

STATE GOVERNMENT

CHAPTER 467

SENATE BILL NO. 2048

(Legislative Council)

(Legislative Management Committee)

LEGISLATIVE ASSEMBLY MEMBER COMPENSATION

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to compensation of members of the legislative assembly; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁸ **SECTION 1. AMENDMENT.** Section 54-03-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of one hundred eleven dollars for each calendar day during any organizational, special, or regular legislative session and for each day that member attends a meeting of a legislative committee between the organizational session and the regular session as authorized by legislative rule. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred fifty dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may be only at the cost of coach fare and may not exceed one and one-half times the amount the member would be entitled to receive as mileage reimbursement for travel by motor vehicle. A member of the legislative assembly who does not receive reimbursement for lodging and whose place of residence in the legislative district that the member represents is not within the city of Bismarck is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that the total reimbursement may not exceed six hundred fifty dollars per month. The

²¹⁸ Section 54-03-20 was also amended by section 3 of Senate Bill No. 2001, chapter 26, and section 1 of Senate Bill No. 2175, chapter 468.

amount to which each legislator is entitled must be paid following the organizational session in December and following each month during a regular or special session.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session or a legislative committee meeting must be included as a calendar day during a legislative session or as a day of a legislative committee meeting for the purposes of this section.

In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of two hundred fifty dollars a month, which is payable every six months or monthly, at the member's option. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member. The majority and minority leaders of the house and senate are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred fifty dollars per month during the biennium for their execution of public duties.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].

SECTION 2. RETROACTIVE APPLICATION. Section 1 of this Act is retroactive in application to December 7, 2000.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved January 30, 2001
Filed January 30, 2001

CHAPTER 468

SENATE BILL NO. 2175

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

LEGISLATIVE ASSEMBLY MEMBER SESSION COMPENSATION

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to compensation paid to members of the legislative assembly during any organizational, special, or regular legislative session; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁹ **SECTION 1. AMENDMENT.** Section 54-03-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of one hundred ~~eleven~~ twenty-five dollars for each calendar day during any organizational, special, or regular legislative session. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred fifty dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may be only at the cost of coach fare and may not exceed one and one-half times the amount the member would be entitled to receive as mileage reimbursement for travel by motor vehicle. A member of the legislative assembly who does not receive reimbursement for lodging and whose place of residence in the legislative district that the member represents is not within the city of Bismarck is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that the total reimbursement may not exceed six hundred fifty dollars per month. The amount to which each legislator is entitled must be paid following the organizational session in December and following each month during a regular or special session.

²¹⁹ Section 54-03-20 was also amended by section 3 of Senate Bill No. 2001, chapter 26, and section 1 of Senate Bill No. 2048, chapter 467.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session must be included as a calendar day during a legislative session for the purposes of this section.

In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of two hundred fifty dollars a month, which is payable every six months or monthly, at the member's option. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member. The majority and minority leaders of the house and senate are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred fifty dollars per month during the biennium for their execution of public duties.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].

SECTION 2. RETROACTIVE APPLICATION. This Act is retroactive in application to January 1, 2001.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 469

HOUSE BILL NO. 1205 (Representatives Klemin, Mahoney) (Senator Trenbeath)

LEGISLATIVE ASSEMBLY MEMBER PROCEEDING CONTINUANCE

AN ACT to amend and reenact section 54-03-22 of the North Dakota Century Code, relating to the continuance of civil proceedings when a party, witness, or attorney is a member of the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-22 of the North Dakota Century Code is amended and reenacted as follows:

54-03-22. When party or attorney is member of legislative assembly. ~~In any civil action pending in any court in this state at any time when the legislative assembly is in session, it is sufficient cause for a continuance of such action to a succeeding term of court, if it is made to appear by affidavit of any attorney of record that the party to said action applying for such continuance, or any attorney who has been the attorney of record of such party since commencement of such action or for more than fifteen days prior to filing such affidavit, is a~~ A member of the legislative assembly who is a witness or party to a civil action or has been the attorney of record for a party in a civil action for more than fifteen days is entitled to a continuance or an extension of time for any matter related to the civil action during the time the member of either house of the legislative assembly and is then, or, at the beginning of the term of the court in which such action is pending, will be, actually engaged in the performance of his the member's duties at a session of the legislative assembly, and that the attendance of such party or the attorney of record the member of the legislative assembly is necessary to the fair and proper trial of said in the action. Upon application for the continuance or extension, the proceeding must be continued and may not proceed within ten days after the adjournment of the legislative assembly over the objection of the party, witness, or attorney of record. ~~Notice of motion, together with a copy of the an affidavit stating that the party, witness, or the attorney of record is a member of the legislative assembly, must be served upon the every other party to the action at least ten days prior to before the opening of the term of court at which said action is pending, if said action is pending in such court at the opening of the term. Upon the proof of service of such notice and affidavit, the case must be continued over to the next succeeding term and may not be tried over the objection of the party within ten days after the adjournment of the legislative assembly date of the matter sought to be continued.~~ It is sufficient cause for the continuance of any proceeding before any board, commission, or agency of the state or its political subdivisions that any witness, party to the proceeding, or his a party's attorney, is a member of the legislative assembly and the legislative assembly is in session. The witness, party, or his the party's attorney shall give written notice of the fact of his membership in the legislative assembly along with a request for continuance of the proceeding to the board, commission, or agency before which he the member of the legislative assembly was to appear, and upon. Upon receipt thereof of the notices, the board shall cause continue the proceeding to be continued to a date not less than ten days after adjournment of the legislative

assembly, and shall notify the other parties to the proceeding, and their attorneys, of ~~such~~ the continuance.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 470

HOUSE BILL NO. 1474

(Representatives Metcalf, Boucher, Haas, Klemin)
(Senators Kilzer, Wardner)

LEGISLATIVE ASSEMBLY MEMBER LEAVE OF ABSENCE

AN ACT to amend and reenact section 54-03-27 of the North Dakota Century Code, relating to a leave of absence from employment for service in the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

54-03-27. Service in the legislative assembly - Leave of absence from ~~public~~ employment. The executive officer in charge of a state agency, department, or institution or the governing body of any political subdivision or any other employer in this state may grant a leave of absence from employment to a full-time employee of that governmental entity or of that employer who is a member of the legislative assembly for service during any regular or special session of the legislative assembly and for attendance at a meeting of the legislative council or any of its committees. The leave of absence may be without pay, and the employer may reduce or eliminate the payment of any additional benefits normally due the employee while the employee is performing legislative service. ~~A state agency, department, or institution or a political subdivision~~ If the leave of absence is granted, the employer may not terminate the employment of an employee solely due to the fact that the employee is absent from employment as the result of service in the legislative assembly.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 471

HOUSE BILL NO. 1407

(Representatives Berg, Keiser, Price)
(Senators Espegard, Krebsbach, Lee)

MANDATED HEALTH INSURANCE COST-BENEFIT ANALYSIS

AN ACT to provide for a cost-benefit analysis of mandated health insurance coverage of services; to provide for a legislative council study; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Health insurance mandated coverage of services - Cost-benefit analysis requirement.

1. A legislative measure mandating health insurance coverage of services or payment for specified providers of services may not be acted on by any committee of the legislative assembly unless the measure is accompanied by a cost-benefit analysis provided by the legislative council. Factors to consider in this analysis include:
 - a. The extent to which the proposed mandate would increase or decrease the cost of the service.
 - b. The extent to which the proposed mandate would increase the appropriate use of the service.
 - c. The extent to which the proposed mandate would increase or decrease the administrative expenses of insurers and the premium and administrative expenses of insureds.
 - d. The impact of the proposed mandate on the total cost of health care.
2. A majority of the members of the committee, acting through the chairman, has sole authority to determine whether a legislative measure mandates coverage of services under this section.
3. Any amendment made during a legislative session to a measure which mandates health insurance coverage of services may not be acted on by a committee of the legislative assembly unless the amendment is accompanied by a cost-benefit analysis provided by the legislative council.
4. The legislative council shall contract with a private entity, after receiving one or more recommendations from the insurance commissioner, to provide the cost-benefit analysis required by this section. The insurance commissioner shall pay the cost of the contracted services to the entity providing the services.

SECTION 2. LEGISLATIVE COUNCIL STUDY - REPORT BY INSURANCE COMMISSIONER ON HEALTH INSURANCE MANDATED COVERAGE OF SERVICES. The legislative council shall consider studying during the 2001-02 interim existing mandated health insurance coverage of services and the feasibility and desirability of repealing state laws mandating health insurance coverage of services. During the 2001-02 interim, the insurance commissioner shall evaluate, subject to receipt of adequate funding under section 3 of this Act, each existing health insurance coverage mandate on the basis of cost or effect on insurance premiums as these relate to the benefits and evaluate the benefits of reducing the need for future health care services due to early identification and treatment. The insurance commissioner may contract with a third party to perform the evaluations. The insurance commissioner shall present the report to the legislative council before July 1, 2002.

SECTION 3. FUNDING AUTHORITY - APPROPRIATION. The insurance commissioner may accept, receive, and expend public and private moneys, not in excess of \$250,000, made available by grant or donation to accomplish the evaluations required under section 2 of this Act and those moneys are appropriated to the insurance commissioner for these purposes for the biennium beginning July 1, 2001, and ending June 30, 2003. Any unexpended appropriation authority to and any excess income received by the insurance commissioner under chapter 32 of the 1999 Session Laws, in an amount not to exceed \$250,000, are not subject to section 54-44.1-11 and are available and may be expended by the insurance commissioner to accomplish the evaluations required under section 2 of this Act during the biennium beginning July 1, 2001, and ending June 30, 2003. The unexpended appropriation authority may only be spent to the extent that the expenditure does not reduce the projected transfers to the general fund under section 26.1-01-07.1 as projected by the fifty-seventh legislative assembly revenue forecast for the 2001-03 biennium.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, the sum of \$55,000, or so much of the sum as may be necessary, to the insurance commissioner for the purpose of paying for the services contracted for under section 1 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 26, 2001
Filed April 26, 2001

CHAPTER 472

HOUSE BILL NO. 1197

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

STATE EMPLOYEE EXPENSE REIMBURSEMENT

AN ACT to amend and reenact section 54-06-09 of the North Dakota Century Code, relating to mileage and travel expense reimbursement for state officials and employees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁰ **SECTION 1. AMENDMENT.** Section 54-06-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-06-09. Mileage and travel expense of state officers and employees.

1. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, must be allowed and paid for mileage and travel expense the following amounts:
 - a. The sum of ~~twenty-five~~ thirty-one cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by motor vehicle or twenty-seven cents per mile [1.61 kilometers] if the travel is by truck, the use of which is required by the employing entity. The sum of ~~thirty-five~~ seventy cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by private airplane. Mileage by private aircraft must be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage must be based on the road mileage between the geographical points. Reimbursement for private airplane travel must be calculated as follows:
 - (1) If reimbursement is for one properly authorized and reimbursable passenger, reimbursement must be paid on a per-mile basis as provided in this subsection.
 - (2) If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular coach fare on a commercial flight, if one is scheduled between the point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the

²²⁰ Section 54-06-09 was also amended by section 2 of House Bill No. 1147, chapter 473.

charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.

- b. Except as provided in subdivision a, when travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the amount actually and necessarily expended therefor in the performance of official duties.
2. No reimbursement may be paid for leased private aircraft, except for leased or rented private aircraft from a recognized fixed base aviation operator who is in the business of leasing and renting private aircraft and is located on an airport open for public use.
3. If only one person engages in such travel in a motor vehicle exceeding at any geographical point ~~one three hundred fifty miles~~ 241.40 482.80 kilometers] beyond the borders of this state, reimbursement is limited to eighteen cents per mile [1.61 kilometers] for ~~the out-of-state portion of the travel beyond the first one hundred fifty miles~~ 241.40 kilometers driven in excess of six hundred miles [965.60 kilometers] of round trip out-of-state travel.
4. An official, deputy, assistant, clerk, or other employee, when required to travel by motor vehicle or truck in the performance of official duty, shall use a state-owned vehicle whenever possible unless exempted under section 24-02-03.3. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision of the state, no allowance may be made or paid for such mileage, except that governmental entities may share expenses when officials or employees of those entities travel in the same motor vehicle or aircraft.
5. Notwithstanding the other provisions of this section, state employees permanently located outside the state or on assignments outside the state for an indefinite period of time, exceeding at least thirty consecutive days, must be allowed and paid ~~twenty-five~~ thirty-one cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle, and the ~~one hundred fifty mile~~ 241.40 kilometer ~~three-hundred-mile~~ 482.80-kilometer restriction imposed by subsection 3 does not apply.
6. Before any allowance for any such mileage or travel expenses may be made, the official, deputy, assistant, clerk, or other employee shall file with the employee's department, institution, board, commission, or agency an itemized statement showing the mileage traveled, the hour of departure and return, the days when and how traveled, the purpose thereof, and such other information and documentation as may be prescribed by rule of the employee's department, institution, board, commission, or agency. The statement must be submitted to the employee's department, institution, board, commission, or agency for approval and must be paid only when approved by the employee's department, institution, board, commission, or agency.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 2001

Filed April 18, 2001

CHAPTER 473

HOUSE BILL NO. 1147

(Transportation Committee)

(At the request of the Office of Management and Budget)

STATE EMPLOYEE PERSONAL VEHICLE USE

AN ACT to amend and reenact subsection 1 of section 24-02-03.3 and subsection 4 of section 54-06-09 of the North Dakota Century Code, relating to use of personal motor vehicles by state employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 24-02-03.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The director shall establish within the department a central vehicle management system to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state subject to registration under chapters 39-04 and 39-05. Upon the request of a state agency and an agreement between the agency and director for the use of the motor vehicle-related equipment, the director may purchase or lease motor vehicle-related equipment and include that equipment within the system. The director shall provide a uniform method of documenting the use and cost of operation of motor vehicles and motor vehicle-related equipment in the system. The director shall advise the director of the office of management and budget as to the need to acquire or dispose of system motor vehicles. The specifications for highway patrol vehicles to be acquired may be set by the highway patrol superintendent. Every state agency, institution, department, board, bureau, and commission unless exempted by the director must use the system. However, an agency, institution, department, board, bureau, or commission may authorize the use of an employee's personal motor vehicle pursuant to subsection 4 of section 54-06-09.

