies represented.

2. Meet at times determined by the commissioner.

3. Develop and make available before each regular session of the legislative assembly a list that identifies economic development moneys included in budget requests of cabinet agencies.

**Cooperation with other agencies or private entities to jointly publish or mail publications.** The department may cooperate with other state agencies or with a private entity for the purpose of jointly publishing or distributing information or publications as provided in section 54-06-04.3.

**SECTION 44. AMENDMENT.** Subsection 15 of section 54-44.3-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. Officers and employees of the department of ~~economic development and finance~~ commerce.

**SECTION 45. AMENDMENT.** Section 54-44.5-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-44.5-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Community action agency" means a not-for-profit corporation that has authority under its charter and bylaws to receive funds to administer community action programs and which was officially designated as a community action agency or a community action program under section 210 of the Economic Opportunity Act of 1964 [Pub. L. 88-452; 78 Stat. 508; 42 U.S.C. 2701 et seq.], unless the community action agency or a community action program lost its designation as a result of failure to comply with the provisions of the federal act.

2. "Community action program" means a community-based and operated program that includes an intake assessment and referral capability in each of its counties and is designed to include a number of projects or components to provide a range of services and activities having a measurable and potentially major impact on causes and conditions of poverty in the community or those areas of the community where poverty is a particularly acute problem. These services and activities may include activities designed to provide opportunities for eligible persons to:

- a. Secure and retain meaningful employment;
- b. Attain an adequate education;
- c. Make better use of available income;
- d. Obtain and maintain adequate housing and suitable living environment;
- e. Obtain emergency assistance through grants and loans to meet immediate and urgent individual and family needs, including the need for health services, nutritious food, housing, and employment-related assistance;
- f. Maximize the role community action agencies play in supportive mechanisms available to North Dakota families;
- g. Remove obstacles and solve problems that block achievement of self-sufficiency;
- h. Achieve greater participation in the affairs of the community; and
- i. Make more effective use of other programs.

3. "Department" means the department of commerce.

~~4.~~ "Director" means the director of the division of community services.

~~4.~~ 5. "Division" means the department division of community services.

**SECTION 46. AMENDMENT.** Section 54-44.5-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-44.5-02. Division of community services - Creation.** The division of community services is established in the ~~office of management and budget~~ department to provide technical assistance to local governments, state agencies, and the executive branch in the area of community and rural planning and development, policy research and development, and grant program implementation. The ~~director of the office of management and budget~~ commissioner shall appoint a director of the division upon the basis of education and experience. The position of director is not a classified position and the director shall serve at the pleasure of the ~~director of the office of management and budget~~ commissioner. The director of the division may employ such other professional, technical, and clerical persons as may be necessary and may fix their compensation within the limits of legislative appropriation. All personnel within the division must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

1           **SECTION 47. AMENDMENT.** Section 54-44.5-03 of the 1999 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **54-44.5-03. Powers and duties of the director.** The director shall direct and  
4 supervise, with the approval of the ~~director of the office of management and budget~~  
5 commissioner, all the administrative and technical activities of the division.

6           **SECTION 48. AMENDMENT.** Section 54-44.5-05 of the 1999 Supplement to the North  
7 Dakota Century Code is amended and reenacted as follows:

8           **54-44.5-05. Continuing appropriation.** There is hereby appropriated as a standing  
9 and continuing appropriation to the ~~division of community services~~ department for the purpose  
10 of carrying out the provisions of this chapter, including the administration of such provisions, all  
11 moneys returned as repayments of federal or other funds granted under the community  
12 development loan fund, and all earnings from the investment of such moneys, which may be  
13 received from time to time by the division. Administrative expenses may only be charged  
14 against such moneys to the extent permitted by federal law or regulations.

