

**FIRST ENGROSSMENT with
House Amendments - Minority Report**
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, and 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, and 21-11-06,
6 subsection 4 of section 26.1-50-01, sections 26.1-50-02, 28-32-01, 40-57.1-04, and 49-10.1-17,
7 subsection 4 of section 50-06-01.8, section 52-01-03, subsection 5 of section 52-02.1-01,
8 section 54-01.1-08, subsection 1 of section 54-06-04, section 54-21.2-03, subsection 1 of
9 section 54-21.3-03, sections 54-21.3-04.1, 54-34-12, 54-34-15, 54-34.3-01, 54-34.3-02,
10 54-34.3-03, 54-34.3-04, 54-34.3-05, 54-34.3-06, 54-34.3-08, 54-34.3-10, and 54-34.3-11,
11 subsection 15 of section 54-44.3-20, sections 54-44.5-01, 54-44.5-02, 54-44.5-03, 54-44.5-05,
12 54-53-02, 55-01-01, and 55-06-01, subsection 1 of section 57-38.5-01, and section 57-38.5-08
13 of the North Dakota Century Code, relating to merging the division of community services and
14 department of economic development and finance into a department of commerce; to repeal
15 section 54-34.3-09 of the North Dakota Century Code, relating to the department of economic
16 development and finance; to provide for correction of statutory references; to provide an
17 appropriation; and to provide an effective date.

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

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

21 **4-14.1-03. Agricultural products utilization commission - Composition -**

22 **Appointment.** The agricultural fuel tax fund must be administered by the agricultural products
23 utilization commission. The commission consists of nine members, five of whom must be
24 appointed by the governor for terms of two years each, arranged so that two terms expire in

1 odd-numbered years and three terms expire in even-numbered years. Three members
2 appointed by the governor must be actively engaged in farming in this state and two members
3 appointed by the governor must be actively engaged in business in this state. The
4 commissioner of agriculture shall appoint one member for a term of two years which expires in
5 odd-numbered years. The member appointed by the commissioner must be actively engaged
6 in farming in this state. Commission members may be reappointed to the commission. Terms
7 of commissioners shall run from the first day of July. The director of the department of
8 commerce division of economic development and finance, the president of North Dakota state
9 university, and the commissioner of agriculture, or their designees, are members of the
10 commission. The commission shall elect one of its members as chairman.

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

13 **4-14.1-04. Agricultural products utilization commission - Meetings - Personnel -**
14 **Reports.** The agricultural products utilization commission, which is ~~a division~~ an office of the
15 department of commerce division of economic development and finance, shall meet as
16 necessary and shall report to each session of the legislative assembly. The commission may
17 secure office space, employ needed personnel for the performance of its duties, hire
18 consultants, spend any funds appropriated to the commission, and contract with public entities
19 or private parties for services.

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

22 **6-12-02. (Effective for first four taxable years beginning after December 31, 1998)**
23 **Establishment - Organization.** Any financial institution or group of financial institutions may
24 establish a corporation or a limited liability company to own and operate the housing
25 development fund. Except as provided in this chapter, all authority regarding the articles of
26 incorporation or articles of organization is the province of the governing board, which must
27 include a representative of the Bank of North Dakota and a representative of the department of
28 commerce division of economic development and finance. The fund administrator shall
29 maintain the fund as an account at the Bank of North Dakota. The governing board is
30 responsible for adopting policies and procedures governing activities in connection with the

fund. The governing board may not distribute more than seventy-five percent of the net profit of the fund in any of the first five years of operation.

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

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

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

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

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

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

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

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

6. Cooperate with and avail itself of the facilities of the department of ~~economic development and finance~~ commerce and any other similar governmental agencies;

1 and cooperate with, assist, and otherwise encourage local organizations in the
2 various communities of the state, the purpose of which are the promotion,
3 assistance, and development of the business prosperity and economic welfare of
4 the communities and of this state.