²²² **SECTION 2. AMENDMENT.** Subsection 4 of section 54-06-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. An official, deputy, assistant, clerk, or other employee, when required to travel by motor vehicle or truck in the performance of official duty, shall use a state-owned vehicle whenever possible unless exempted under section 24-02-03.3. However, an agency, institution, department, board, bureau, or commission may allow use of an official's, deputy's, or

²²¹ Section 24-02-03.3 was also amended by section 1 of House Bill No. 1186, chapter 252.

²²² Section 54-06-09 was also amended by section 1 of House Bill No. 1197, chapter 472.

employee's personal motor vehicle in circumstances authorized by the official, deputy, or the employee's supervisor. If personal motor vehicle use is authorized under this subsection, the agency may also allow mileage reimbursement at a rate less than that otherwise provided in this section. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision of the state, no allowance may be made or paid for such mileage, except that governmental entities may share expenses when officials or employees of those entities travel in the same motor vehicle or aircraft.

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 474

HOUSE BILL NO. 1035

(Legislative Council)

(Budget Committee on Government Services)

STATE EMPLOYEE TELECOMMUTING INCENTIVE PROGRAM

AN ACT relating to a state employee telecommuting incentive program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Telecommuting incentive program for state employees.

1. A state agency head may submit a proposal to the suggestion incentive committee established under section 54-06-24 to locate a state employee away from a central office setting of the agency. The proposal must be for a position that has been or would be located in a central office setting within the agency. The proposal must contain a comparison of the estimated annual costs of locating the employee away from a central office setting within the agency to the estimated annual costs of locating the employee in a central office setting within the agency. The comparison must include supporting documentation.
2. a. The suggestion incentive committee shall consider the proposal and determine whether:
 - (1) The proposal has been previously submitted and rejected.
 - (2) The proposal is beyond the reasonable expectations of job performance for an employee.
 - (3) The proposal will increase employment opportunities in a part of the state which is more rural than where the central office setting within the agency is located.
 - (4) Implementation of the proposal is desirable and feasible.
 - (5) Implementation of the proposal will continue to provide the quality of services presently provided by the employing state agency and any other state agency affected by the proposal.
- b. The suggestion incentive committee shall inform the state agency head in writing of its decision on the proposal. For a proposal not approved, the committee shall include its reasons for rejecting the proposal.
- c. A state agency head who submits a proposal and also is a member of the suggestion incentive committee shall abstain from voting on that agency head's proposal.

3. A state agency head who submits a proposal that is approved by the suggestion incentive committee and implemented by the state agency shall compare the actual costs directly relating to the telecommuting program for the twelve-month period beginning with the month the proposed change is instituted to the estimated costs if the program would not have been implemented. The state agency head shall submit the cost comparison to the suggestion incentive committee. Upon approval of the cost comparison report by the suggestion incentive committee, the state agency head is entitled to receive ten percent of any savings identified in the report as resulting from implementing the telecommuting program for the twelve-month period up to a maximum of two thousand dollars. A state agency head may receive no more than two thousand dollars under this program regardless of the number of employees that are located away from the central office setting and the total savings that result. The state employee who is located away from a central office setting of the agency is entitled to receive twenty percent of any savings identified in the report up to a maximum of two thousand dollars. The state agency head may use twenty percent of any savings identified in the report for one-time technology, equipment, or capital improvement costs.

SECTION 2. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2005, and after that date is ineffective.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 475

HOUSE BILL NO. 1119

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

STATE EMPLOYEE PERFORMANCE BONUS PROGRAM

AN ACT to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to establishing a state employee performance bonus program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

State employee performance bonus program - Criteria - Limitations.
State agencies may provide monetary performance bonuses to their classified state employees under this section.

1. State agencies may pay bonuses under this section if:
 - a. The agency has had a written employee performance evaluation policy in place for more than one year before paying the bonus;
 - b. The written employee performance evaluation policy required in subdivision a must have at least three levels of performance criteria; and
 - c. The agency performance bonus program adopted under this section must be a written policy and must be communicated to each classified employee in the agency. Development of the written policy must include input from employees.
2. Classified state employees are eligible to receive a bonus under this section only if:
 - a. The employee has held a classified position in state government for at least one year before a bonus is paid;
 - b. The employee's overall annual performance evaluation satisfies the agency's performance bonus program criteria for receiving a bonus; and
 - c. The employee is a full-time or part-time regular nonprobationary employee holding a regularly funded nontemporary position in the classified service.
3. A classified employee may not receive more than one performance bonus per fiscal year and may not receive more than one thousand dollars in bonuses per biennium.

4. Agencies may pay bonuses under this section during a fiscal year to not more than the number of classified employees equal to twenty-five percent of the classified employees employed by the agency on July first at the beginning of each state fiscal year. Each agency must fund the performance bonus program from within its agency budget for salaries and wages.
5. Bonuses paid under this section may not be included in an employee's base salary for purposes of calculating any wage or salary increase.
6. Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.

SECTION 2. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2005, and after that date is ineffective.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 476

HOUSE BILL NO. 1120

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

STATE EMPLOYEE RECRUITMENT AND RETENTION PROGRAM

AN ACT to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to pilot programs for recruiting and retaining state employees in hard-to-fill occupations; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

State employee recruitment and retention bonus pilot programs - Criteria - Limitations. State agencies may develop pilot programs to provide bonuses to recruit or retain classified state employees in hard-to-fill occupations.

1. State agencies may pay recruitment and retention bonuses under this section only if:
 - a. The agency has a written policy in place identifying eligible positions or occupations and provisions for providing and receiving bonuses;
 - b. The agency has filed a copy of the written policy with the central personnel division; and
 - c. The agency reports to the central personnel division each bonus provided to an employee under the pilot program.
2. State agencies must fund bonus pilot programs from within its agency salaries and wages budget.
3. The central personnel division shall periodically report to a legislative committee designated by the legislative council on the implementation, progress, and bonuses provided under agency recruitment and retention bonus pilot programs.
4. Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 2003, and after that date is ineffective.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 477

HOUSE BILL NO. 1050

(Legislative Council)
(Legislative Management Committee)

LEGISLATIVE ASSEMBLY BILL FILING

AN ACT to amend and reenact section 54-07-01.5 of the North Dakota Century Code, relating to the filing of bills enacted by the Legislative Assembly; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-07-01.5 of the North Dakota Century Code is amended and reenacted as follows:

54-07-01.5. Governor to file bills with secretary of state. The governor shall cause each bill passed by the legislative assembly and not vetoed by the governor to be filed with the secretary of state within five legislative days; ~~Sundays excepted~~, after the bill has been ~~presented~~ delivered to the governor ~~unless~~. If the legislative assembly ~~by its adjournment prevents its return in which case is not in session~~, the governor shall cause ~~the~~ each bill delivered to the governor to be filed with the secretary of state within fifteen days, Saturdays and Sundays excepted, after ~~the adjournment~~ delivery of the bill to the governor.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 12, 2001
Filed February 12, 2001

CHAPTER 478

HOUSE BILL NO. 1259

(Representatives Monson, Delzer, Kingsbury, Wald)

OCCUPATIONAL AND PROFESSIONAL BOARD AUDITS

AN ACT to create and enact a new section to chapter 54-10 of the North Dakota Century Code, relating to audits and reviews of occupational and professional boards; and to amend and reenact subsection 2 of section 54-10-01 of the North Dakota Century Code, relating to powers and duties of the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 54-10-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state and perform or provide for the audits and reviews of state agencies; ~~including occupational or professional boards provided for by law.~~ The state auditor shall audit or review each state agency once every two years. The state auditor shall determine the contents of the audits and reviews of state agencies. The state auditor may conduct any work required by the federal government. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for any agency that receives and expends both general fund and nongeneral fund moneys. ~~The governing board of any occupational or professional board shall provide for an audit once every two years by a certified public accountant or licensed public accountant who shall submit the audit report to the state auditor's office. If the report is in the form and style as prescribed by the state auditor, the state auditor may not audit that board. Alternatively, an occupational or professional board may request the state auditor to do its audit, and if the state auditor agrees to do so, the state auditor shall deposit the fees charged to the occupational or professional board into the state auditor operating account.~~ Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.

SECTION 2. A new section to chapter 54-10 of the North Dakota Century Code is created and enacted as follows:

Occupational and professional boards - Audits and reports. The governing board of any occupational or professional board shall provide for an audit once every two years by a certified public accountant or licensed public accountant. The accountant conducting the audit shall submit the audit report to the state auditor's office. If the report is in the form and style prescribed by the state auditor,

the state auditor may not audit that board. An occupational or professional board may request the state auditor to conduct its audit, and if the state auditor agrees to conduct the audit, the state auditor shall deposit the fees charged to the occupational or professional board into the state auditor operating account. Instead of providing for an audit every two years, an occupational or professional board that has less than ten thousand dollars of annual receipts may submit an annual report to the state auditor. The report must contain the information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the occupational or professional board an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge an occupational or professional board a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 479

SENATE BILL NO. 2259

(Senators Klein, Christmann, Heitkamp)
(Representatives Pollert, Weisz)

PARK DISTRICT AUDITS

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to audits of park districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports. The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firefighters relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison diversion conservancy district.
10. Rural fire protection districts.
11. Special education districts.
12. Area vocational and technology centers.
13. Correction centers.
14. Recreation service districts.
15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.

18. Southwest water authority.
19. Regional planning councils.
20. Soil conservation districts.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. The political subdivision audited shall pay to the state treasurer the fees for the audit performed by the state auditor. The state treasurer shall deposit the fees in the state auditor operating account. The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

In lieu of conducting an audit every two years, the state auditor may require annual reports from school districts with less than one hundred enrolled students, cities with less than three hundred population, park districts with less than two hundred thousand dollars of annual receipts, and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts. The reports must contain the financial information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

A political subdivision, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit report to determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the report and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections shall result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 480

SENATE BILL NO. 2431

(Senators G. Nelson, Lee, Traynor)
(Representatives DeKrey, Eckre, Kliniske)

BIENNIAL REPORTS

AN ACT to amend and reenact section 54-12-05 of the North Dakota Century Code, relating to biennial reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-12-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-12-05. Biennial report.

1. The attorney general shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The report must ~~state~~ provide:
 - ~~4.~~ a. ~~The number, character, condition, and result~~ A summary of the types of the actions prosecuted or defended by the attorney general ~~in~~ on behalf of the state.
 - ~~2.~~ b. The aggregate cost of prosecuting or defending ~~each action~~ actions on behalf of the state.
 - ~~3.~~ c. The amount of fines and penalties collected.
2. The attorney general also shall direct attention to any defect in the practical operations of the law relating to revenue and criminal offenses, and shall suggest amendments and changes as in the attorney general's judgment are necessary to subserve the public interest.

Approved March 29, 2001
Filed March 29, 2001

CHAPTER 481

SENATE BILL NO. 2165

(Natural Resources Committee)
(At the request of the Industrial Commission)

STATE BUILDING AUTHORITY LEASES

AN ACT to create and enact section 54-17.2-05.1 of the North Dakota Century Code, relating to the authority of the state building authority to lease and leaseback state property; and to amend and reenact section 54-17.2-23 of the North Dakota Century Code, relating to the calculation of lease payments for capital construction projects financed by the state building authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 54-17.2-05.1 of the North Dakota Century Code is created and enacted as follows:

54-17.2-05.1. Lease of state property to commission - Leaseback to state. Notwithstanding any other provision in this chapter, the state may lease any project or other property to the commission, in lieu of a transfer of title, and the commission may sublease or leaseback any such project or property back to the state in connection with any financing by the commission under this chapter. Any reference in this chapter to the power or authority of the commission or the state to sell, convey, or lease any project or other property to the other must be deemed to include the power or authority to lease, sublease, or leaseback such project or property, as the case may be.

