

of such filling station or a regular bona fide employee or authorized attendant of such owner or operator.

No owner or operator of any filling station shall permit the tank of any motor vehicle or any barrel, drum or any vessel or container, to be filled or partially filled at any such filling station by any person other than the owner or operator, or a regular bona fide employee or authorized attendant of such owner or operator; or permit any such hose, pump, pipe or other device for conveying, measuring, pumping or dispensing any such liquids by any person or persons, except such owner or operator, or a regular bona fide employee or authorized attendant of such owner or operator.

§ 3. PENALTY FOR VIOLATION.] Any person who shall violate any of the provisions of this Act shall upon conviction thereof be fined not less than ten dollars, nor more than two hundred dollars. Each day or part thereof during which any person shall operate any filling station in violation of the provisions of this Section shall be deemed and shall constitute a separate offense.

Approved March 3, 1933.

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## HIGHWAYS

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### CHAPTER 125

S. B. No. 114—(Bonzer.)

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#### STATE HIGHWAY COMMISSIONER

An Act creating the office of State Highway Commissioner, defining his powers and duties, and fixing the compensation of said commissioner, and repealing Chapter 153 of the Laws for 1931.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. The office of State Highway Commissioner is hereby created and established, which shall consist of one person, to be appointed by the Governor for a term of three years, and until his successor is appointed and qualified, and who shall be subject to removal by the Governor for neglect of duty, or for nonfeasance or malfeasance in office. Said Commissioner, upon appointment, shall take and file the oath prescribed by law for state officers, and shall be bonded in the State Bonding Fund, in the sum of twenty-five thousand dollars, such bond to be conditioned for the faithful performance of the duties of his office.

§ 2. Such Commissioner shall not hold any other office under the laws of this state or any other state, or of the United States. He shall reside at the capital of the state, and shall devote his entire time to the duties of his office, and shall not hold any position of trust, or profit, or engage in any business or occupation interfering

or inconsistent with his duties, nor shall he serve on or under any committee of any political party.

§ 3. The salary of such Commissioner shall not exceed four thousand dollars per annum, payable monthly. In addition to such salary, he shall receive his expenses actually and necessarily incurred in the performance of the official duties of his office.

§ 4. The office of said Commissioner shall be open for the transaction of business every day of the year, except Sundays, and legal holidays, and said Commissioner, or whosoever may be designated by him, may hold sessions or conduct investigation or hearings at the Capitol, or at any other place within the state when deemed necessary to facilitate the work of the commission.

§ 5. Said State Highway Commissioner shall have the full control, management, supervision, administration and direction of the State Highway Department of the State Highway Commission now existing, of the office of Registrar of Motor Vehicles and such other duties as may now or hereafter be imposed upon him, or placed under his jurisdiction. All powers and duties now vested, or which hereafter may be vested by law in the existing State Highway Commission or in any officer or employee thereof, and in the Registrar of Motor Vehicles, or any officer or employee thereof, shall be exercised and performed under the direction, control, supervision, management of, and with the approval of the office of State Highway Commissioner hereby created. It is hereby declared to be the intent and purpose of this Act to make and constitute the State Highway Commissioner hereby created, the final and ultimate authority to carry out the duties and exercise the powers of the departments and offices hereinbefore mentioned.

§ 6. In addition to the foregoing powers and duties, the State Highway Commissioner shall be the chief executive and administrative officer of the offices and departments above enumerated. He shall have charge of the records of the State Highway Department. He shall cause minutes of his acts to be kept and accurate and complete books of account to be kept, and to supervise the signing of vouchers, orders for supplies, materials and any other expenditures. He shall have authority, and it shall be his duty to employ all engineers, assistants, clerks, agents, attorneys and other employees, as may be required for the proper transaction of the business of his office, or of the State Highway Department; fix their titles, determine their duties, the amount of their bonds in the State Bonding Fund, if any are required, their compensation and discharge them in his discretion; sign and execute all documents and papers, contracts and agreements for highway construction, and purchase of machinery, materials and supplies.

It shall be the duty of the State Highway Commissioner, on or before December fifteenth of each year, to transmit to the Governor,

a full and complete annual report of the activities of his office, and of the State Highway Department, as of December first of each year, and to submit a biennial report, as is now required by law for other departments of the state government.