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

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

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

27 **20.1-02-18.1. Federal wildlife area acquisitions - Submission to county**
28 **commissioners, opportunity for public comment, and impact analysis required.** The
29 governor, the director, or their designees, responsible under federal law for final approval of
30 land, wetland, and water acquisitions by the United States department of the interior, its
31 bureaus or agencies, for waterfowl production areas, wildlife refuges, or other wildlife or

1 waterfowl purposes, shall submit the proposed acquisitions by certified mail with return receipt
2 to the board of county commissioners of the county or counties in which the land, wetland, and
3 water areas are located for the board's recommendations.

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

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

29 **SECTION 10. AMENDMENT.** Section 21-11-02 of the 1999 Supplement to the North
30 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:

1 a. That the facilities proposed to be financed by the loan will result in significant
2 additional industrial or other economic activity in North Dakota which would
3 not occur in the absence of a state loan.

4 b. That the cost of power furnished by the facilities financed by the loan will be
5 significantly lower than it would be without a loan made under this chapter.

6 c. That the facilities financed will furnish power at the lowest possible cost to
7 stimulate industrial development, benefit the general public, and expand the
8 use of North Dakota fuel resources.

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

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

14 **21-11-03. Processing of application - Fee - Purpose.** The department of commerce
15 division of economic development and finance shall process each application and if it
16 determines the applicant is eligible for the loan and has complied with all requirements, it shall
17 request an application fee of not more than fifty thousand dollars. The fee must be deposited in
18 a special and separate fund in the state treasury and must be expended by the ~~department~~
19 division of economic development and finance for purposes of investigating the applicant and
20 evaluating the technical and economic feasibility of the plans and specifications as submitted
21 by the applicant. The ~~department~~ division may consult or contract with any person or private,
22 state, or federal department, agency, or entity, for purposes of that investigation or evaluation.
23 All departments, agencies, institutions, and officials of this state and its political subdivisions
24 shall provide to the ~~department~~ division of economic development and finance such aid,
25 information, and assistance as it may request in regard to any matter relative to the applicant or
26 such applicant's plans and specifications. The ~~department~~ division of economic development
27 and finance may conduct any private or public hearing it may deem necessary in the course of
28 that investigation or evaluation. Any unexpended portion of the funds received as an
29 application fee must be refunded to the applicant after the payment of all costs of investigation
30 and evaluation of the application. There is hereby appropriated from each application fee these

1 funds as may be necessary to pay all costs of investigation and evaluation and pay refunds as
2 provided in this section.

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

5 **21-11-04. Approval or rejection of application.** Upon completion of all investigations
6 and evaluations of any matter relative to the applicant or the submitted application and plan, the
7 department of commerce division of economic development and finance shall either reject the
8 application as submitted, approve the application as submitted, or offer to approve the
9 application if modified in accordance with any recommendation made by the commission as a
10 result of any such investigation or evaluation. If the applicant fails or refuses to agree to those
11 modifications, the application must be rejected.

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

14 **21-11-05. Approved application filed with industrial commission.** Upon approval
15 of the application, as submitted or modified, the department of commerce division of economic
16 development and finance shall file the application, along with its report and recommendations,
17 received by it as a result of any investigation and evaluation, with the ~~state~~ industrial
18 commission. The department of ~~economic development and finance~~ commerce shall prepare
19 and submit any necessary legislation for the appropriation of additional funds or the
20 authorization of the issuance of bonds at the following session of the legislative assembly, or at
21 a special session if called in accordance with the constitution.