15           **SECTION 49. AMENDMENT.** Section 54-53-02 of the 1999 Supplement to the North  
16 Dakota Century Code is amended and reenacted as follows:

17           **54-53-02. Advisory transportation council - Composition.** There is hereby  
18 established a transportation council ~~which~~ that shall serve in an advisory capacity to the upper  
19 great plains transportation institute. The director of the institute shall serve as the executive  
20 secretary of the council ~~and it.~~ The council shall elect its own chairman. The council  
21 membership ~~shall consist~~ consists of a traffic counsel selected by the members of the council,  
22 a representative of the railways serving the state who is selected by the council, and one  
23 representative from and appointed by the following organizations:

- 24           1. The greater North Dakota association.
- 25           2. The public service commission.
- 26           3. The North Dakota farm bureau.
- 27           4. The North Dakota farmers union.
- 28           5. ~~The livestock industry council~~ North Dakota stockmen's association.
- 29           6. The North Dakota state wheat commission.
- 30           7. The North Dakota department of commerce division of economic development and  
31 finance.

8. The North Dakota ~~farmers~~ grain dealers association.

9. ~~The North Dakota railway lines.~~

~~10.~~ The North Dakota motor carriers association.

~~11.~~ 10. The North Dakota aeronautics commission.

~~12.~~ A traffic counsel selected by the members of the council appointed by the  
above-named organizations.

Members of the council shall serve without pay, but they may receive reimbursement for actual and necessary expenses incurred in the performance of their duties, if authorized by the director.

The council shall consult with the institute in matters of policy affecting the administration of this chapter and in the development of transportation in the state of North Dakota. The council shall meet at the call of the executive director or upon the written request of three or more members of the council.

**SECTION 50. AMENDMENT.** Section 55-01-01 of the North Dakota Century Code is amended and reenacted as follows:

**55-01-01. State historical board.** There is a state historical society of North Dakota which is under the supervision and control of the state historical board. The board consists of seven members who are appointed by the governor. Each member appointed to the board must be a citizen and resident of the state of North Dakota. Appointments are for a term of three years from the first day of July to the thirtieth day of June of the third year or until a successor has been appointed and qualified. The governor shall appoint two members for terms commencing in 1996, two members for terms commencing in 1997, and three members for terms commencing in 1998. Vacancies occurring other than by the expiration of an appointive term must be filled by appointment for the remainder of the term only in the same manner as regular appointments. The board of directors shall select from its membership a president, vice president, and secretary to serve as officers of the board. The secretary of state, director of the parks and recreation department, director of the department of transportation, director of the department of commerce division of tourism ~~department~~, and state treasurer are ex officio members of the board and shall take care that the interests of the state are protected. Each ex officio member may appoint a designee to attend meetings with full voting privileges.

**SECTION 51. AMENDMENT.** Section 55-06-01 of the North Dakota Century Code is amended and reenacted as follows:

**55-06-01. Yellowstone-Missouri-Fort Union commission.** There is a Yellowstone-Missouri-Fort Union commission, hereinafter referred to as the "commission", declared to be a governmental agency with the authority to exercise the powers specified herein, or which may be reasonably implied, composed of the governor as chairman, the president of the senate, the speaker of the house, the superintendent of the state historical board, the ~~director~~ commissioner of the ~~department of economic development and finance~~ commerce, all ex officio, and five citizens of the state to be appointed by the governor who shall serve without compensation for the purpose of investigating, in cooperation with the state of Montana and the national park service, the historical importance and significance of the area and for formulating and executing plans for the preservation of the historic sites illustrative of the history of the United States. The commission may expend its operating expenses and other funds provided by legislative appropriations, and public and private grants, for programs, improvements, and facilities to preserve and improve the Yellowstone-Missouri confluence area.

**SECTION 52. AMENDMENT.** Section 57-38-29 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-29. ~~Rate of tax on individuals~~ Optional method of computing tax.**  
Notwithstanding the other provisions of this chapter, an individual, estate, or trust may elect to determine state income tax liability by applying the provisions of this section. A tax is hereby imposed upon every individual, to be levied, collected, and paid annually with respect to the taxable income of such individual as defined in this chapter, computed at the following rates:

1. On taxable income not in excess of three thousand dollars, a tax of two and sixty-seven hundredths percent.
2. On taxable income in excess of three thousand dollars and not in excess of five thousand dollars, a tax of four percent.
3. On taxable income in excess of five thousand dollars and not in excess of eight thousand dollars, a tax of five and thirty-three hundredths percent.
4. On taxable income in excess of eight thousand dollars and not in excess of fifteen thousand dollars, a tax of six and sixty-seven hundredths percent.