§ 7. Such State Highway Commissioner shall not pay, to exceed the maximum sums hereinafter stated, for the following classes of employees, to-wit:

For bookkeeper not to exceed.....\$1800.00 per annum  
For draftsman not to exceed..... 2,000.00 per annum  
For assistant engineers not to exceed..... 2400.00 per annum  
For engineers, other than the chief engineer or his first assistant not to exceed... 3000.00 per annum

The total annual expense for the Highway Department, and the office of State Highway Commissioner, exclusive of all outside employees, assistants and engineers, and inspection and maintenance work shall not exceed the sum of \$100,000.00 per annum. In addition to the salaries fixed by the Commissioner for said employees, they shall be entitled to receive their expenses, actually and necessarily incurred in the performance of their duties; the amount of such expenses so allowed to be fixed and determined by such Commissioner.

§ 8. The State Highway Commissioner shall file, at the beginning of each month, with the State Auditing Board, an itemized statement of all materials purchased or sold, showing the amount paid or received for such materials, together with the names and the postoffice address of the party or parties from whom such materials were purchased or to whom such materials were sold. He shall also file with said board, at the beginning of each month an itemized statement of all moneys paid out or received by him, together with the name of the party or parties to whom such moneys have been paid or from whom they have been received.

§ 9. REPEAL.] All Acts or parts of Acts in conflict herewith, including Chapter 153, Laws 1931, are hereby repealed.

§ 10. EMERGENCY.] This Act is hereby declared to be an emergency measure, and shall be in full force and effect from and after its passage and approval.

Approved February 14, 1933.

**CHAPTER 126****H. B. No. 245—(Peterson of Mountrail.)****AWARD CONTRACTS ROAD, BRIDGE WORK AND MATERIALS**

An Act to amend and re-enact Chapter 154, Session Laws of 1931 relating to and governing the awarding of certain contracts and giving preference to residents of the State of North Dakota.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That Chapter 154 of the Session Laws of 1931 is hereby amended and re-enacted to read as follows:

§ 154. CONTRACTS: FOR ROAD AND BRIDGE WORK AND MATERIALS. AWARDING TO RESIDENTS OF NORTH DAKOTA AND GIVING PREFERENCE TO RESIDENTS OF NORTH DAKOTA.] In the letting of any contract for the construction of any road or bridge, road work, or for road material or culvert, by the State Highway Department or by any political subdivision of the State, preference shall be given to all bona fide contractors who have been continually in business and resided in the State of North Dakota for a period of at least one year prior to the taking effect of this Act, to the extent of five per cent; provided such 5% preference shall not apply to Federal Aid projects; and provided further that at least 90% of the employees engaged in highway construction and maintenance shall have been residents of the State of North Dakota for at least one year, and shall be citizens of the United States or have declared their intention to become such.

§ 2. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

§ 3. EMERGENCY.] Whereas, resident North Dakota contractors bidding upon such work and materials are entitled to a preference over bidders not residents of this State, this Act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

Approved March 6, 1933.

**CHAPTER 127****H. B. No. 79—(Svingen and McManus.)****MILEAGE STATE HIGHWAY SYSTEM**

An Act designating the number of miles of main market, arterial and interstate public roads to be included in the "State Highway System" of the State of North Dakota. Repeal.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. STATE HIGHWAY SYSTEM.] The State Highway System of the State of North Dakota consisting of main market, arterial

and interstate public roads, as heretofore created, shall not exceed seven per cent of the entire road mileage of the State, whether such roads be township, county or state roads, and in no case shall such highway system exceed 7700 miles in length.

§ 2. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

Approved March 1st, 1933.

## CHAPTER 128

H. B. No. 144—(Swendseid and Muus.)

### PURCHASE AND CONDEMNATION RIGHT OF WAY, MATERIAL, ETC., STATE HIGHWAY COMMISSION

An Act to amend and re-enact Section 20 of Chapter 159, Laws of 1927 relating to the purchase and condemnation of right of way, material, etc., by the State Highway Commission.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] Section 20 of Chapter 159, Laws of 1927 is hereby amended and re-enacted to read as follows:

§ 20. PURCHASE OF RIGHT OF WAY, GRAVEL, ETC., BY STATE HIGHWAY COMMISSION.] The State Highway Commission or its successor, by resolution or order may, on behalf of the state, and as part of the cost of construction, reconstruction, widening, altering, changing, locating, relocating, aligning, re-aligning, or maintaining, or for providing a temporary road for public use, may purchase, acquire, take over or condemn under the right and power of eminent domain, for the state, any and all lands which it shall deem necessary for present public use, either temporary or permanent, or which it may deem necessary for reasonable future public use, and to provide adequate drainage in the improvement, construction, reconstruction, widening, altering, changing, locating, re-locating, aligning, re-aligning, or maintaining of a state highway. It may, by the same means, secure any and all materials, including clay, gravel, sand or rock, or the lands necessary to secure such material, and the necessary land, lands or easements thereover, to provide ways and access thereto. It may so acquire such land, lands or materials notwithstanding that the title thereto now or hereafter be vested in the State or any division thereof. Whenever the State Highway Commission or its successors shall determine by resolution or order that public exigency requires the taking of land or materials as aforesaid, it shall cause the same to be surveyed and described, and a plat thereof, and the said description shall be recorded in the office of the Register of Deeds for the county wherein the same is located. The State Highway Commission, or its duly authorized agents, is hereby authorized and empowered to enter upon any land or lands for the

purpose of making such surveys, examination or tests for the purpose herein named; provided, however, that in case of any damages to said premises said Commission shall forthwith pay to the owner of said premises the amount of said damages.