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

24 **21-11-06. Disbursements of loan - Inspection fee.** If the industrial commission finds
25 that the approved loan application has been filed and processed as required by this chapter
26 and the proposed loan agreement is in proper legal form and the amount to be disbursed
27 thereunder, with other previous disbursements, does not exceed the funds appropriated for that
28 purpose, it shall authorize the execution of the loan agreement with the applicant by the director
29 of the department of commerce division of economic development and finance on behalf of the
30 state. Prior to the disbursement of any funds pursuant to the loan agreement, the applicant
31 shall deliver to the director of the division of economic development and finance a supervision

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

12 **SECTION 15. AMENDMENT.** Subsection 4 of section 26.1-50-01 of the 1999
13 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

20 **SECTION 16. AMENDMENT.** Section 26.1-50-02 of the 1999 Supplement to the North
21 Dakota Century Code is amended and reenacted as follows:

22 **26.1-50-02. Establishment - Organization.** Any insurer or group of insurers may
23 establish a corporation or limited liability company to own and operate the North Dakota
24 low-risk incentive fund. Except as provided in this chapter, all authority regarding the articles of
25 incorporation or articles of organization is the province of the governing board, which must
26 include a representative of the Bank of North Dakota and the director of the department of
27 commerce division of economic development and finance. The Bank of North Dakota shall
28 administer the fund; however, the governing board is responsible for adopting fund policies and
29 procedures. The governing board may not distribute more than seventy-five percent of the net
30 profit of the fund in any of the first five years of operation.

1 **SECTION 17. AMENDMENT.** Section 28-32-01 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **28-32-01. (Effective through December 31, 2002) Definitions.** In this chapter,
4 unless the context or subject matter otherwise provides:

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

23 2. "Administrative agency" or "agency" means each board, bureau, commission,
24 department, or other administrative unit of the executive branch of state
25 government, including one or more officers, or employees, or other persons
26 directly or indirectly purporting to act on behalf or under authority of the agency.
27 An administrative unit located within or subordinate to an administrative agency
28 shall be treated as part of that agency to the extent it purports to exercise authority
29 subject to this chapter. The term administrative agency does not include:
30 a. The office of management and budget except with respect to rules made
31 under section 32-12.2-14, rules relating to conduct on the capitol grounds and

1 in buildings located on the capitol grounds under section 54-21-18, ~~rules~~
2 ~~relating to the state building code as authorized or required under section~~
3 ~~54-21.3-03, rules relating to the Model Energy Code as required under~~
4 ~~section 54-21.2-03~~, rules relating to the central personnel system as
5 authorized under section 54-44.3-07, rules relating to state purchasing
6 practices as required under section 54-44.4-04, rules relating to records
7 management as authorized or required under chapter 54-46, and rules
8 relating to the central microfilm unit as authorized under chapter 54-46.1.

- 9 b. The adjutant general with respect to the division of emergency management.
- 10 c. The council on the arts.
- 11 d. The state auditor.
- 12 e. The department of commerce with respect to the division of economic
13 development and finance.
- 14 f. The dairy promotion commission.
- 15 g. The education factfinding commission.
- 16 h. The educational telecommunications council.
- 17 i. The board of equalization.
- 18 j. The board of higher education.
- 19 k. The Indian affairs commission.
- 20 l. The industrial commission with respect to the activities of the Bank of North
21 Dakota, the North Dakota housing finance agency, the North Dakota
22 municipal bond bank, the North Dakota mill and elevator association, and the
23 North Dakota farm finance agency.
- 24 m. The department of corrections and rehabilitation except with respect to the
25 activities of the division of adult services under chapter 54-23.4.
- 26 n. The pardon advisory board.
- 27 o. The parks and recreation department.
- 28 p. The parole board.
- 29 q. The state fair association.
- 30 r. The state department of health with respect to the state toxicologist.