5. On taxable income in excess of fifteen thousand dollars and not in excess of twenty-five thousand dollars, a tax of eight percent.

6. On taxable income in excess of twenty-five thousand dollars and not in excess of thirty-five thousand dollars, a tax of nine and thirty-three hundredths percent.

7. On taxable income in excess of thirty-five thousand dollars and not in excess of fifty thousand dollars, a tax of ten and sixty-seven hundredths percent.

8. On taxable income in excess of fifty thousand dollars, a tax of twelve percent.

**SECTION 53. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.3. Simplified ~~optional~~ method of computing tax.**

~~1. Notwithstanding the other provisions of this chapter, an individual, estate, or trust may elect to determine state income tax liability by applying the provisions of this section. Any taxpayer electing to determine the taxpayer's income tax liability pursuant to this section is only eligible for those adjustments or credits which are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return pursuant to the provisions of this chapter, but who has not computed a federal taxable income or federal income tax liability figure shall compute such a federal taxable income figure using a pro forma return pursuant to the provisions of this section in order to determine a federal income tax liability figure to be used as a starting point in computing state income tax.~~

~~2.~~ A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. This tax is fourteen percent of the individual's, estate's, or trust's adjusted federal income tax liability for the taxable year. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal income tax liability figure, shall compute a federal income tax liability figure using a pro forma return in order to determine a federal income tax

liability figure to be used as a starting point in computing state income tax under this section.

~~3.~~ 2. The adjusted federal income tax liability for a resident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income taxable to this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator:

- a. Interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
- b. The portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
- c. An amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.

~~4.~~ 3. The adjusted federal income tax liability of a nonresident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income derived from sources within this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator:

- a. Interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

b. The portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

c. An amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.

~~5.~~ 4. For purposes of this section, "federal income tax liability" means the individual's, estate's, or trust's federal income tax computed for the taxable year under Internal Revenue Code sections 1 and 3, relating to the computation of the regular federal income tax before credits, including calculation and tax rate modifications prescribed under other provisions of the Internal Revenue Code, adjusted as follows:

a. Add the alternative minimum tax computed under Internal Revenue Code section 55;

b. Add the tax on a lump sum distribution computed under Internal Revenue Code section 402; however, this adjustment does not apply if the lump sum distribution is received while a nonresident of this state and is exempt from taxation by this state under federal law;

c. Add the tax on an accumulation distribution of a trust computed under Internal Revenue Code section 667;

d. Add the tax computed under Internal Revenue Code section 72(m)(5) on excess benefits received from a qualified plan under Internal Revenue Code section 401(a) or a qualified annuity under Internal Revenue Code section 403(a);

e. Add the tax computed under Internal Revenue Code section 72(q)(1) on an early distribution from an annuity contract;

f. Add the tax computed under Internal Revenue Code section 72(t)(1) on an early distribution from a qualified retirement plan;

- 1           g. Add the tax computed under Internal Revenue Code section 4973(a) on  
2           excess contributions to an individual retirement account, medical savings  
3           account, and certain Internal Revenue Code section 403(b) and annuity  
4           contracts; however, this adjustment does not apply if the individual, estate, or  
5           trust is a nonresident of this state;
- 6           h. Add the tax computed under Internal Revenue Code section 4974(a) on  
7           excess accumulations in a qualified retirement plan; however, this adjustment  
8           does not apply if the individual, estate, or trust is a nonresident of this state;
- 9           i. Add the tax computed under Internal Revenue Code section 4980A on  
10          excess distributions from a qualified retirement plan; and
- 11          j. Subtract the credit for prior year minimum tax computed under Internal  
12          Revenue Code section 53.

13          Unless specifically provided for in this subsection, no federal income tax credit may  
14          be subtracted in determining the federal income tax liability for purposes of this  
15          section.

- 16      ~~6.~~ 5. A husband and wife filing a joint federal income tax return shall file a joint state  
17          income tax return if the return is filed under this section. If separate federal income  
18          tax returns are filed, one spouse's state income tax return may be filed under this  
19          section and the other spouse's income tax return may be filed under the other  
20          provisions of this chapter.