If the State Highway Commission is unable to purchase such land, lands, or materials with the necessary ways and access thereto, at what it deems a reasonable valuation, then the Board of County Commissioners of the county wherein such land, lands or materials may be situated, on petition of the State Highway Commission, shall proceed to ascertain and determine the damages and make awards in the same manner as provided by statute for lands taken for highway purposes as hereby modified or amended. Within 15 days after the filing of such petition with the County Auditor, the Board of County Commissioners shall fix a time and place, not later than 60 days from and after the filing of such petition, for a hearing of all persons or parties interested or aggrieved by such taking and shall cause to be published in the official newspaper of the county at least once a week, for a period of three successive weeks, prior to such hearing, a notice of such hearing, stating the time and place where the same shall be held, together with a description of the property so to be taken. Such published notice shall be in lieu of all other notices now required by statute, and when so published shall give the said Board of County Commissioners full and complete jurisdiction to proceed with the determination of awards of damages, provided, however, that a copy of such notice shall be personally served upon all known owners residing or found within the state, and upon the occupant of such land, not less than fifteen days prior to such hearing, in the manner now provided for the service of a summons in the District Court, and in case of personal service of said notice upon all persons interested in any manner in said real property, as disclosed by the records in the office of the Register of Deeds of the county wherein said property is located, no publication of said notice shall be made.

When the award of damages for the taking of land or materials, or both, shall have been completed by the Board of County Commissioners, the State Highway Commission shall pay, or cause to be paid from the State Highway Fund, into court for the benefit of the owners of land to whom such awards have been made by depositing with the Clerk of Court of such county, cash in the amount of such award or awards.

Every owner entitled to such award before the same shall be paid to him by the Clerk of Court, aforesaid, shall sign and execute a receipt therefor, which receipt shall contain a description of the premises covered by the said award. In case the owner shall fail or refuse to accept such award and execute such receipt therefor, the Clerk of Court shall execute a receipt, reciting the deposit of such award with him and the description of the premises covered by the award.

At the expiration of 30 days from the award by the Board of County Commissioners, from which no appeal has been taken as hereinafter provided, and when such money shall have been deposited in the office of the Clerk of Court, the receipt of the owners of said property, or of such Clerk of Court, as aforesaid, shall be recorded in the office of the Register of Deeds of the county in which such real estate is situated, and the title of the land or materials shall thereupon be and become vested in the state.

Parties aggrieved by these proceedings of the State Highway Commission in the taking of the lands or materials or by the estimates of damages and the awards by the Board of County Commissioners, shall have like remedies provided by statute for appeal from any determination of a Board of County Commissioners in taking of land by counties for highway purposes, the service of a written or printed notice of such appeal to be made upon the Chairman of the Board of County Commissioners and the Chief Highway Commissioner. Appeal from the award by the Board of County Commissioners, without filing cost bond, may be taken by the State Highway Commission, by service of notice of appeal upon the Chairman of the Board of County Commissioners and the owner of the property in the manner provided by law for the service of summons in civil actions.

In all cases of appeal, as heretofore provided, the State Highway Commission shall, on application to the Judge of the District Court, be granted a special term of court, in like manner as is provided by statute in cases of eminent domain under the Code of Civil Procedure. No fees shall be charged or collected by the County Auditor, the Register of Deeds, or the Clerk of Court for any services rendered for the recording or filing of any document hereinbefore required, nor for filing the case upon appeal.

The State Highway Commission may vacate any land or part thereof, or rights in land which have been taken or acquired for highway purposes under the provisions of this Act by executing and recording a deed thereof, and said vacation shall revest the title to the lands or rights so vested in the persons, their heirs, successors or assigns in whom it was vested at the time of the taking. The Governor, on recommendation of the State Highway Commission, is authorized to sell and convey on behalf of the state the interests of the state in property acquired by purchase under this Section and deemed no longer necessary for the purposes of the Act, and the proceeds of such sale so far as practicable be credited to the funds from which such purchase was originally made.

§ 2. REPEAL.] All Acts or parts of Acts inconsistent herewith are hereby repealed.

Approved March 6th, 1933.