- 1 s. The board of university and school lands except with respect to activities
2 under chapter 47-30.1.
- 3 t. The administrative committee on veterans' affairs except with respect to rules
4 relating to the supervision and government of the veterans' home and the
5 implementation of programs or services provided by the veterans' home.
- 6 u. The industrial commission with respect to the lignite research fund except as
7 required under section 57-61-01.5.
- 8 v. The secretary of state with respect to rules adopted for the presidential
9 preference contest under section 16.1-11-02.2.
- 10 3. "Agency head" means an individual or body of individuals in whom the ultimate
11 legal authority of the agency is vested by law.
- 12 4. "Complainant" means any person who files a complaint before an administrative
13 agency pursuant to section 28-32-05; and any administrative agency which, when
14 authorized by law, files such a complaint before such agency or any other agency.
- 15 5. "Hearing officer" means any agency head or one or more members of the agency
16 head when presiding in an administrative proceeding, or, unless prohibited by law,
17 one or more other persons designated by the agency head to preside in an
18 administrative proceeding, an administrative law judge from the office of
19 administrative hearings, or any other person duly assigned, appointed, or
20 designated to preside in an administrative proceeding pursuant to statute or rule.
- 21 6. "License" means a franchise, permit, certification, approval, registration, charter, or
22 similar form of authorization required by law.
- 23 7. "Order" means any agency action of particular applicability that determines the
24 legal rights, duties, privileges, immunities, or other legal interests of one or more
25 specific persons, but does not mean an executive order issued by the governor.
- 26 8. "Party" means each person named or admitted as a party or properly seeking and
27 entitled as of right to be admitted as a party. An administrative agency may be a
28 party. In a hearing for the suspension, revocation, or disqualification of an
29 operator's license under title 39, the term may include each city and each county in
30 which the alleged conduct occurred, but the city or county may not appeal the
31 decision of the hearing officer.

1 9. "Person" includes an individual, association, partnership, corporation, limited
2 liability company, state governmental agency or governmental subdivision, or an
3 agency of such governmental subdivision.

4 10. "Relevant evidence" means evidence having any tendency to make the existence
5 of any fact that is of consequence to the determination of the administrative action
6 more probable or less probable than it would be without the evidence.

7 11. "Rule" means the whole or a part of an agency statement of general applicability
8 that implements or prescribes law or policy, or the organization, procedure, or
9 practice requirements of the agency. The term includes the adoption of new rules
10 and the amendment, repeal, or suspension of an existing rule. The term does not
11 include:

12 a. A rule concerning only the internal management of an agency which does not
13 directly or substantially affect the substantive or procedural rights or duties of
14 any segment of the public.

15 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency
16 in the performance of audits, investigations, inspections, and settling
17 commercial disputes or negotiating commercial arrangements, or in the
18 defense, prosecution, or settlement of cases, if the disclosure of the
19 statement would:

20 (1) Enable law violators to avoid detection;

21 (2) Facilitate disregard of requirements imposed by law; or

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

24 c. A rule establishing specific prices to be charged for particular goods or
25 services sold by an agency.

26 d. A rule concerning only the physical servicing, maintenance, or care of agency
27 owned or operated facilities or property.

28 e. A rule relating only to the use of a particular facility or property owned,
29 operated, or maintained by the state or any of its subdivisions, if the
30 substance of the rule is adequately indicated by means of signs or signals to
31 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.

- 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 16.1-11-02.3.
- 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.

SECTION 18. 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

1 exemption is in the best interest of the people of North Dakota and, if it so determines, approve
2 the exemption. The board shall, after making its determination, certify the findings back to the
3 applicant and to the tax commissioner. Nothing contained herein shall have the effect of
4 exempting the project from filing an annual income tax return.

5 **SECTION 19. AMENDMENT.** Section 49-10.1-17 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **49-10.1-17. Agreements to restore Amtrak service.** The governor or the director of
8 the department of transportation may make agreements in accordance with applicable federal
9 law with the state of Montana and relevant federal agencies for the renewal of service on the
10 Amtrak north coast Hiawatha route from Fargo to Spokane, Washington. The governor, the
11 director of the department of transportation, or the ~~director of the department of economic~~
12 ~~development and finance~~ commissioner of commerce may enter agreements with any political
13 subdivision, state, and federal agency for the restoration of daily service on the Amtrak empire
14 builder route.