SECTION 2. AMENDMENT. Section 54-17.2-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-17.2-23. State building authority lease payments - Limitation. The general fund amount of lease payments for a biennium associated with capital construction projects financed by the industrial commission acting as the state building authority may not exceed the amount equal to a portion of sales, use, and motor vehicle excise tax collections equal to ten percent of an amount, determined by multiplying the quotient of one percent divided by the general sales tax rate that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3. The computation for the authorized general fund lease payments for a biennium must be based on the projected sales, use, and motor vehicle excise tax collections presented to the legislative assembly at the close of the most recently adjourned regular legislative session. Lease payment amounts for any particular project must be calculated as of the date the related bonds are issued.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 482

SENATE BILL NO. 2101

(Government and Veterans Affairs Committee)
(At the request of the Industrial Commission)

MILL AND ELEVATOR ASSOCIATION INSTRUMENT EXECUTION

AN ACT to amend and reenact section 54-18-11 of the North Dakota Century Code, relating to execution of instruments by the North Dakota mill and elevator association; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-18-11 of the North Dakota Century Code is amended and reenacted as follows:

54-18-11. Name in which business conducted and titles taken - Execution of written instruments. All business of the association must be conducted under the name of "North Dakota mill and elevator association". Title to property pertaining to the operation of the association must be obtained and conveyed in the name of the state of North Dakota, doing business as the North Dakota mill and elevator association. Written instruments must be executed in the name of the state of North Dakota, signed by any two members of the industrial commission, of whom the governor must be one, or by the manager of the association within the scope of his the manager's authority, as defined by the commission or by other officers, employees, or legal counsel of the association as authorized by the industrial commission.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 483

SENATE BILL NO. 2100

(Government and Veterans Affairs Committee)
(At the request of the Industrial Commission)

MILL AND ELEVATOR ASSOCIATION CONTRACT PREPAYMENT

AN ACT to create and enact a new section to chapter 54-18 of the North Dakota Century Code, relating to prepayment by the North Dakota mill and elevator association to contractors for construction or equipment; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-18 of the North Dakota Century Code is created and enacted as follows:

Contractor to be paid during progress of work - Retainage - Failure to pay - Rate of interest - Investment of retainage. If the contractor to whom a contract for construction or the provision of equipment to the association is let properly performs the work therein designated, the mill manager, at least once in each calendar month during the continuance of the contract work, shall meet, receive, and consider estimates furnished by the agent, engineer, or architect acting for the association or if not so furnished, then by the contractor, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon the contract, and of the material then upon the ground for use in the contract, subject to retentions of ten percent of each estimate presented until the time the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. Notwithstanding the requirements of any other law, the industrial commission may authorize the mill manager to prepay for equipment prior to delivery to the construction site if the industrial commission determines:

1. Prepayment is in the best interest of the association;
2. The association's interest will be adequately protected; and
3. The equipment is of a type that is not fungible and could not be sold except at a discount to another because it is constructed to specifications required by the association.

Upon completion of ninety-five percent of the contract according to the estimates, the association may pay to the contractor ninety-five percent of the amount retained from previous estimates. Any amount retained after ninety-five percent completion of the contract must be paid to the contractor in such amounts and at such times as are approved by the association, upon estimates by its agent, engineer, or architect or the contractor, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. Immediately after considering and allowing any such estimate, the association shall certify and promptly draw a warrant upon the proper fund and transmit it to the contractor entitled to it. If the association fails or neglects to receive and allow the estimate or certify any estimate or final payment upon completion and acceptance for a period of

more than thirty days from the date of the estimate or completion date, then the estimate or final payment, with any retainage properly payable, shall draw interest from its date at the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of the estimate or completion date until the issuance of a proper warrant therefor. Such interest must be computed and added to the face of the estimate, final payment, or retainage by the officer required to issue the warrant, must be included in the warrant when drawn, and must be charged to the fund from which payment for the improvement is to be made. On the amounts of estimates retained, as provided herein, the association may invest or deposit the retained amounts in the Bank of North Dakota earning interest or dividends for the benefit of the contractor. Any amount so invested or deposited must remain in the name of the association until final payment of all moneys due to the contractor is to be made. Further, no contractor shall use such account in any manner whatsoever until released and received by the contractor upon completion of the contract.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 484

HOUSE BILL NO. 1423

(Representatives Carlson, M. Klein)
(Senators Stenehjem, Tollefson)

STATE BUILDING CODE

AN ACT to amend and reenact sections 18-12-25 and 54-21.3-03 of the North Dakota Century Code, relating to the state building code; and to provide for transition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-12-25 of the North Dakota Century Code is amended and reenacted as follows:

18-12-25. Reference data. The latest edition of the following data must be used as reference and as an aid in the interpretation of this chapter:

1. ~~Uniform Building Code - international conference of State building officials code.~~
2. The National Fire Codes - national fire protection association.
3. ~~Uniform Mechanical Code - international conference of building officials except that section 504(f) of the Uniform Mechanical Code is amended as provided in subsection 4 of section 54-21.3-03.~~
4. National Electrical Code - national fire protection association.

²²³ **SECTION 2. AMENDMENT.** Section 54-21.3-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-21.3-03. State building code - Amendments.

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~~

²²³ Section 54-21.3-03 was also amended by section 27 of Senate Bill No. 2032, chapter 488.

~~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, in cooperation with the state building code advisory committee, shall adopt rules to implement, amend, and periodically update the state building code and may adopt rules to amend the code, which must consist of the international building, residential, mechanical, and fuel gas codes.

2. The state building code advisory committee consists of:
 - a. Two representatives appointed by the North Dakota building officials association, one of whom must be from a jurisdiction of fewer than ten thousand people.
 - b. One representative appointed by the North Dakota chapter of the American institute of architects.
 - c. One representative appointed by the North Dakota society of professional engineers.
 - d. One representative appointed by the North Dakota association of builders.
 - e. One representative appointed by the North Dakota association of mechanical contractors.
 - f. One representative appointed by the associated general contractors.
 - g. A fire marshal appointed by the state fire marshal.
 - h. One individual appointed by the state electrical board.
3. The state building code advisory committee shall meet with the director of the office of management and budget or a designee of the director at least once each calendar year to address proposed amendments to the state building code. The director of the office of management and budget may not adopt an amendment to the state building code unless the amendment is approved by a majority vote of:
 - a. One representative appointed by the North Dakota chapter of the American institute of architects;
 - b. One representative appointed by the North Dakota society of professional engineers;
 - c. One representative appointed by the North Dakota association of builders;
 - d. One representative appointed by the North Dakota association of mechanical contractors;

- e. One representative appointed by the associated general contractors; and
 - f. Representatives of eligible jurisdictions as established by administrative rule.
4. For the purposes of manufactured homes, the state building code consists of the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.].
- ~~3.~~ 5. The governing body of a city, township, or county that elects to administer and enforce a building code shall adopt and enforce the state building code. However, the state building code may be amended by cities, townships, and counties to conform to local needs.

SECTION 3. TRANSITION. The state building code in effect on January 1, 2001, must remain in effect until publication of rules under section 54-21.3-03 to implement the international building, residential, mechanical, and fuel gas codes as the state building code.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 485

HOUSE BILL NO. 1210

(Representatives Froseth, Brandenburg, Ekstrom, S. Kelsh)

MODULAR STRUCTURE INSPECTIONS

AN ACT to create and enact a new section to chapter 54-21.3 of the North Dakota Century Code, relating to recognition of third-party building, electrical, fire, and plumbing inspections for modular residential and commercial structures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. If Senate Bill No. 2032 of the fifty-seventh legislative assembly does not become effective, a new section to chapter 54-21.3 of the North Dakota Century Code is created and enacted as follows:

Modular residential and commercial structures - Third-party inspections

- Rules. The manufacturer of a modular residential or commercial structure that is built in a factory may contract with a third party for the inspection of the structure for compliance with all applicable building, electrical, fire, and plumbing codes and standards during the manufacturing process in the factory. A third party that conducts inspections and certifies compliance with all applicable codes and standards must be approved as a certified third-party inspector by the director of the office of management and budget. The director of the office of management and budget shall adopt rules for the certification of inspectors and for the procedures to be followed in conducting inspections of modular residential and commercial structures. If a manufacturer of modular residential or commercial structures contracts with a certified third-party inspector to monitor compliance with all applicable building, electrical, fire, and plumbing codes and standards for a modular residential or commercial structure, no further inspection by state or local building, electrical, fire, or plumbing inspectors may be required for that structure during the manufacturing process in the factory.

SECTION 2. If Senate Bill No. 2032 of the fifty-seventh legislative assembly becomes effective, a new section to chapter 54-21.3 of the North Dakota Century Code is created and enacted as follows:

Modular residential and commercial structures - Third-party inspections

- Rules. The manufacturer of a modular residential or commercial structure that is built in a factory may contract with a third party for the inspection of the structure for compliance with all applicable building, electrical, fire, and plumbing codes and standards during the manufacturing process in the factory. A third party that conducts inspections and certifies compliance with all applicable codes and standards must be approved as a certified third-party inspector by the division of community services. The department of commerce shall adopt rules for the certification of inspectors and for the procedures to be followed in conducting inspections of modular residential and commercial structures. If a manufacturer of modular residential or commercial structures contracts with a certified third-party inspector to monitor compliance with all applicable building, electrical, fire, and plumbing codes and standards for a modular residential or commercial structure, no

further inspection by state or local building, electrical, fire, or plumbing inspectors may be required for that structure during the manufacturing process in the factory.

Approved April 13, 2001

Filed April 13, 2001

CHAPTER 486

SENATE BILL NO. 2055

(Senators Solberg, Holmberg, Watne)
(Representatives Eckre, Kliniske, Pietsch)

LIBRARY COORDINATING COUNCIL COMPOSITION

AN ACT to amend and reenact section 54-24.4-01 of the North Dakota Century Code, relating to the composition of the North Dakota library coordinating council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-24.4-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.4-01. North Dakota library coordinating council - Members - Term.

The North Dakota library coordinating council consists of ~~ten~~ eleven members. The president of the North Dakota library association is an ex officio, voting member of the council. The state librarian is an ex officio nonvoting member of the council. The governor shall appoint ~~eight~~ nine members to the council, one of whom must represent special libraries, one of whom must represent public higher education institution libraries, one of whom must represent private higher education institution libraries, one of whom must represent school libraries, two of whom must represent public libraries, one of whom must represent disabled, economically disadvantaged, and minority populations, and ~~one citizen~~ two citizens at large. The governor shall take into account reasonable geographic considerations when appointing members of the council. The term of each member is three years. ~~Of the initial council, three members must be appointed by the governor for a three-year term, three members must be appointed by the governor for a two-year term, and two members must be appointed by the governor for a one-year term.~~ If at any time during a member's term, the member ceases to possess the qualifications required by this section, the member's office is deemed vacant and the governor shall appoint a qualified representative to complete the term of office. No member may be appointed to serve more than two consecutive three-year terms.

Approved March 28, 2001

Filed March 28, 2001

CHAPTER 487

HOUSE BILL NO. 1169

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

CAPITAL IMPROVEMENT FEE PREPAYMENT REVOLVING FUND

AN ACT to amend and reenact section 54-27-22 of the North Dakota Century Code, relating to the revolving fund for prepayment of planning and consulting fees for capital improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27-22 of the North Dakota Century Code is amended and reenacted as follows:

54-27-22. Revolving fund for prepayment of consulting and planning fees for capital improvements. Funds must be made available to all state agencies, institutions, and departments from a preliminary planning revolving fund in the state treasury under the control of the director of the office of management and budget for studies, planning, architectural programming, schematic designs, and cost estimates relating to proposed new capital improvements and major remodeling of existing facilities. State agencies, institutions, and departments interested in obtaining planning moneys shall submit a written request detailing the scope and purpose of such project to the director of the office of management and budget. The director shall file such request with, and shall present ~~his~~ the director's recommendations regarding the proposed project and necessary planning moneys to, the budget section of the legislative council. Funds may be advanced only in the event that an authorization has first been received from the budget section. Such funds advanced must be repaid to the preliminary planning revolving fund as moneys become available through legislative appropriation or other sources for the commencement of the project.

Approved February 6, 2001
Filed February 6, 2001

CHAPTER 488

SENATE BILL NO. 2032

(Legislative Council)

(Commerce and Labor Committee)

DEPARTMENT OF COMMERCE

AN ACT to create and enact a new chapter to title 54 of the North Dakota Century Code, relating to creation of a department of commerce; to amend and reenact sections 4-14.1-03, 4-14.1-04, 6-12-02, subsection 6 of section 10-30-04, subsection 4 of section 10-30.5-02, section 10-30.5-05, subsection 6 of section 10-30.6-04, subsection 3 of section 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, 24-03-21, subsection 4 of section 26.1-50-01, sections 26.1-50-02, 28-32-01, 40-57.1-04, 49-10.1-17, subsection 4 of section 50-06-01.8, section 52-01-03, subsection 5 of section 52-02.1-01, section 54-01.1-08, subsection 1 of section 54-06-04, section 54-21.2-03, subsection 1 of 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, 54-34.3-03, 54-34.3-04, 54-34.3-05, 54-34.3-06, 54-34.3-08, 54-34.3-10, 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 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, 57-38-30.3, 57-38-54, subsection 1 of section 57-38.5-01, section 57-38.5-08, and subsection 6 of section 57-39.2-28 of the North Dakota Century Code, relating to merging the division of community services, department of economic development and finance, and tourism department into a department of commerce, income tax filing methods for individuals, and publication of statistics by the tax commissioner; to repeal section 54-34.3-09 of the North Dakota Century Code, relating to the department of economic development and finance; to provide for correction of statutory references; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.1-03 of the 1999 Supplement to the North 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 commerce division of economic development and finance. The fund administrator shall maintain the fund as an account at the Bank of North Dakota. The governing board is 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; and cooperate with, 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 the communities and of this state.

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

3. A detailed impact analysis from the state game and fish department shall be included with the acquisition proposal for board of county commissioner consideration in making recommendations. The analysis by the game and fish department shall include, but shall not be limited to, 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 shall include the fiscal, social, and agricultural impacts of the proposed acquisition. The state game and fish department shall reimburse the county or counties for any expenses incurred by the county agent in preparing the analysis. The analyses shall 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 shall 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 shall be forwarded to the state game and fish department. The state game and fish department may, after consideration of such comments, file a final impact analysis with the division of community services and the board of county commissioners.