- 21      ~~7.~~ 6. a. A resident individual, estate, or trust must be allowed a credit against the tax  
22          otherwise due under this section for the amount of any income tax imposed  
23          on the taxpayer for the taxable year by another state or territory of the United  
24          States or the District of Columbia on income derived from sources therein and  
25          which is also subject to tax under this section.
- 26          b. The credit provided under this subsection may not exceed the proportion of  
27          the tax otherwise due under this section that the amount of the taxpayer's  
28          adjusted gross income derived from sources in the other taxing jurisdiction  
29          bears to the taxpayer's entire adjusted gross income as reported on the  
30          taxpayer's federal income tax return.

~~8- 7.~~ a. Individuals, estates, or trusts receiving a refund of federal income tax for a year for which an election to file state income tax returns has been made under this section shall file amended state income tax returns reducing the federal income tax liability for the year for which the federal income tax refund is granted and may not report the federal income tax refund in the year received.

b. Individuals, estates, or trusts assessed additional federal income tax for a year for which an election to file state income tax returns has been made under this section shall file amended state income tax returns increasing the federal income tax liability for the year for which the additional federal income tax is assessed and may not report increased federal income tax liability in the year in which the additional federal income tax is paid.

9- 8. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.

~~40.~~ 9. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.20.

44- 10. A taxpayer filing a return under this section is entitled to the exemptions or credits provided under sections 40-63-04, 40-63-06, and 40-63-07.

**SECTION 54. AMENDMENT.** Section 57-38-54 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-54. Publication of statistics.** The tax commissioner shall prepare and publish biennially statistics reasonably available with respect to the operation of this chapter, including amounts collected, classification of taxpayers, and such other facts as are deemed pertinent and valuable. The commissioner shall publish the tax rate imposed under section 57-38-30.3 as a percentage of adjusted federal tax liability and as the corresponding range of marginal tax rates as if the tax were imposed on taxable income.

1           **SECTION 55. AMENDMENT.** Subsection 1 of section 57-38.5-01 of the North Dakota  
2 Century Code is amended and reenacted as follows:

- 3           1. "Director" means the director of the department of commerce division of economic  
4 development and finance.

5           **SECTION 56. AMENDMENT.** Section 57-38.5-08 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **57-38.5-08. Rules and administration.** The tax commissioner is charged with  
8 administration of this chapter as it relates to an income tax credit and has the same powers as  
9 provided under section 57-38-56 for purposes of this chapter. The director is charged with  
10 administration of this chapter as it relates to certification of qualified businesses and the  
11 ~~director~~ commissioner of commerce may adopt rules for that purpose.

12           **SECTION 57. AMENDMENT.** Subsection 6 of section 57-39.2-28 of the North Dakota  
13 Century Code is amended and reenacted as follows:

- 14           6. Notwithstanding section 57-39.2-23, the commissioner may provide names and  
15 addresses of Canadian residents claiming a North Dakota sales tax refund to the  
16 director of the department of commerce division of tourism ~~department~~.

17           **SECTION 58. REPEAL.** Section 54-34.3-09 of the North Dakota Century Code is  
18 repealed.

19           **SECTION 59. LEGISLATIVE COUNCIL CORRECTION OF STATUTORY**  
20 **REFERENCES.** The legislative council may replace references to the "department of  
21 economic development and finance", "division of community services", "tourism department",  
22 and "department of economic development and finance division of finance" with references to  
23 the "department of commerce division of economic development and finance", department of  
24 commerce division of community services", "department of commerce division of tourism",  
25 "department of commerce division of economic development and finance finance office",  
26 "department of commerce", and "commissioner of commerce", or any variation of these terms  
27 as appropriate, in any measure enacted by the fifty-seventh legislative assembly.

28           **SECTION 60. APPROPRIATION - TRANSFER.** As of the effective date of this Act,  
29 the division of community services, department of economic development and finance, and  
30 tourism department are abolished and any funds appropriated to these agencies by the

1 fifty-sixth legislative assembly and fifty-seventh legislative assembly are transferred to the  
2 department of commerce.

3 **SECTION 61. EFFECTIVE DATE.** Sections 52 through 54 of this Act are effective for  
4 taxable years beginning after December 31, 2000, and the remainder of this Act becomes  
5 effective on August 1, 2001.