15 **SECTION 20. AMENDMENT.** Subsection 4 of section 50-06-01.8 of the North Dakota
16 Century Code is amended and reenacted as follows:

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

22 **SECTION 21. AMENDMENT.** Section 52-01-03 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **52-01-03. Disclosure of information.** Except as otherwise provided in this section,
25 information obtained from any employing unit or individual pursuant to the administration of the
26 North Dakota Unemployment Compensation Law and determinations as to the benefit rights of
27 any individual must be held confidential and may not be disclosed or be open to public
28 inspection in any manner revealing the individual's or employing unit's identity. Any claimant or
29 claimant's legal representative must be supplied with information from the records of the job
30 insurance division, to the extent necessary for the proper presentation of the claimant's claim in
31 any proceeding under the North Dakota Unemployment Compensation Law with respect to the

1 claim. Subject to restrictions as the bureau by rule may prescribe, the information may be
2 made available to any agency of this or any other state, or any federal agency, charged with
3 the administration of any unemployment compensation law or the maintenance of a system of
4 public employment offices, or the bureau of internal revenue of the United States department of
5 the treasury, and information obtained in connection with the administration of the employment
6 service may be made available to persons or agencies for purposes appropriate to the
7 operation of a public employment service. Upon a request, the bureau shall furnish to any
8 agency of the United States charged with the administration of public works or assistance
9 through public employment, and may furnish to any state agency similarly charged, the name,
10 address, ordinary occupation, and employment status of each recipient of benefits and the
11 recipient's rights to further benefits under the North Dakota Unemployment Compensation Law.
12 The bureau may request the comptroller of the currency of the United States to cause an
13 examination of the correctness of any return or report of any national banking association,
14 rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection
15 with the request, may transmit any report or return to the comptroller of the currency of the
16 United States as provided in subsection c of section 3305 of the federal Internal Revenue
17 Code. The bureau shall request and exchange information for purposes of income and
18 eligibility verification to meet the requirements of section 1137 of the Social Security Act.

19 The bureau may provide the workers compensation bureau, the state commissioner of
20 labor, the department of ~~economic development and finance~~ commerce, the state tax
21 commissioner, and the North Dakota occupational information coordinating committee with
22 information obtained pursuant to the administration of the North Dakota Unemployment
23 Compensation Law. Any information so provided may be used only for the purpose of
24 administering the duties of the workers compensation bureau, the state commissioner of labor,
25 the state department of ~~economic development and finance~~ commerce, the state tax
26 commissioner, and the North Dakota occupational information coordinating committee. The
27 bureau may provide any state agency or a private entity with the names and addresses of
28 employing units for the purpose of jointly publishing or distributing publications or other
29 information as provided in section 54-06-04.3. Any information so provided may only be used
30 for the purpose of jointly publishing or distributing publications or other information as provided
31 in section 54-06-04.3.

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

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

9 **SECTION 22. AMENDMENT.** Subsection 5 of section 52-02.1-01 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 5. "Department" means the department of ~~economic development and finance~~
12 commerce.

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

15 **54-01.1-08. Adoption of rules and regulations.** State agencies may consult with the
16 department of commerce division of community services to establish regulations and
17 procedures for implementation of the provisions of this chapter and to establish such
18 regulations and procedures necessary to assure:

- 19 1. That the payments and assistance authorized by this chapter shall be administered
20 in a manner which is fair and reasonable, and as uniform as practicable;
21 2. That a displaced person who makes proper application for a payment authorized
22 by this chapter shall be paid promptly after a move or, in hardship cases, be paid
23 in advance; and
24 3. That any displaced person aggrieved by a determination as to eligibility for a
25 payment, or as to the amount of a payment, may have the application reviewed by
26 the head or governing body of the state agency.