SECTION 9. AMENDMENT. Section 20.1-02-18.1 of the 1999 Supplement to the 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 application fee must be refunded to the applicant after the payment of all costs of investigation and evaluation of the application. There is hereby appropriated from each application fee these funds as may be necessary to pay all costs of investigation and evaluation and pay refunds as provided in this section.

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

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

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

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

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

21-11-06. Disbursements of loan - Inspection fee. If the industrial commission finds that the approved loan application has been filed and processed as required by this chapter and the proposed loan agreement is in proper legal form and the amount to be disbursed thereunder, with other previous disbursements, does not exceed the funds appropriated for that purpose, it shall authorize the execution of the loan agreement with the applicant by the director of the department of commerce division of economic development and finance on behalf of the state. Prior to the disbursement of any funds pursuant to the loan agreement, the applicant shall deliver to the director of the division of economic development and finance a supervision fee in such amount as may be specified in the loan agreement, which fee must be deposited in a special fund in the state treasury. The fee must be expended by the ~~department~~ division of economic development and finance for the purpose of periodic inspection of the construction of such power generation or transmission facilities, and disbursements to the borrower under the loan agreement may be made only upon certification by the director or a person appointed by the director ~~that~~ which the construction is being carried on in accordance with the loan agreement and that the loan funds are due the borrower under the agreement. Upon the completion of the construction of the facilities, any unexpended balance of the inspection fee must be refunded to the borrower. There is hereby appropriated from each inspection fee those funds as may be necessary to provide for the inspections and refunds as provided in this section.

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

24-03-21. Preparation of road maps - Publication of tourist information.

The commissioner shall prepare for general distribution; road maps of the state highway system and other roads as the commissioner determines necessary. Any tourist-oriented material printed on road maps must be prepared by the department of commerce division of tourism ~~department~~ at no cost to the department of transportation.

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

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

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

26.1-50-02. Establishment - Organization. Any insurer or group of insurers may establish a corporation or limited liability company to own and operate the North Dakota low-risk incentive 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 the director of the department of commerce division of economic development and finance. The Bank of North Dakota shall administer the fund; however, the governing board is responsible for adopting fund policies and procedures. 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.

²²⁴ **SECTION 18. AMENDMENT.** Section 28-32-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-01. (Effective through December 31, 2002) 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

²²⁴ Section 28-32-01 was created by section 12 of House Bill No. 1030, chapter 293, and amended by section 4 of Senate Bill No. 2251, chapter 501, and section 2 of Senate Bill No. 2446, chapter 140.

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.
 - e. The department of commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational telecommunications council.
 - i. The board of equalization.
 - j. The board of higher education.

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

7. "Order" means any agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, but does not mean an executive order issued by the governor.
8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.
9. "Person" includes an individual, association, partnership, corporation, limited liability company, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
10. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.
11. "Rule" means the whole or a part of an agency statement of general applicability that implements or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not 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.

(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.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational telecommunications council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, the North Dakota mill and elevator association, and the North Dakota farm finance agency.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The state department of health with respect to the state toxicologist.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.

- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
 - u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
 - v. The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.3.
- 3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.
 - 4. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-05; and any administrative agency which, when authorized by law, files such a complaint before such agency or any other agency.
 - 5. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.
 - 6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.
 - 7. "Order" means any agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, but does not mean an executive order issued by the governor.
 - 8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.
 - 9. "Person" includes an individual, association, partnership, corporation, limited liability company, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
 - 10. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.
 - 11. "Rule" means the whole or a part of an agency statement of general applicability that implements or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The

term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not 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~~ commerce commissioner may enter agreements with any political subdivision, state, and federal agency for the restoration of daily service on the Amtrak empire builder route.

²²⁵ **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.

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

52-01-03. Disclosure of information. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual must be held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or claimant's legal representative must be supplied with information from the records of the job insurance division, to the extent necessary for the proper presentation of the claimant's claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to the claim. Subject to restrictions as the bureau by rule may prescribe, the information may be made available to any agency of this or

²²⁵ Section 50-06-01.8 was repealed by section 6 of House Bill No. 1108, chapter 418.

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

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

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

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

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

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

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

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

1. That the payments and assistance authorized by this chapter shall be administered 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.

²²⁶ **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.

²²⁶ Section 54-06-04 was also amended by section 88 of Senate Bill No. 2164, chapter 88, and section 12 of Senate Bill No. 2424, chapter 503.

- 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.
- ~~u.~~ t. Job service North Dakota.
- ~~v.~~ 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.

²²⁷ **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)

²²⁷ Section 54-21.3-03 was also amended by section 2 of House Bill No. 1423, chapter 484.

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 28. 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 29. 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.

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
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 34. 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 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 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 39. 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 40. AMENDMENT. Section 54-34.4-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

4. The division of tourism ~~department~~ is established to foster and promote tourism to, and within, the state and the full development of the state's tourism resources, and to serve as a planning and coordinating agency for tourism-related programs of the state and the state's political subdivisions.
2. ~~The governor shall appoint a director of the tourism department who shall serve at the will of the governor.~~ The director shall supervise and control the division of tourism ~~department~~.

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

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

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.

²²⁸ **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.

²²⁸ Section 54-34.4-04 was also amended by section 19 of Senate Bill No. 2019, chapter 44.

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;
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. The foundation is composed of a minimum of fifteen and a maximum of thirty members appointed by the governor for two-year terms, except the governor shall appoint approximately one-half of the initial foundation members to one-year terms in order to initiate a cycle of staggered terms. Appointment of the foundation 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.

²²⁹ **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;

²²⁹ Section 54-44.3-20 was also amended by section 9 of House Bill No. 1010, chapter 10.

- 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.

SECTION 47. 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 48. 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 49. 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.~~
- ~~40.~~ 10. The North Dakota motor carriers association.
- ~~44.~~ ~~10.~~ The North Dakota aeronautics commission.
- ~~42.~~ 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.

²³⁰ **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,

²³⁰ Section 55-01-01 was also amended by section 18 of Senate Bill No. 2424, chapter 503.

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.

²³¹ **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.

²³¹ Section 55-06-01 was also amended by section 48 of Senate Bill No. 2424, chapter 503.

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.

²³² **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.

²³² Section 57-38-30.3 was also amended by section 1 of House Bill No. 1399, chapter 526, section 1 of House Bill No. 1413, chapter 528, section 2 of Senate Bill No. 2252, chapter 522, and section 1 of Senate Bill No. 2386, chapter 527.

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

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

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

- ~~7.~~ 6. a. A resident individual, estate, or trust must be allowed a credit against the tax otherwise due under this section for the amount of any income tax imposed on the taxpayer for the taxable year by another state or territory of the United States or the District of

Columbia on income derived from sources therein and which is also subject to tax under this section.

- b. The credit provided under this subsection may not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's entire adjusted gross income as reported on the 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.

²³³ **SECTION 55. 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 56. 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 57. AMENDMENT. Subsection 6 of section 57-39.2-28 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 60. APPROPRIATION - TRANSFER. As of the effective date of this Act, the division of community services, department of economic development and finance, and tourism department are abolished and any funds appropriated to these agencies by the fifty-sixth legislative assembly and fifty-seventh legislative assembly are transferred to the department of commerce.

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

Approved April 28, 2001
Filed April 28, 2001

²³³ Section 57-38.5-01 was also amended by section 2 of House Bill No. 1413, chapter 528.

CHAPTER 489

HOUSE BILL NO. 1400

(Representatives Berg, Pietsch, Severson, Tieman)
(Senators Klein, Trenbeath)

RURAL GROWTH INCENTIVE PROGRAM

AN ACT to create and enact a new section to chapter 54-34.3 of the North Dakota Century Code, relating to a rural growth incentive program administered by the department of economic development and finance; and to provide for allocation of the North Dakota development fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-34.3 of the North Dakota Century Code is created and enacted as follows:

Rural growth incentive program.

1. The department shall manage and administer the rural growth incentive program. A city with a population of less than two thousand five hundred may apply to the department to be designated as a rural growth incentive city. The department shall designate an applicant city as a rural growth incentive city if the city raises funds in the amount of a dollar for dollar match for the amount requested in the loan, prepares an economic development strategic plan, and meets any additional program requirements provided by rule. The source of city funds may be any combination of public and private funds.
2. If the department designates a city as a rural growth incentive city:
 - a. Subject to the availability of funds, the state shall make a loan to the city in an amount not less than twenty-five thousand dollars and not more than seventy-five thousand dollars. The department shall establish the amount of the interest rate for loans provided to a city under this section. The funding source of the state loan is the North Dakota development fund. The city shall distribute the city and state funds to qualifying new or expanded primary sector businesses in the city. A qualifying business in the city includes a business that provides essential services to the city. For purposes of this section, a business that provides essential services does not include a public utility. The governing body of the city determines whether a new or expanded primary sector business qualifies for funding, and the director of the department determines whether a business that provides essential services to the city qualifies for funding. The state shall distribute a loan to a rural growth incentive city once the city establishes the city has chosen a specified qualified business to receive funding. The city may not use city or state funds raised or provided under this section for costs associated with administering the rural growth incentive city.

- b. The department shall provide the city with training to assist the city in expanding primary sector businesses and working with state economic development programs.

SECTION 2. NORTH DAKOTA DEVELOPMENT FUND ALLOCATIONS. A portion of the amount available in the North Dakota development fund relating to the transfer of regional rural development revolving loan fund moneys may be used for the purpose of providing state loan funds under section 1 of this Act.

Approved April 13, 2001

Filed April 16, 2001

CHAPTER 490

SENATE BILL NO. 2176

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

LEGISLATIVE COUNCIL MEMBER COMPENSATION

AN ACT to amend and reenact subsection 1 of section 54-35-10 of the North Dakota Century Code, relating to compensation paid to members of the legislative assembly for attending sessions of the legislative council and its committees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-35-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The members of the council and the members of any committee of the council ~~must~~ are entitled to be compensated for the time spent in attendance at sessions of the council and of its committees at the rate of ~~seventy-five~~ one hundred dollars per day and must also be paid for expenses incurred in attending said meetings and in the performance of their official duties in the amounts provided by law for other state officers.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 491

HOUSE BILL NO. 1032

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS MEMBERSHIP

AN ACT to amend and reenact subsection 1 of section 54-35.2-01 of the North Dakota Century Code, relating to the membership of the advisory commission on intergovernmental relations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The advisory commission on intergovernmental relations consists of ~~eleven~~ twelve members:
 - a. The North Dakota league of cities executive committee shall appoint two members of the commission.
 - b. The North Dakota association of counties executive committee shall appoint two members of the commission.
 - c. The North Dakota township officers association executive board of directors shall appoint one member of the commission.
 - d. The North Dakota recreation and park association executive board shall appoint one member of the commission.
 - e. The North Dakota school boards association board of directors shall appoint one member of the commission.
 - f. The governor or the governor's designee is a member of the commission.
- ~~f.~~ g. The legislative council shall appoint four members of the legislative assembly as members of the commission.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 492

HOUSE BILL NO. 1125

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

OMB PURCHASES, BIDDING, AND VENDOR REGISTRATION EXEMPTIONS

AN ACT to amend and reenact subsection 7 of section 54-44.4-02, section 54-44.4-05, and subsections 1 and 4 of section 54-44.4-09 of the North Dakota Century Code, relating to justification for emergency purchases, variations on competitive bidding, and exemptions from vendor registration; and to provide for legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁴ **SECTION 1. AMENDMENT.** Subsection 7 of section 54-44.4-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Emergency purchases the office of management and budget cannot make within the required time and which involve public health or public safety, or where immediate expenditures are necessary for repairs of state property to protect it against further loss or damage, or to prevent or minimize serious disruption in state services. Emergency purchases must be made with the level of competition practicable under the circumstances, and a written determination of the basis for the emergency and for the selection of the particular contractor must be included in the contract file.

SECTION 2. AMENDMENT. Section 54-44.4-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.4-05. Competitive ~~bidding on~~, limited competitive, noncompetitive, and negotiated purchases - Other government purchasing contracts - Exempt records.

1. Except as otherwise provided in ~~section~~ sections 44-08-01 and section 25-16.2-02, and in this section, purchasing contracts must be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability. The office of management and budget may reject any or all bids or negotiate for a lower price with a successful bidder. Each bid received, with the name of the bidder, must be recorded. The office of management and budget may enter into term contracts for the acquisition of commodities or services, and may make multiple awards for term commodity or service contracts when it deems a multiple award to be in the best

²³⁴ Section 54-44.4-02 was also amended by section 2 of House Bill No. 1148, chapter 493.

interests of the state. Until the date and time set for receiving and opening bids and proposals pursuant to a request for bids or proposals, all bids and proposals received under this chapter are exempt records under subsection 5 of section 44-04-17.1.

2. The office of management and budget shall adopt rules specifying the circumstances under which competition may be waived or limited, when negotiation may be used, and specifying the required justifications and procedures for using those methods of purchasing. The circumstances that may permit limited competitive, noncompetitive, or negotiated purchases include:

 - a. The commodity is available from only one supplier.
 - b. The commodity is available from another governmental entity's contract.
 - c. The commodity is to be purchased for experimentation or trial.
 - d. Competitive bidding has failed to produce a bidder.
 - e. Commodities are being purchased for over-the-counter resale.
 - f. Acceptable goods are produced or provided by correctional institutions or other government agencies.
 - g. The anticipated cost of purchasing specified goods is less than an amount determined by the office of management and budget which would justify the expense of competitive bidding.
 - h. A used commodity is advantageous to the state and the commodity is available only on short notice.
 - i. The commodity is a component or replacement part for which there is no commercially available substitute and which can be obtained only from the manufacturer.
 - j. Compatibility with equipment currently owned by the state is essential to the proper functioning of that equipment.
3. If the director of the office of management and budget determines it to be in the best interest of the state, the office of management and budget may agree to purchase according to contracts entered into by the United States general services administration, or may enter into cooperative purchasing agreements with a cooperative purchasing group of other state governments.