27 **SECTION 24. AMENDMENT.** Subsection 1 of section 54-06-04 of the 1999
28 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 29 1. The following executive and administrative officers and departments shall submit
30 to the governor and the secretary of state reports covering their operations for the
31 two preceding fiscal years, except as otherwise provided by law, not later than the

1 first day of December each year after the regular session of the legislative
2 assembly:

- 3 a. Secretary of state.
- 4 b. State auditor.
- 5 c. Insurance commissioner.
- 6 d. Attorney general.
- 7 e. Agriculture commissioner.
- 8 f. Superintendent of public instruction.
- 9 g. State tax commissioner.
- 10 h. Public service commission.
- 11 i. Department of corrections and rehabilitation.
- 12 j. Department of transportation.
- 13 k. State department of health.
- 14 l. Department of human services.
- 15 m. Workers compensation bureau.
- 16 n. Office of management and budget.
- 17 o. State treasurer.
- 18 p. Commissioner of labor.
- 19 q. Department of banking and financial institutions.
- 20 r. ~~Department of economic development and finance.~~
- 21 ~~s.~~ Game and fish department.
- 22 ~~t.~~ s. Industrial commission.
- 23 ~~u.~~ t. Job service North Dakota.
- 24 ~~v.~~ u. Board of university and school lands.

25 **SECTION 25. AMENDMENT.** Section 54-21.2-03 of the 1999 Supplement to the North
26 Dakota Century Code is amended and reenacted as follows:

27 **54-21.2-03. Energy conservation standards.** The standards for energy conservation
28 in new building construction, for thermal design conditions and criteria for buildings, and for
29 adequate thermal resistance in regard to the design and selection of mechanical, electrical
30 service, and illumination systems and equipment which will enable the effective use of energy
31 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 26. 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.

SECTION 27. AMENDMENT. Section 54-21.3-04.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-21.3-04.1. Accessibility standards. Notwithstanding section 54-21.3-04, every building or facility subject to the federal Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327] must conform to the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36]. State and political subdivision entities may not claim the exceptions to the requirement that elevators be installed in certain buildings as those exceptions are stated in exception 1 to section 4.1.3(5) and in section 4.1.6(1)(k)(i) in the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36. A structural change to an existing state or

political subdivision building or facility is not required if another method is effective in achieving compliance with regulations adopted under Public Law 101-336. For public accommodations, an alternative to a structural change in existing buildings or facilities is permitted only after it has been documented, in accordance with regulations adopted under Public Law 101-336, that a particular structural change is not readily achievable. A state agency or the governing body of a political subdivision shall require from any person preparing plans and specifications for a building or facility subject to the Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327], a statement that the plans and specifications are, in the professional judgment of that person, in conformance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36, subject to the exception stated in this section. A statement of conformance must be submitted to the department of commerce division of community services for recording.

SECTION 28. AMENDMENT. Section 54-34-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1 **SECTION 29. AMENDMENT.** Section 54-34-15 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **54-34-15. Private sponsor.** The department of commerce division of economic
4 development and finance may endeavor to locate a private sector sponsor or group of sponsors
5 to assume administration of the venture capital network.

6 **SECTION 30. AMENDMENT.** Section 54-34.3-01 of the 1999 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **54-34.3-01. Department of commerce division of economic development and**
9 **finance established - Mission.** The ~~North Dakota~~ department of commerce division of
10 economic development and finance is established to assume the functions, powers, and duties
11 of the department of economic development ~~commission~~ and finance with respect to programs
12 and other efforts intended to enhance the economic development of the state. The mission of
13 the ~~department~~ division is to develop strategies and programs to:

- 14 1. Facilitate the growth, diversification, and expansion of existing enterprises and the
15 attraction and creation of new wealth-generating enterprises in the state;
- 16 2. Promote economic diversification and innovation within the basic industries and
17 economic sectors of this state, including strategies and programs designed to
18 specialize and focus the state's economy on advanced agriculture and food
19 processing, energy byproduct development, export services and tourism, and
20 advanced manufacturing;
- 21 3. Promote increased productivity and value-added products, processes, and
22 services in the state, and the export of those goods and services by North Dakota
23 enterprises to the nation and to the world;
- 24 4. Maintain and revitalize economically depressed rural areas by working in close
25 collaboration with local communities and by encouraging communities to enter into
26 cooperative relationships for more efficient and effective education, health care,
27 government service, and infrastructure maintenance;
- 28 5. Forge a supportive partnership with the Bank of North Dakota, the board of higher
29 education and the state's institutions of higher education, regional planning
30 councils, local development organizations and authorities, the Myron G. Nelson
31 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 31. 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 32. 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
3. Other divisions offices that the director organizes and establishes as necessary to carry out most efficiently and effectively the mission and duties of the ~~department~~ division.

SECTION 33. AMENDMENT. Section 54-34.3-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

1. Manage the internal operations of the department division and establish policies that promote the orderly and efficient administration of the ~~department~~ division;

2. Appoint personnel as may be determined necessary to carry out ~~sections~~
~~54-34.3-01 through 54-34.3-08~~ this chapter and fix their compensation within the
limits of legislative appropriations;
3. Assume central responsibility to develop, implement, and coordinate within state
government a comprehensive program of economic development consistent with
the mission of the ~~department~~ division;
4. Coordinate that program of economic development with all other appropriate state
and local government departments, agencies, institutions, and organizations that
perform research, develop and administer programs, gather statistics, or perform
other functions relating to economic development, and those government entities
shall advise, cooperate, and provide reasonable assistance to the director in
carrying out ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter;
5. Advise, and cooperate with, departments and agencies of the federal government
and of other states, private business and agricultural organizations and
associations, research institutions, and any individual or other private or public
entity, and call upon those entities or individuals for consultation and assistance in
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~~

1 ~~must also include a comparison of dollars spent to the economic benefits created~~
2 ~~of all programs administered or supervised by the director; and~~

3 9- Have authority to do any and all other things necessary and proper to carry out
4 ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter.

5 **SECTION 34. AMENDMENT.** Section 54-34.3-05 of the 1999 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **54-34.3-05. ~~Division of finance~~ Finance office - Deputy director.** The director shall
8 appoint a deputy director who shall administer the ~~division of finance~~ office. The deputy
9 director shall serve at the will of the director and receive a salary set by the director within the
10 limits of legislative appropriations. The purpose of the ~~division of finance~~ office is to identify
11 and coordinate sources of capital and financial assistance, including lending programs of the
12 Bank of North Dakota, and administer programs of financial assistance placed under the
13 administration of the ~~division~~ office, to business and industry, local governments, and other
14 entities and individuals in the state consistent with the mission of the ~~department~~ office. The
15 ~~division of finance~~ office shall:

- 16 1. Administer other programs of financial assistance assigned to it by law or
17 otherwise.
18 2. Perform such other duties as assigned to it by the director.

19 **SECTION 35. AMENDMENT.** Section 54-34.3-06 of the 1999 Supplement to the North
20 Dakota Century Code is amended and reenacted as follows:

21 **54-34.3-06. ~~Divisions~~ Division offices.** The director shall organize and establish
22 other ~~divisions~~ offices as necessary to carry out most efficiently and effectively the mission and
23 duties of the ~~department~~ division, except that the ~~department~~ division must contain:

- 24 1. ~~An office of~~ A North Dakota American Indian business development office to assist
25 North Dakota tribal and individual economic development representatives and
26 North Dakota American Indian entrepreneurs with access to state and federal
27 programs designed to assist them.
28 2. ~~An office of~~ A North Dakota women's business development office to develop and
29 administer the North Dakota women's business program, to establish and fund the
30 women's business leadership council, certify women-owned businesses for federal
31 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 36. 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 37. 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 unexpired term. The members are entitled to be paid for mileage and actual expenses incurred in attending meetings and in performance of their official duties in amounts provided by law for other state officers and employees. ~~The~~ This commission shall coordinate activities and serve as a clearinghouse and an advisory group to the ~~department~~ division for information relating to economic development programs that focus on career development for women. ~~The~~ This commission shall prepare for and perform followup duties in connection with state, regional, and national conferences, encourage interest, participation, and cooperation with state departments, agencies, and other organizations in developing needed services, facilities, and opportunities, and provide consultant help to local organizations created for the purpose of coordinating activities for the economic and career development of women.