SECTION 3. AMENDMENT. Subsections 1 and 4 of section 54-44.4-09 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Every person or business entity that desires to bid or submit a proposal on contracts for commodities awarded under this chapter must be an approved vendor in order to receive a request for bids or proposals. Unless waived by the director of the office of management and budget,

or the director's designee, a bid or proposal may not be considered under this section from any vendor that is not approved.

4. The director of the office of management and budget, or the director's designee, may waive the requirements for registration with the secretary of state as provided in this section and authorize receipt of a bid or proposal from a vendor that unqualifiedly refuses to register as provided in this section if the director or the director's designee makes a written determination that:
 - a. A commodity is so unique and possesses such specific characteristics essential to the government program in question that it is available only from one source and not through wholesalers or retailers; or
 - b. An emergency as defined in subsection 7 of section 54-44.4-02 exists; or
 - c. The commodity to be purchased is a one-time purchase for which at least two approved vendors are not available and the director of the office of management and budget, or the director's designee, determines consideration of bids or proposals from unregistered vendors is in the best interest of the state. In the event of a tie bid or proposal, the registered vendor must be given preference.

SECTION 4. LEGISLATIVE INTENT. It is the intent of the fifty-seventh legislative assembly that the office of management and budget in consultation with the attorney general develop standards and guidelines for the procurement of contracts for services and if appropriate, submit proposed legislation to the fifty-eighth legislative assembly regarding those standards and guidelines. State agencies are encouraged to follow the standards and guidelines as set forth by the office of management and budget and develop agency guidelines for procurement of contracts for service.

Approved April 3, 2001
Filed April 3, 2001

CHAPTER 493

HOUSE BILL NO. 1148

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

STATE PURCHASING CARDS

AN ACT to amend and reenact section 44-08-05.1, subsection 8 of section 54-44.4-02, and section 54-44.4-04 of the North Dakota Century Code, relating to approval of vouchers for state purchases made using a purchasing card and required use of purchasing cards for state purchases costing less than a designated amount.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-08-05.1 of the North Dakota Century Code is amended and reenacted as follows:

44-08-05.1. Vouchers - Requirements for approval - Penalty - Action for violations. Any public officer or employee who has the power to approve a voucher for a department, agency, or institution for travel expenses or any other state expenditure of public funds shall determine before approving such voucher the following:

1. That the expenditure for travel or other expenditures were for lawful and official purposes.
2. If for travel expense, that the travel actually occurred, and that the sums claimed for travel expenses are actually due the individual who is seeking reimbursement, allowance, or payment.
3. If the voucher is for expenditure other than travel expense, that the expenditure is lawful and that the voucher contains no false claims.

For purchases made with the use of a purchasing card authorized under subsection 8 of section 54-44.4-02, an employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all agencies, may review and approve vouchers under this section and make payments pursuant thereto. Any public officer or employee who willfully approves a voucher with knowledge it contains false or unlawful claims or that it does not otherwise meet the requirements of this section for approval is guilty of theft and punishable under the provisions of chapter 12.1-23. Any public officer or employee who, without the use of ordinary care and diligence, negligently approves a voucher for a department, agency, or institution containing false or unlawful claims or which does not otherwise meet the requirements of this section for approval is personally liable for any funds improperly expended. The director of the office of management and budget, members of the office of the budget, state auditor, or any other person who has knowledge of an actual or possible violation of this section shall make such information known to the attorney general. The attorney general shall investigate any alleged violations and, if a violation appears to exist ~~he~~, shall criminally prosecute under chapter 12.1-23 or bring a civil suit for the recovery of such funds as may actually have been improperly paid against the payee and officer or employee who approved such voucher in violation of any of the above requirements or shall

bring both such criminal action and civil suit. The officer or employee who approves any voucher negligently has the right of subrogation against the payee of such voucher in the event public funds have been improperly paid to the payee.

²³⁵ **SECTION 2. AMENDMENT.** Subsection 8 of section 54-44.4-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. Such specific items or items costing less than a specified amount as determined and indicated by written directive by the director of the office of management and budget. The director may organize and administer, including by contract with a provider, a system of procurement for items agencies are authorized to purchase under this subsection which includes use of a procurement card. If the director establishes and administers a purchasing card system, the director may designate which agencies are required to use it for purchasing of items designated under this subsection costing less than a specified amount designated in writing by the director.

SECTION 3. AMENDMENT. Section 54-44.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.4-04. Office of management and budget - Rules. The office of management and budget shall adopt, pursuant to chapter 28-32, rules necessary to administer this chapter. The written directives issued by the director exercising authority provided in subsection 8 of section 54-44.4-02 and section 54-44.4-03 need not be adopted as rules under chapter 28-32.

Approved March 14, 2001
Filed March 15, 2001

²³⁵ Section 54-44.4-02 was also amended by section 1 of House Bill No. 1125, chapter 492.

CHAPTER 494

SENATE BILL NO. 2082

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

PERS SERVICE AND BENEFITS

AN ACT to create and enact a new subsection to section 54-52-17.4 of the North Dakota Century Code, relating to purchase of service credit under the public employees retirement system; to amend and reenact subsection 11 of section 54-52-04, subsections 4 and 6 of section 54-52-17, subsection 4 of section 54-52-17.4, and sections 54-52-17.5, 54-52-17.10, 54-52-26, 54-52.2-03, and 54-52.2-04 of the North Dakota Century Code, relating to funding of administrative expenses of the deferred compensation plan, computation of benefits, determination of normal retirement date, beneficiary designations, cost of credit purchases, postretirement adjustments, prior service retiree adjustments, confidentiality of records, and deferred compensation under the public employees retirement system; to repeal section 54-52-17.9 of the North Dakota Century Code, relating to prior service retiree adjustments under the public employees retirement system; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁶ **SECTION 1. AMENDMENT.** Subsection 11 of section 54-52-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. The board shall fund the administrative expenses of chapter 54-52.2 from funds collected under chapters 54-52, 54-52.1, and 54-52.3 and from fines collected from deferred compensation services providers, subject to appropriation by the legislative assembly.

²³⁷ **SECTION 2. AMENDMENT.** Subsections 4 and 6 of section 54-52-17 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. The board shall calculate retirement benefits as follows:
 - a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:

²³⁶ Section 54-52-04 was also amended by section 1 of House Bill No. 1099, chapter 496.

²³⁷ Section 54-52-17 was also amended by section 1 of Senate Bill No. 2083, chapter 495, section 2 of Senate Bill No. 2083, chapter 495, and section 3 of Senate Bill No. 2083, chapter 495.

- (1) Service benefit equals ~~one and eighty-nine hundredths~~ two percent of final average salary multiplied by the number of years of service employment.
 - (2) Prior service benefit equals ~~one and eighty-nine hundredths~~ two percent of final average salary multiplied by the number of years of prior service employment.
 - (3) ~~All participants who retired before August 1, 1997, are entitled to benefits calculated at one and seventy-seven hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning August 1, 1997.~~
- b. Single life benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, which must be determined as follows:
- (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
 - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
 - (3) A participant who retired before August 1, 1995, is entitled to benefits calculated at two and eighty hundredths percent multiplied by the second ten years of judicial service, with the increased benefits payable beginning August 1, 1995.
- c. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.
- d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date, which is the earlier of age sixty-five or the age at which current service plus age equals eighty-five. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.
- e. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court

judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars. A participant who, on July 31, 1997, is receiving disability retirement benefits that are not based upon the benefit multiplier is entitled to receive an increase in benefits equal to five percent of the individual's present benefit with the increased benefits payable beginning August 1, 1997.

- f. A participating member who is a vested permanent employee is entitled to purchase additional years of service credit to enable the member to qualify for the normal retirement date defined by subdivision a of subsection 3. The years of service purchased must be added to the years of service employment under paragraph 1 of subdivision a for calculating the service benefit.
6. If before retiring a member dies after completing three years of eligible employment, except for supreme and district court judges, who must have completed five years of eligible employment, the board shall pay the member's account balance to the member's surviving spouse. However, if there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing, the board shall pay the member's account balance to the member's beneficiary or, if there is no named beneficiary, to the member's estate designated beneficiary as provided in this subsection. If the member has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the member's account balance to the named beneficiary. If the member has named more than one primary beneficiary, the board shall pay the member's account balance to the named primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If there are no remaining primary beneficiaries, the board shall pay the member's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the member's account balance to the member's estate. If the member has not designated an alternate beneficiary or the surviving spouse is the beneficiary, the surviving spouse of the member may select a form of payment as follows:
 - a. If the member was a supreme or district court judge, the surviving spouse may select one of the following optional forms of payment:
 - (1) A lump sum payment of the member's retirement account as of the date of death.
 - (2) Payments as calculated for the deceased member as if the member was of normal retirement age at the date of death, payable until the spouse dies.
 - b. The surviving spouse of all other members may select one of the following options:

- (1) A lump sum payment of the member's retirement account as of the date of death.
- (2) Payments for sixty months as calculated for the deceased member as if the member was of normal retirement age at the date of death.
- (3) Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.
- (4) If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity, payable until the spouse dies. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1, 1995.

SECTION 3. AMENDMENT. Subsection 4 of section 54-52-17.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The member may purchase credit under this section by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by the number of months of credit refunded, multiplying that amount times the number of months of credit the member seeks to repurchase, and adding interest at the actuarial rate of return. The member shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.

SECTION 4. A new subsection to section 54-52-17.4 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Pursuant to rules adopted by the board, the board may allow a member to purchase service credit with either pretax or aftertax moneys, at the board's discretion.

SECTION 5. AMENDMENT. Section 54-52-17.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.5. Postretirement adjustments. An individual or the individual's beneficiary who, on July 31, ~~1999~~ 2001, is receiving retirement benefits under subdivision a, c, d, or e of subsection 4 of section 54-52-17; ~~or disability retirement benefits under subdivision e of subsection 4 of section 54-52-17~~, is entitled to receive an increase in benefits equal to ~~eight~~ six percent of the individual's present benefits with the increase payable beginning August 1, ~~1999~~ 2001.

SECTION 6. AMENDMENT. Section 54-52-17.10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.10. Prior service retiree adjustment. Prior service retirees who are receiving benefits under this chapter on July 31, ~~1999~~ 2001, are entitled to receive an increase in benefits equal to ~~eight~~ six percent of the individual's present benefit, with the increased benefits payable beginning August 1, ~~1999~~ 2001. A prior service retiree is a former participating employee who receives a supplemental monthly payment from the retirement system based upon the original prior service credit system.

SECTION 7. AMENDMENT. Section 54-52-26 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-26. Confidentiality of records. All records relating to the retirement benefits of a member or a beneficiary under this chapter, chapter 54-52.2, and chapter 54-52.6 are confidential and are not public records. ~~This section does not prohibit any party from obtaining this information from other agencies or governmental sources.~~ Information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the member has given written consent to have the information disclosed.
2. A person legally representing the member, upon proper proof of representation, and unless the member specifically withholds consent.
3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit and years of age. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal laws. Any information provided to the member's participating employer under this subsection must remain confidential except as provided under subsection 6.
5. The administrative staff of the retirement and investment office for purposes relating to membership and benefits determination.
6. State or federal agencies for purposes of reporting on a service provider's provision of services or when the employer must supply information to an agency to validate the employer's compliance with existing state or federal laws.

7. Member interest groups approved by the board on a third-party blind list basis, limited to information concerning the member's participation, name, and address.
8. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 54-52-17.6. The information disclosed under this subsection must be limited to information necessary for drafting the order.

SECTION 8. AMENDMENT. Section 54-52.2-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.2-03. Deferred compensation program - Administration - Contract for services. The administration of the deferred compensation program for each state agency, department, board, commission, or institution is under the direction of the public employees retirement board. Each county, city, or other political subdivision shall designate an officer to administer the deferred compensation program or appoint the public employees retirement board to administer the program on its behalf. Payroll reductions must be made in each instance by the appropriate payroll officer. The public employees retirement board shall administer the deferred compensation program based on a plan one or more plans in compliance with the appropriate provisions of the Internal Revenue Code and regulations adopted under those provisions. Not later than January 1, 1999, all plan assets and income must be held in trust, custodial accounts, or contracts as described in section 401(f) of the Internal Revenue Code [26 U.S.C. 401(f)] for the exclusive benefit of participants and their beneficiaries as required by section 457 of the Internal Revenue Code [26 U.S.C. 457]. Once the trust, custodial account, or contract is established as required by this section, the board shall act as fiduciary of the plan to the extent required by section 457 of the Internal Revenue Code [26 U.S.C. 457] and the board is authorized to do all things necessary for the proper administration of the plan to ensure that the plan maintains its qualified status.

SECTION 9. AMENDMENT. Section 54-52.2-04 of the North Dakota Century Code is amended and reenacted as follows:

54-52.2-04. Definition - Employee. For the purpose of this chapter, "employee" means any person, whether appointed, elected, or under contract, providing services for employed by the state, county, city, town, or other a political subdivision, for which compensation is paid who is at least eighteen years of age and employed in an approved and regularly funded position of unlimited duration for twenty hours or more per week and at least five months each year. For purposes of this chapter, "employee" also means a member of the legislative assembly.