SECTION 38. AMENDMENT. Section 54-34.3-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-11. Mutual fund capital pool - Authorization. The ~~department~~ division of economic development and finance, in conjunction with the agricultural products utilization

commission, may establish a mutual fund capital pool to attract farm and nonfarm investments in value-added processing projects.

SECTION 39. 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 and department of economic development and finance 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 workforce development; and
 - d. Any division the commissioner determines necessary to carry out this chapter.
2. The commissioner shall appoint the directors of the division of community services, division of economic development and finance, division of workforce development, and any division created by the commissioner under subsection 1. Each director serves at the pleasure of the commissioner and is entitled to receive a salary set by the commissioner within the limits of legislative appropriation.

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

North Dakota economic development foundation - Executive committee -

Purpose. The North Dakota economic development foundation is created.

- 1 1. The foundation is composed of a minimum of fifteen and a maximum of thirty
2 members appointed by the governor for two-year terms, except the governor shall
3 appoint approximately one-half of the initial foundation members to one-year terms
4 in order to initiate a cycle of staggered terms. Appointment of the foundation
5 members must ensure a cross section of business and economic development
6 representation, and must ensure that at least one member represents rural
7 concerns.
- 8 2. The foundation members shall elect an executive committee with a minimum of
9 five and a maximum of seven foundation members. The executive committee
10 members shall elect a chairman, vice chairman, and a secretary.
- 11 3. The foundation shall seek funding for administrative expenses from private sector
12 sources and shall seek and distribute private sector funds for use in
13 commerce-related activities in the state.
- 14 4. The purpose of the executive committee is to:
 - 15 a. Provide the governor advice and counsel in selecting the commissioner;
 - 16 b. Serve in an advisory role to the commissioner, including counsel in the
17 development of the department's strategic plan;
 - 18 c. Monitor economic development activities and initiatives of the department;
19 and
 - 20 d. Set accountability measurements for the department.

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

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

1. Coordinate and communicate economic development 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 40. 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 commerce division of economic development and finance.

SECTION 41. 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 42. 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.

SECTION 43. AMENDMENT. Section 54-44.5-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 44. AMENDMENT. Section 54-44.5-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 45. AMENDMENT. Section 54-53-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. The greater North Dakota association.
2. The public service commission.
3. The North Dakota farm bureau.
4. The North Dakota farmers union.
5. ~~The livestock industry council~~ North Dakota stockmen's association.
6. The North Dakota state wheat commission.

7. The North Dakota department of commerce division of economic development and 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 46. 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 47. 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 48. AMENDMENT. Subsection 1 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 49. AMENDMENT. Section 57-38.5-08 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 50. REPEAL. Section 54-34.3-09 of the North Dakota Century Code is repealed.

1 **SECTION 51. LEGISLATIVE COUNCIL CORRECTION OF STATUTORY**

2 **REFERENCES.** The legislative council may replace references to the "department of
3 economic development and finance", "division of community services", and "department of
4 economic development and finance division of finance" with references to the "department of
5 commerce division of economic development and finance", department of commerce division of
6 community services", "department of commerce division of economic development and finance
7 finance office", "department of commerce", and "commissioner of commerce", or any variation
8 of these terms as appropriate, in any measure enacted by the fifty-seventh legislative
9 assembly.

10 **SECTION 52. APPROPRIATION - TRANSFER.** As of the effective date of this Act,
11 the division of community services and department of economic development and finance are
12 abolished and any funds appropriated to these agencies by the fifty-sixth legislative assembly
13 and fifty-seventh legislative assembly are transferred to the department of commerce.

14 **SECTION 53. EFFECTIVE DATE.** This Act becomes effective on August 1, 2001.