SECTION 10. REPEAL. Section 54-52-17.9 of the North Dakota Century Code is repealed.

SECTION 11. EFFECTIVE DATE. Section 4 of this Act becomes effective on the date the board of trustees of the public employees retirement system receives a letter ruling from the internal revenue service that section 4 of this Act does not jeopardize the qualified status of the public employees retirement system. The board shall notify the legislative council of the effective date of section 4 of this Act.

CHAPTER 495

SENATE BILL NO. 2083

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

JUDGES RETIREMENT BENEFITS

AN ACT to amend and reenact subdivision e of subsection 3 of section 54-52-17, subdivision b of subsection 4 of section 54-52-17, subsection 9 of section 54-52-17, and section 54-52-17.11 of the North Dakota Century Code, relating to disability retirement, normal retirement benefits, retirement benefit options, and postretirement adjustments for supreme and district court judges under the public employees retirement system; and to repeal section 54-52-17.12 of the North Dakota Century Code, relating to postretirement adjustments for supreme and district court judges under the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁸ **SECTION 1. AMENDMENT.** Subdivision e of subsection 3 of section 54-52-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:
 - (1) Became disabled during the period of eligible employment; and
 - (2) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the

²³⁸ Section 54-52-17 was also amended by section 2 of Senate Bill No. 2082, chapter 494, section 2 of Senate Bill No. 2083, chapter 495, and section 3 of Senate Bill No. 2083, chapter 495.

eligibility definition, the board may discontinue the disability retirement benefit. The board is ~~authorized to~~ may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are ~~hereby~~ appropriated from the retirement fund for those purposes.

²³⁹ **SECTION 2. AMENDMENT.** Subdivision b of subsection 4 of section 54-52-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. ~~Single life~~ Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, ~~which must be~~ determined as follows:
 - (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
 - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
 - ~~(3) A participant who retired before August 1, 1995, is entitled to benefits calculated at two and eighty hundredths percent multiplied by the second ten years of judicial service, with the increased benefits payable beginning August 1, 1995.~~

²⁴⁰ **SECTION 3. AMENDMENT.** Subsection 9 of section 54-52-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 9. The board shall ~~promulgate regulations~~ adopt rules providing for the receipt of retirement benefits in the following optional forms:
 - a. ~~Joint~~ Single life.
 - b. An actuarially equivalent joint and survivor option, with fifty percent or one hundred percent options.

²³⁹ Section 54-52-17 was also amended by section 2 of Senate Bill No. 2082, chapter 494, section 1 of Senate Bill No. 2083, chapter 495, and section 3 of Senate Bill No. 2083, chapter 495.

²⁴⁰ Section 54-52-17 was also amended by section 2 of Senate Bill No. 2082, chapter 494, section 1 of Senate Bill No. 2083, chapter 495, and section 2 of Senate Bill No. 2083, chapter 495.

- b- c. ~~Level~~ An actuarially equivalent level social security option, which ~~shall be~~ is available only to ~~early retirees~~ members who retire prior to attaining the age at which they may begin to receive unreduced social security benefits.
- e- d. Life with five-year or ten-year certain options.

~~Unless~~ Except for supreme and district court judges, ~~unless~~ a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a single life benefit. For supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension with fifty percent of the benefit continuing for the life of the surviving spouse, if any.

SECTION 4. AMENDMENT. Section 54-52-17.11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.11. Judges postretirement adjustments. A supreme or district court judge or that person's beneficiary who, on December 31, ~~4997~~ 2001, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, ~~4998~~ 2002. A supreme or district court judge or that person's beneficiary who, on December 31, ~~4998~~ 2002, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, ~~4999~~ 2003.

SECTION 5. REPEAL. Section 54-52-17.12 of the North Dakota Century Code is repealed.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 496

HOUSE BILL NO. 1099

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

PERS HEALTH INSURANCE DEFINITIONS AND ELIGIBILITY

AN ACT to create and enact a new subsection to section 54-52-04 of the North Dakota Century Code, relating to state retirement board authority over excess uniform group insurance program funds; to amend and reenact subsection 4 of section 54-52.1-01, subsection 3 of section 54-52.1-03, and sections 54-52.1-03.3, 54-52.1-06, and 54-52.1-11 of the North Dakota Century Code, relating to the definition of eligible employee, retiree eligibility for the group health insurance program and retiree health benefits, and excess funds and confidentiality of records under the uniform group insurance program; and to provide a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴¹ **SECTION 1.** A new subsection to section 54-52-04 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

The board may use any amount credited to the separate uniform group insurance program fund created by section 54-52.1-06 in excess of the costs of administration of the uniform group insurance program to reduce the amount of premium amounts paid monthly by enrolled members of the uniform group insurance program, to reduce any increase in premium amounts paid monthly by enrolled members, or to provide increased insurance coverage to the members, as the board may determine.

SECTION 2. AMENDMENT. Subsection 4 of section 54-52.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. "Eligible employee" includes members of the legislative assembly, judges of the supreme court, paid members of state or political subdivision boards, commissions, or associations, full-time employees of political subdivisions, elective state officers as defined by subsection 2 of section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota workers' compensation fund. As used in this subsection, "permanent employee" means one whose services are not limited in duration, who is filling an approved and regularly funded position in a governmental unit, and who

²⁴¹ Section 54-52-04 was also amended by section 1 of Senate Bill No. 2082, chapter 494.

is employed at least seventeen and one-half hours per week and at least five months each year. For purposes of sections 54-52.1-04.1, 54-52.1-04.7, 54-52.1-04.8, and 54-52.1-11, "eligible employee" includes retired and terminated employees who remain eligible to participate in the uniform group insurance program pursuant to applicable state or federal law.

SECTION 3. AMENDMENT. Subsection 3 of section 54-52.1-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A retiree who has accepted a periodic distribution from the defined contribution retirement plan pursuant to section 54-52.6-13 who the board determines is eligible for participation in the uniform group insurance program or has accepted a retirement allowance from the public employees retirement system, the highway patrolmen's retirement system, the teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF) for service credit earned while employed by North Dakota institutions of higher education, the retirement system established by job service North Dakota under section 52-11-01, the judges' retirement system established under chapter 27-17, or the teachers' fund for retirement may elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the member's spouse reaches age sixty-five, upon the receipt of a benefit, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this subsection, the retiree or surviving spouse must meet the minimum requirements established by the board. Subject to sections 54-52.1-03.2 and 54-52.1-03.3, each retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided.

SECTION 4. AMENDMENT. Section 54-52.1-03.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.3. Eligibility for retiree health benefits - Fixed contribution and reduction factors.

1. The following persons are entitled to receive credit for hospital and medical benefits coverage under subsection 2:
 - a. A member of the highway patrolmen's retirement system receiving retirement benefits, or the surviving spouse of a member of the highway patrolmen's retirement system who was eligible to receive or was receiving retirement benefits, under section 39-03.1-11.
 - b. A member of the public employees retirement system receiving retirement benefits, or the surviving spouse of a member of the public employees retirement system who was eligible to receive or was receiving retirement benefits, under section 54-52-17.
 - c. A member of the retirement program established by job service North Dakota under section 52-11-01 receiving retirement benefits, or the surviving spouse of a member of that retirement program who was eligible to receive or was receiving retirement benefits, under the plan provisions of that retirement program.

- d. A retired judge receiving retirement benefits under the retirement program established under chapter 27-17, or the surviving spouse of a retired judge who was eligible to receive or was receiving retirement benefits, under section 27-17-01.
 - e. A former participating member of the defined contribution retirement plan is eligible as determined by the board pursuant to its rules.
- 2. The board shall calculate the allowable monthly credit toward hospital and medical benefits coverage for a person eligible under subsection 1 in an amount equal to four dollars and fifty cents multiplied by the member's or deceased member's number of years of credited service under the highway patrolmen's retirement system, the public employees retirement system, the retirement program established by job service North Dakota under section 52-11-01, or the judges retirement program established under chapter 27-17. For a member of the public employees retirement system receiving an early retirement benefit or the surviving spouse of that member, or a former participating member of the defined contribution retirement plan who is receiving a periodic distribution and would not meet the normal retirement provisions of the public employees retirement system, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of sixty-four. For a member of the highway patrolmen's retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of fifty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of fifty-four. For a member of the retirement program established by job service North Dakota under section 52-11-01 receiving an early retirement benefit or a discontinued service annuity under the plan provisions of that retirement program or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent applies for each year the member terminates employment prior to attaining the age of sixty-four.
- 3. The board shall apply the credit allowable under subsection 2 to the payment of monthly premiums required of each person eligible under subsection 1 for hospital benefits coverage and medical benefits coverage under the uniform group insurance program. However, if the allowable credit exceeds the monthly premium in effect for selected coverage, that amount of the credit which exceeds the premium is forfeited and may not be used for any other purpose.
- 4. The board may, as an alternative to the calculation of the allowable monthly credit under subsection 2, provide actuarially reduced benefit options for the member and the member's surviving spouse including a one hundred percent joint and survivor option, a fifty percent joint and survivor option, or a five-year or ten-year certain option.

SECTION 5. AMENDMENT. Section 54-52.1-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-06. State contribution. Each department, board, or agency shall pay to the board each month from its funds appropriated for payroll and salary amounts a state contribution in the amount as determined by the primary carrier of the group contract for the full single rate monthly premium for each of its eligible employees enrolled in the uniform group insurance program and the full rate monthly premium, in an amount equal to that contributed under the alternate family contract, including major medical coverage, for hospital and medical benefits coverage for spouses and dependent children of its eligible employees enrolled in the uniform group insurance program pursuant to section 54-52.1-07. The board shall then pay the necessary and proper premium amount for the uniform group insurance program to the proper carrier or carriers on a monthly basis. Any refund, rebate, dividend, experience rating allowance, discount, or other reduction of premium amount must be credited at least annually to a separate fund of the uniform group insurance program to be used by the board to reimburse the administrative expense and benefit fund of the public employees retirement program for the costs of administration of the uniform group insurance program. ~~Any amount credited to the separate fund in excess of the costs of administration of the program must be held in the separate fund to be used by the board to reduce the amount of premium amounts paid monthly by enrolled eligible employees, to reduce any increase in premium amounts paid monthly by enrolled eligible employees or to provide increased insurance coverage, as the board may determine.~~ In the event an enrolled eligible employee is not entitled to receive salary, wages, or other compensation for a particular calendar month, ~~he~~ that employee may make direct payment of the required premium to the board to continue ~~his~~ the employee's coverage, and the employing department, board, or agency shall provide for the giving of a timely notice to the employee of ~~his~~ that person's right to make such payment at the time ~~such~~ the right arises.

SECTION 6. AMENDMENT. Section 54-52.1-11 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-11. Confidentiality of employee records. Information pertaining to an eligible employee's group medical records for claims, employee premium payments made, salary reduction amounts taken, history of any available insurance coverage purchased, and amounts and types of insurance applied for under the supplemental life insurance coverage under this chapter is confidential and is not a public record. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the eligible employee has given written consent to have the information disclosed.
2. A person legally representing the eligible employee, upon proper proof of representation, and unless the eligible employee specifically withholds consent.
3. A person authorized by a court order.
4. A person or entity to which the board is required to disclose information pursuant to federal statutes or regulations.

5. If involved in a dissolution proceeding, the member's spouse or former spouse, that person's legal representative, and the judge presiding over the member's dissolution proceeding.

SECTION 7. TRANSFER BETWEEN UNIFORM GROUP INSURANCE PROGRAM FUNDS. For the biennium beginning July 1, 2001, and ending June 30, 2003, the executive director of the public employees retirement system shall transfer \$475,000 from the public employee life insurance program fund to the uniform group health insurance program fund for the purpose of increasing the health insurance reserve.

Approved April 24, 2001

Filed April 24, 2001

CHAPTER 497

HOUSE BILL NO. 1449

(Representatives Kasper, Keiser, M. Klein)
(Senators Lee, D. Mathern, Mutch)

PRETAX BENEFITS PROGRAM PARTICIPATION

AN ACT to amend and reenact section 54-52.3-01 of the North Dakota Century Code, relating to participation by members of the legislative assembly in the pretax benefits program; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.3-01. Pretax benefits program for public employees. The public employees retirement system board may establish a pretax benefits program for all state employees and employees of district health units, including members of the legislative assembly, under which an employee may reduce the employee's salary and elect benefits to the extent of the reduction. A participating district health unit shall comply with the program conditions and pay all fees established by the board.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 2002.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 498

HOUSE BILL NO. 1100

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

DEFINED CONTRIBUTION PLAN PARTICIPATION AND DISABILITY BENEFITS

AN ACT to create and enact a new section to chapter 54-52.6 of the North Dakota Century Code, relating to the acceptance of rollover contributions under the defined contribution retirement plan; and to amend and reenact sections 54-52.6-02, 54-52.6-03, 54-52.6-13, and 54-52.6-14 of the North Dakota Century Code, relating to participation, calculation of interest on transferred amounts, distribution options, and disability benefits under the defined contribution retirement plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴² **SECTION 1. AMENDMENT.** Section 54-52.6-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-02. Election.

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on December 31, 1999, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on the effective date of this Act and ending 12:01 a.m. January 1, 2000. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 1999; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2000; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 1999. This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after December 31, 1999, may make an election to participate in the defined contribution retirement plan

²⁴² Section 54-52.6-02 was also amended by section 1 of House Bill No. 1216, chapter 499.

established under this chapter at any time during the first six months after the date of employment to participate in the defined contribution retirement plan established under this chapter. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

2. If an individual who is a deferred member of the public employees retirement system on December 31, 1999, is reemployed and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's reemployment and ending upon the expiration of ~~sixty days~~ six months after the date of that reemployment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.
3. An eligible employee who elects to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member

of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board who is eligible to participate in an alternative retirement program established under subsection 13 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.
5. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.

²⁴³ **SECTION 2. AMENDMENT.** Section 54-52.6-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-03. Transfer of accumulated fund balances. For an individual who elects to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be

²⁴³ Section 54-52.6-03 was also amended by section 2 of House Bill No. 1216, chapter 499.

transferred for employees electing to transfer prior to January 1, 2000, using the two following formulas, and shall transfer the greater of the two amounts obtained:

1. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2000, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or
2. The actual employer ~~and employee contributions~~ contribution made pursuant to ~~sections 54-52-05 and 54-52-06~~, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

The board shall calculate the amount to be transferred for persons employed after December 31, 1999, using only the formula contained in subsection 2.

SECTION 3. A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

Acceptance of rollovers. The plan may allow a participating member to transfer or rollover funds from other qualified plans into the member's account under rules adopted by the board.

SECTION 4. AMENDMENT. Section 54-52.6-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that person's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the board, the board, in a lump sum distribution, shall distribute the accumulated balance to a legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.
3. A ~~deferred~~ former participating member or refund beneficiary may elect one or a combination of several of the following methods of distribution of the accumulated balance:
 - a. A lump sum distribution to the recipient.
 - b. A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.
 - c. Periodic distributions, as authorized by the board.

- d. No current distribution, in which case the accumulated balance must remain in the plan until the ~~deferred~~ former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.
4. If the former participating member's vested account balance is less than five thousand dollars, the board shall automatically refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within thirty days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 5. AMENDMENT. Section 54-52.6-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-14. Disability benefits. The board shall ~~provide a procedure whereby a participating member may use a portion of that person's account contributions under this chapter to purchase disability insurance~~ allow distribution of the participating member's vested account balance if the board determines that the participating member has become totally and permanently disabled. If approved, the disabled member has the same distribution options as provided in subdivisions a and c of subsection 3 of section 54-52.6-13. However, if the member chooses the periodic distribution option, the member may only receive distributions for as long as the disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board shall discontinue the disability retirement benefit.

Approved April 3, 2001
Filed April 3, 2001

CHAPTER 499

HOUSE BILL NO. 1216

(Representatives Wald, Grande)

(Senators Krebsbach, Wardner)

DEFINED CONTRIBUTION PLAN PARTICIPATION

AN ACT to amend and reenact subsections 1 and 2 of section 54-52.6-02 and section 54-52.6-03 of the North Dakota Century Code, relating to participation in the defined contribution retirement plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁴ **SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 54-52.6-02 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on ~~December 31, 1999~~ September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on the effective date of this Act and ending 12:01 a.m. ~~January 1, 2000~~ December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, ~~1999~~ 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, ~~2000~~ 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, ~~1999~~ 2001. This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after ~~December 31, 1999~~ September 30, 2001, may make an election at any time during the first six months after the date of employment to participate in the defined contribution retirement plan established under this chapter.

²⁴⁴ Section 54-52.6-02 was also amended by section 1 of House Bill No. 1100, chapter 498.

2. If an individual who is a deferred member of the public employees retirement system on ~~December 31, 1999~~ September 30, 2001, is reemployed and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's reemployment and ending upon the expiration of sixty days after the date of that reemployment. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

²⁴⁵ **SECTION 2. AMENDMENT.** Section 54-52.6-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-03. Transfer of accumulated fund balances. For an individual who elects to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for ~~employees electing to transfer prior to January 1, 2000~~ persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:

²⁴⁵ Section 54-52.6-03 was also amended by section 2 of House Bill No. 1100, chapter 498.

1. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, ~~2000~~ 2001, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or
2. The actual employer ~~and employee~~ contributions made ~~pursuant to sections 54-52-05 and 54-52-06~~, less vested employer contributions pursuant to section 54-52-11.1, plus interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election and the employee account balance.

The board shall calculate the amount to be transferred for persons employed after ~~December 31, 1999~~ September 30, 2001, using only the formula contained in subsection 2.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 500

SENATE BILL NO. 2043

(Legislative Council)
(Information Technology Committee)

INFORMATION TECHNOLOGY COMMITTEE AND DEPARTMENT POWERS AND DUTIES

AN ACT to create and enact a new section to chapter 54-59 of the North Dakota Century Code, relating to the preparation of an information technology department annual report; to amend and reenact section 54-35-15.2, subsection 4 of section 54-59-05, and sections 54-59-06, 54-59-07, 54-59-11, and 54-59-16 of the North Dakota Century Code, relating to powers, duties, and responsibilities of the information technology committee and the information technology department; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-15.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-35-15.2. Information technology committee - Powers and duties. The information technology committee has continuing existence and may meet and conduct its business during the legislative session and in the interim between sessions. The committee shall:

1. Meet at least once each calendar quarter.
2. Receive a report from the chief information officer of the state at each meeting.
3. Review the business plan of the information technology department.
4. Address macro-level questions relating to the information technology department.
5. Review the activities of the information technology department.
6. Review statewide information technology standards.
7. Review the statewide information technology plan.
8. Conduct studies of information technology efficiency and security.
9. Make recommendations regarding established or proposed information technology programs and information technology acquisition by the executive and judicial branches.
10. ~~Review~~ Except as provided in subsection 11, review the cost-benefit analysis of any major information technology project of an executive or judicial branch agency. A major project is a project with a cost of two

hundred fifty thousand dollars or more in one biennium or a total cost of five hundred thousand dollars or more.

11. Review the cost-benefit analysis of any major project of the state board of higher education or any institution under the control of the state board of higher education if the project:
 - a. Significantly impacts the statewide wide area network, including the campus access routers;
 - b. Impacts the statewide library system; or
 - c. Is an administrative project. An administrative project is a project that directly collects, aggregates, modifies, stores, or reports institutional student, financial, or human resources records or data and is provided primarily for administrative purposes.
12. Perform periodic reviews to ensure that a major information technology project is on its projected schedule and within its cost projections.

SECTION 2. AMENDMENT. Subsection 4 of section 54-59-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. May purchase, finance the purchase, or lease equipment or software or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. An agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of three years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the budget section of the legislative council before executing a financing agreement. If the budget section does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. The department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed the amount appropriated to the department during that biennium for equipment. Each executive branch agency or institution, except the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.

SECTION 3. AMENDMENT. Section 54-59-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-59-06. Business plan. The department shall develop and maintain a business plan. The business plan must:

1. Define the department's overall organization, mission, and delivery of services.
2. Define the ~~strategies for improving personnel productivity and workflow processes of the department~~ department's short-term and long-term goals and objectives based on customer needs.
3. ~~Determine how use of the statewide network will improve learning in the state.~~ Outline the strategies and activities necessary to meet the goals and objectives of the department while improving the efficiency of the department and improving service to customers.
4. ~~Determine how the statewide networks can provide network services for the benefit of Indian tribes, nonprofit organizations, and noncommercial public television stations licensed by the federal communications commission to operate in this state.~~ Define rates and funding mechanisms necessary to finance the proposed activities of the department.
5. Define a method for evaluating progress toward the goals outlined in the business plan.
- ~~6.~~ Determine the specific strategies and processes to ensure that agencies share information, systems, and the statewide network.
- ~~6.~~ Define the processes that will ensure that counties, cities, and school districts receive maximum benefit of the statewide network.
- ~~7.~~ Define a fair and equitable billing structure that provides for payback of the initial investments and ongoing operations of the statewide network.
8. ~~7.~~ Address the processes that will be put in place to ensure that the department exercises its powers and duties with minimal delay, cost, and procedural burden to an entity receiving services from the department; to ensure that the department provides prompt, high-quality services to an entity receiving services from the department; to ensure that an entity receiving services from the department is aware of the technology available and to ensure training on its use; and to foster information technology innovation by state entities.
- ~~9.~~ Address the deployment of encryption and the administration of digital signatures.
- ~~10.~~ Address information and system backup and disaster recovery.

SECTION 4. AMENDMENT. If Senate Bill No. 2251 does not become effective, section 54-59-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-59-07. Statewide wide area network State information technology advisory committee. The ~~statewide wide area network~~ state information technology advisory committee consists of the chief information officer or the officer's

designee, who is a nonvoting member; the ~~state court administrator~~ director of the department of economic development and finance or the ~~administrator's~~ director's designee; ~~with the approval of the chief justice of the supreme court~~; the commissioner of higher education or the commissioner's designee; the chairman of the information technology council of North Dakota or a designee; the director of the North Dakota workforce development council or a designee; the chairman of the educational telecommunications council or a designee; and ~~nine~~ eight members appointed by the governor. ~~The governor shall appoint two members representing state agencies, one member representing a county, one member representing a city, two members representing elementary or secondary education, one member representing noncommercial public television stations licensed by the federal communications commission to operate in this state, and two members from private industry who are knowledgeable in the deployment of major technology projects. The governor's appointees from private industry serve two-year terms, and other appointees of the governor serve at the pleasure of the governor. The governor shall designate the chairman of the committee. The department shall provide staff services to the committee. Except for the commissioner of higher education and the representatives of state agencies who receive compensation for their duties as state officers or employees, members of the committee are entitled to be compensated for time spent in attendance at meetings of the committee and for other travel as approved by the chairman of the committee at the rate of sixty-two dollars and fifty cents per day and are entitled to reimbursement for their actual and necessary expenses incurred in the same manner as other state officials. The compensation and expenses are to be paid from appropriations for the department. The committee shall advise the department with respect to planning and implementation of wide area network services provided by the department regarding statewide information technology planning, including providing electronic government services for citizens and businesses, developing technology infrastructure to support economic development and work force training, and developing other statewide information technology initiatives and policy.~~

SECTION 5. AMENDMENT. If Senate Bill No. 2251 becomes effective, section 54-59-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-59-07. Statewide wide area network State information technology advisory committee. ~~The statewide wide area network state information technology advisory committee consists of the chief information officer or the officer's designee, who is a nonvoting member; the state court administrator~~ director of the department of economic development and finance or the administrator's ~~director's~~ designee; ~~with the approval of the chief justice of the supreme court~~; the commissioner of higher education or the commissioner's designee; the chairman of the information technology council of North Dakota or a designee; the director of the North Dakota workforce development council or a designee; the chairman of the educational technology council or a designee; and ~~nine~~ eight members appointed by the governor. ~~The governor shall appoint two members representing state agencies, one member representing a county, one member representing a city, two members representing elementary and secondary education, one member representing noncommercial public television stations licensed by the federal communications commission to operate in this state, and two members from private industry who are knowledgeable in the deployment of major technology projects. The governor's appointees from private industry serve two-year terms, and other appointees of the governor serve at the pleasure of the governor. The governor shall designate the chairman of the committee. The department shall provide staff services to the committee. Except for the commissioner of higher education and the representatives of state agencies who receive compensation for their duties as state officers or~~

employees, members of the committee are entitled to be compensated for time spent in attendance at meetings of the committee and for other travel as approved by the chairman of the committee at the rate of sixty-two dollars and fifty cents per day and are entitled to reimbursement for their actual and necessary expenses incurred in the same manner as other state officials. The compensation and expenses are to be paid from appropriations for the department. The committee shall advise the department with respect to planning and implementation of wide area network services provided by the department regarding statewide information technology planning, including providing electronic government services for citizens and businesses, developing technology infrastructure to support economic development and workforce training, and developing other statewide information technology initiatives and policy.

SECTION 6. AMENDMENT. Section 54-59-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-59-11. Information technology plans. Each executive branch state agency or institution, including the institutions under the control of the board of higher education, shall prepare an information technology plan, subject to approval by the department. The plan must be submitted to the department by ~~January~~ March fifteenth of each even-numbered year. The plan must be prepared based on guidelines developed by the department; must provide the information technology goals, objectives, and activities of the entity for the current biennium and the next two bienniums; and must include ~~a list of~~ information regarding the information technology assets owned, leased, or employed by the entity. Each entity required to file a plan shall provide interim updates to its plan if major information technology changes occur which affect its plan. The department shall review each entity's plan for compliance with statewide information technology policies and standards and may require an entity to change its plan to comply with statewide policies or standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches shall file their information technology plans with the department by ~~January~~ March fifteenth of each even-numbered year. Each state entity shall prepare its budget request for the next biennium based on its information technology plan. The agency's budget request and the governor's budget recommendation must include supporting information describing in detail how the information technology plan relates to the budget request and recommendation. Any budget adjustment by the budget office must include the corresponding change to the plan. Based on the plans, the department shall prepare a statewide information technology plan and distribute copies of that plan to members of the legislative assembly as requested by the legislative council or its designee. The statewide information technology plan must be developed with emphasis on long-term strategic goals and objectives. ~~Any state agency or institution, county, city, school district, or other entity that uses the statewide network or is a user of services of the department shall file a plan that includes and identifies all requirements for voice, data, or video.~~

SECTION 7. AMENDMENT. Section 54-59-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-59-16. Confidentiality. The department may receive from various agencies and various agencies may provide to the department any information from the agencies necessary to effect the purposes of this chapter without regard to the confidential nature of the information. Each agency shall notify the department regarding the confidential nature of any information submitted to the department. The department is subject to the same restrictions and penalties regarding the dissemination of this information as the entity involved. Except for a request for access authorized by section 54-10-22.1 or a request to access information collected

to carry out section 54-59-09, 54-59-11, or 54-59-13, the department shall refer a request for access to or inspection of information provided by an agency to that agency for response. Referral to the agency satisfies any responsibility of the department to provide that information under open records requirements. Upon court order the department shall provide access to or inspection of this information in accordance with restrictions of that entity involved governing dissemination of that information.

SECTION 8. A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

Information technology department annual report. The department shall prepare and present an annual report to the information technology committee. In addition to the presentation of the annual report to the information technology committee, the department shall present a summary of the annual report to the budget section and to the legislative audit and fiscal review committee. The report must contain:

1. A list of major projects started, ongoing, and completed during the year including related budgeted and actual costs and the estimated implementation date for each project as well as the actual implementation date for completed projects.
2. A list of all projects for which financing agreements have been executed.
3. Information regarding evaluations of cost-benefit analyses for completed projects.
4. A comparison of the department's rates charged for services compared to rates charged for comparable services in other states and in the private sector.
5. Information regarding the information technology plans including the department's plan review process, the number of plans reviewed, and the number of plans approved.
6. A description of the benefits to the state resulting from its investment in information technology.

SECTION 9. LEGISLATIVE INTENT - PERFORMANCE MEASURES. It is the intent of the legislative assembly that the information technology department develop performance measures to assist the legislative assembly in determining the effectiveness and efficiency of the department's operations during the biennium beginning July 1, 2001, and ending June 30, 2003. Each performance measure must include a benchmark for targeted department performance based on national, other states, or private sector performance. The department shall report to the information technology committee, the budget section, and the legislative audit and fiscal review committee during the 2001-02 interim on the performance measures developed.

Approved May 1, 2001
Filed May 2, 2001

CHAPTER 501

SENATE BILL NO. 2251

(Senators Robinson, Solberg, Wardner)
(Representatives Ekstrom, Lemieux, B. Thoreson)

EDUCATIONAL TECHNOLOGY COUNCIL

AN ACT to create and enact two new sections to chapter 54-59 of the North Dakota Century Code, relating to the establishment, powers, and duties of an educational technology council; to amend and reenact sections 15-19-02 and 15-19-06, subsection 1 of section 15.1-02-07, subdivision h of subsection 2 of section 28-32-01, and subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to the administration of the division of independent study and the appointment of members of the educational telecommunications council; to repeal chapter 15.1-05 of the North Dakota Century Code, relating to the educational telecommunications council; to provide for a transfer of funds; and to provide for reports to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-19-02 of the North Dakota Century Code is amended and reenacted as follows:

15-19-02. Administration - Director of division of independent study - Appointment and duties. The program of and all activities related to the division of independent study are the responsibility of and under the supervision of the superintendent of public instruction educational technology council. The educational technology council shall hire a state director of the division of independent study ~~must be appointed by the superintendent of public instruction~~ who must be classified under the state personnel merit system. The director, ~~under the supervision of the superintendent of public instruction~~ shall carry out the director's responsibilities in the administration of the division of independent study in the manner approved by the state board of public school education. ~~The board shall determine the director's qualifications and fix his compensation within limits of legislative appropriations. The director is responsible to and must carry out all policies and directives of the state board of public school education in the administration of the program of the division of independent study.~~

SECTION 2. AMENDMENT. Section 15-19-06 of the North Dakota Century Code is amended and reenacted as follows:

15-19-06. Special funds - Deposit of collections - Transfers from general fund appropriations.

1. A special operating fund for the division of independent study must be maintained within the state treasury and all income and fees collected by the division of independent study from any source must be remitted monthly by the director to the state treasurer and credited to ~~such the~~ special operating fund. All expenditures from ~~such the~~ fund must be within the limits of legislative appropriations and must be made upon vouchers, signed and approved by the ~~superintendent of public instruction~~ technology director appointed by the educational technology

council. Upon approval of ~~such~~ the vouchers by the office of the budget, warrant-checks must be prepared by the office of management and budget. The state treasurer shall make periodic transfers upon order of the director of the office of management and budget from the division of independent study general fund appropriation to ~~such~~ the special operating fund whenever its balance falls so low as to require supplementation.

2. The ~~superintendent of public instruction~~ educational technology council may establish an administrative operational fund, of not to exceed ten thousand dollars, out of the special operating fund for the division of independent study. The administrative operational fund must be deposited in the Bank of North Dakota and may be drawn upon by the state director of the division of independent study for the payment of necessary expenses in the administration and operation of the division of independent study within the limits and rules prescribed by the ~~superintendent of public instruction~~ educational technology council. The director shall submit a full, minute, and itemized statement of every expenditure made during the month to the ~~superintendent of public instruction~~ council in accordance with the rules adopted by the ~~superintendent of public instruction~~ council, and thereafter the ~~superintendent of public instruction~~ council may periodically authorize additional transfers to the administrative operational fund, but the balance in ~~such~~ the fund may never exceed ten thousand dollars, and any unencumbered balance ~~therein~~ at the end of any biennium must revert to the state treasury. The administrative operational fund may not be used to pay salaries or expenses of the director. The ~~superintendent of public instruction~~ council shall determine the amount of the bond to be posted by the director.
3. The state board of public school education may establish a scholarship fund to provide financial grants to students enrolled in courses offered through the division of independent study. The scholarship fund may consist only of those funds specifically appropriated by the legislative assembly and property received by the board or the division of independent study as a gift, devise, or bequest. Any gift, devise, or bequest of property received by the board or division of independent study which is designated by the board and donor for the scholarship fund must be deposited in the scholarship fund at the Bank of North Dakota. The state director of the division of independent study may draw only on the interest earned by the scholarship fund for the award of scholarships within the limits and rules adopted by the state board of public school education. The interest earned by the scholarship fund is ~~hereby~~ appropriated to the division of independent study.
4. ~~Repealed by S.L. 1989, ch. 199, § 4.~~

SECTION 3. AMENDMENT. Subsection 1 of section 15.1-02-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The superintendent of public instruction may lease surplus portions of real property, including buildings and improvements, owned by the state and administered by the superintendent of public instruction at the school for the blind; and the school for the deaf; ~~and the division of independent study.~~

²⁴⁶ **SECTION 4. AMENDMENT.** Subdivision h of subsection 2 of section 28-32-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- h. The educational ~~telecommunications~~ technology council.

²⁴⁷ **SECTION 5. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, 12-55.1-02, 12-59-01, 15-38-17, 15-39.1-05.1, 15.1-01-01, ~~45.1-05-02~~, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk marketing board.
 - c. The dairy promotion commission.
 - d. The state banking board.
 - e. The state credit union board.
 - f. The advisory board of directors to the Bank of North Dakota.
 - g. The pardon advisory board.
 - h. The state parole board.
 - i. The state board of public school education.
 - j. The education standards and practices board and the administrator's professional practices board.
 - k. The board of trustees for the teachers' fund for retirement.
 - l. ~~The educational telecommunications council.~~
 - m. The state game and fish advisory board.

²⁴⁶ Section 28-32-01 was created by section 12 of House Bill No. 1030, chapter 293, and amended by section 18 of Senate Bill No. 3032, chapter 488, and section 2 of Senate Bill No. 2446, chapter 140.

²⁴⁷ Section 54-07-01.2 was also amended by section 29 of House Bill No. 1046, chapter 161, and section 13 of Senate Bill No. 2424, chapter 503.

- ~~n.~~ m. The health council.
- ~~o.~~ n. The air pollution control advisory council.
- ~~p.~~ o. The board of animal health.
- ~~q.~~ p. The administrative committee on veterans' affairs.
- ~~r.~~ q. The committee on aging.
- ~~s.~~ r. The committee on employment of people with disabilities.
- ~~t.~~ s. The commission on the status of women.
- ~~u.~~ t. The North Dakota council on the arts.
- ~~v.~~ u. The state historical board.
- ~~w.~~ v. The Yellowstone-Missouri-Fort Union commission.
- ~~x.~~ w. The state water commission.
- ~~y.~~ x. The state water pollution control board.

SECTION 6. A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

Educational technology council - Meetings - Compensation.

1. The educational technology council is responsible for coordinating educational technology initiatives for elementary and secondary education.
2. The educational technology council consists of:
 - a. The chief information officer.
 - b. The superintendent of public instruction or the superintendent's designee.
 - c. The commissioner of higher education or the commissioner's designee.
 - d. A representative appointed by the state board for vocational and technical education.
 - e. A representative appointed by the governor from a list of three nominees submitted by the North Dakota association of technology leaders.
 - f. A representative appointed by the governor from a list of three nominees submitted by the North Dakota council of educational leaders.

- g. A representative appointed by the governor from a list of three nominees submitted by the North Dakota school boards association.
 - h. A representative appointed by the governor from a list of three nominees submitted by the North Dakota association of special education directors.
 - i. Two representatives of school districts, one of which has an enrollment in kindergarten through grade twelve of fewer than four hundred, appointed by the governor.
 - j. The director of technology for the department of public instruction.
 - k. A representative appointed by the governor from a list of three nominees submitted by the state association of non public schools.
- 3. The council shall select a chairman from among its members.
- 4. The term of office for the members appointed by the governor is four years.
- 5. The members of the educational technology council appointed by the governor are entitled to receive as compensation sixty-two dollars and fifty cents per day and to reimbursement of expenses as provided by law for state officers while attending meetings of the council.

SECTION 7. A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

North Dakota educational technology council - Powers and duties. The educational technology council shall:

- 1. Coordinate the use of technology and the development of technology systems to enhance educational opportunities for elementary and secondary education.
- 2. Cooperate with state agencies and other organizations to develop statewide educational technology systems.
- 3. Adopt bylaws for the conduct of its affairs.
- 4. Publish the informational material it deems necessary.
- 5. Conduct a continuing study to assess the needs, resources, and facilities that are available or which may be required to establish educational technology systems throughout the state.
- 6. Solicit and receive moneys from public and private sources and expend the moneys for educational technology.
- 7. Appoint a technology director who shall serve at the will of the council.
- 8. Hire the director of the division of independent study.

SECTION 8. REPEAL. Chapter 15.1-05 of the North Dakota Century Code is repealed.

SECTION 9. TRANSFER OF FUNDS. Any funds appropriated by the fifty-seventh legislative assembly to or for the purposes of the division of independent study, SENDIT technology services, and the center for innovation in instruction must be transferred to the information technology department for use by the educational technology council on the effective date of this Act.

SECTION 10. SUPERINTENDENT OF PUBLIC INSTRUCTION TO REPORT TO LEGISLATIVE COUNCIL. During the 2001-03 biennium, the superintendent of public instruction shall vigorously pursue grant funds for projects and initiatives relating to the use of technology in elementary and secondary education. The superintendent of public instruction shall report to the legislative council, when requested by the legislative council, at least once every five months during the 2001-02 interim.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 502

SENATE BILL NO. 2212

(Senators Dever, Kringstad, Stenehjem)
(Representatives Dosch, Keiser, Weiler)

BURLEIGH COUNTY LAND SALE

AN ACT to amend and reenact section 1 of chapter 648 of the 1989 Session Laws and section 1 of chapter 562 of the 1991 Session Laws, relating to the sale of state land to Burleigh County.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1 of chapter 648 of the 1989 Session Laws is amended and reenacted as follows:

SECTION 1. Sale of land - Proceeds. The director of institutions is authorized to sell and convey the following property to Burleigh County, North Dakota:

A tract of land approximately three hundred twelve acres, lying in section one, township one hundred thirty-eight, range eighty west, Burleigh County, North Dakota.

The property must be sold at not less than fair market value, based upon two independent appraisals. The state shall reserve all mineral rights now held by the state in and under the premises. Sections 54-01-05.2, 54-01-05.5, and 54-21-26.1 do not apply to the sale authorized by this Act. The proceeds realized from the sale authorized by this Act must be deposited in the North Dakota state penitentiary land fund. ~~The property sold under the authority of this Act must be used for fairgrounds.~~

SECTION 2. AMENDMENT. Section 1 of chapter 562 of the 1991 Session Laws is amended and reenacted as follows:

SECTION 1. Sale of land - Proceeds. The director of institutions may sell and convey the following property to Burleigh County, North Dakota ~~for use as fairgrounds:~~

All that part of the southeast quarter of section 2, township 138 north, range 80 west of the fifth principal meridian, Burleigh County, North Dakota that lies southeasterly of the Bismarck Expressway right of way and north of old-old highway 10 and its connection with Bismarck Expressway, containing 52.74 acres, more or less.

If as a result of passage of Senate Bill No. 2245 by the fifty-second legislative assembly the office of the director of institutions ceases to exist, the office of management and budget shall perform the powers and duties of the director of institutions under this Act.

The property must be sold at not less than fair market value, based upon a current independent appraisal. The state must reserve all mineral rights now held by the state in and under the premises. Sections 54-01-05.2 and 54-01-05.5 do not apply to the sale authorized by this Act. The proceeds realized from the sale

authorized by this Act must be deposited in the North Dakota state penitentiary land fund. ~~The property sold under the authority of this Act must be used for fairgrounds.~~

The commissioner of university and school lands or the commissioner's designee shall provide technical assistance and advice to the director of institutions in any transaction under this Act. The attorney general shall review and approve as to form and legality all legal documents, papers, and instruments required by any transaction under this Act.

Approved March 21, 2001

Filed March 21, 2001