

Introduced by

Representatives Klemin, DeKrey, Delmore

Senators Grindberg, Nelson, Nething

1 A BILL for an Act to create and enact chapter 10-35 of the North Dakota Century Code, relating
2 to public corporations; and to amend and reenact section 54-09-08 of the North Dakota Century
3 Code, relating to the secretary of state's general services operating fund.

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

5 **SECTION 1.** Chapter 10-35 of the North Dakota Century Code is created and enacted
6 as follows:

7 **10-35-01. Citation.** This chapter may be cited as the "North Dakota Public
8 Corporations Act".

9 **10-35-02. Definitions.** For purposes of this chapter, unless the context otherwise
10 requires:

11 1. "Beneficial owner", "owns beneficially", and similar terms have the same meaning
12 as in the rules and regulations of the commission under section 13 of the
13 Exchange Act.

14 2. "Commission" means the United States securities and exchange commission.

15 3. "Exchange Act" means the Securities Exchange Act of 1934, as amended
16 [15 U.S.C. section 78a et seq.].

17 4. "Executive officer" has the same meaning as in the rules and regulations of the
18 commission under the Exchange Act.

19 5. "Poison pill" means a security created or issued by a public corporation that
20 precludes or limits a person or group of persons from owning beneficially or of
21 record, or from exercising, converting, transferring, or receiving, the security on the
22 same terms as other shareholders or which is intended to have the effect of diluting
23 disproportionately from the shareholders generally the interest of the person or
24 group of persons in the corporation or a successor to the corporation or otherwise

- 1 discouraging the person or group of persons from acquiring beneficial ownership of
2 shares of the corporation or a successor to the corporation. For the purposes of
3 this subsection:
- 4 a. A security may constitute a poison pill whether or not it trades separately or
5 together with other securities of the corporation and whether or not it is
6 evidenced by a separate certificate or by a certificate for other securities of
7 the corporation.
- 8 b. "Poison pill" includes any form of security created or issued by a corporation,
9 or any agreement or arrangement entered into by a corporation, regardless of
10 the name by which it is known, that is designed or intended to operate as or
11 that has the effect of what is commonly referred to, either on July 1, 2007, or
12 at any time thereafter, as a "poison pill" or "shareholder rights plan".
- 13 c. A security is not a poison pill if it would otherwise be a poison pill solely
14 because it contains restrictions on ownership or acquisition of shares of the
15 corporation that are necessary:
- 16 (1) To maintain the tax status of the corporation; or
17 (2) For the corporation to comply with a statute, rule, or regulation that
18 regulates a business in which the corporation is engaged.
- 19 d. "Security" includes:
- 20 (1) An investment contract, warrant, option right, conversion right, or any
21 other form of right or obligation;
- 22 (2) A "security" within the meaning of that term in the Exchange Act, the
23 Securities Act of 1933, as amended [15 U.S.C. section 77a et seq.], the
24 rules and regulations of the commission, or judicial interpretations
25 under any of the foregoing;
- 26 (3) Any other ownership interest or right to acquire an ownership interest;
27 (4) Any other instrument commonly known as a "security"; and
28 (5) Any instrument or contract right created or issued by a public
29 corporation, whether or not the instrument or contract right is a security
30 under any other provision of law.

- 1 6. "Public corporation" or "corporation" means a corporation as defined in section
2 10-19.1-01:
3 a. That is incorporated after July 1, 2007; and
4 b. The articles of which state that the corporation is governed by this chapter.
5 7. "Public corporation franchise fee" means the fee imposed by subsection 3 of
6 section 10-35-28.
7 8. "Required vote" means approval of a provision of the articles or bylaws, at a time
8 when the corporation has a class of voting shares registered under the Exchange
9 Act, by at least the affirmative vote of both:
10 a. A majority of the directors in office who are not executive officers of the
11 corporation; and
12 b. Two-thirds of the voting power of the outstanding shares entitled to vote
13 generally for the election of directors that are not owned beneficially or of
14 record by directors or executive officers of the corporation.

15 **10-35-03. Application and effect of chapter.**

- 16 1. This chapter applies to every public corporation.
17 2. The existence of a provision of this chapter does not of itself create any implication
18 that a contrary or different rule of law is or would be applicable to a corporation that
19 is not a public corporation. This chapter does not affect any statute or rule of law
20 as it applies to a corporation that is not a public corporation.
21 3. A provision of the articles or bylaws of a public corporation may not be inconsistent
22 with any provision of this chapter.
23 4. The computation of a percentage of shares owned beneficially or of record by a
24 person or group of persons for purposes of this chapter or chapter 10-19.1 shall be
25 based on the number of outstanding shares of the public corporation shown most
26 recently in a filing by the corporation with the commission under the Exchange Act.

27 **10-35-04. Application of chapter 10-19.1.**

- 28 1. Chapter 10-19.1 applies generally to all public corporations, except that the
29 provisions of this chapter control over any inconsistent provision of chapter
30 10-19.1.

1 2. A public corporation is a "publicly held corporation" as that term is used in chapter
2 10-19.1.

3 3. The definitions in section 10-19.1-01 apply to the use in this chapter of the terms
4 defined in that section.

5 **10-35-05. Amendment of the bylaws.**

6 1. Any shareholder of a public corporation may propose the adoption, amendment, or
7 repeal of a bylaw.

8 2. Subdivision c of subsection 3 of section 10-19.1-31 shall not apply to a public
9 corporation except that a provision of the articles or bylaws authorized by section
10 10-35-14 may apply to a proposal to adopt, amend, or repeal a bylaw.

11 **10-35-06. Board of directors.**

12 1. The articles or bylaws of a public corporation may not fix a term for directors longer
13 than one year.

14 2. The articles or bylaws of a public corporation may not stagger the terms of
15 directors into groups whose terms end at different times.

16 3. The size of the board of a public corporation may not be changed at a time when:

17 a. The board has notice that there will be a contested election of directors at the
18 next regular or special meeting of the shareholders; or

19 b. The shareholders do not have the right to nominate candidates for election at
20 the next regular meeting of the shareholders under a provision of the articles
21 or bylaws adopted pursuant to section 10-35-07.

22 4. The board of a public corporation must elect one of its members as the chair of the
23 board who shall preside at meetings of the board and perform such other functions
24 as may be provided in the articles or bylaws or by resolution of the board. The
25 chair of the board may not serve as an executive officer of the corporation.

26 **10-35-07. Nomination of directors.**

27 1. A public corporation may not require a shareholder or beneficial owner of shares to
28 provide notice of an intention to nominate a candidate for election as a director
29 except as provided in a provision of the articles or bylaws that satisfies the
30 requirements of this section.

- 1 2. A provision of the articles or bylaws of a public corporation requiring a shareholder
2 or beneficial owner to provide notice of an intention to nominate a candidate for
3 election as a director may not require the notice to include more than:
- 4 a. The name of the shareholder or beneficial owner;
5 b. A statement that the shareholder or beneficial owner is the beneficial owner of
6 one or more shares in the corporation and reasonable evidence of that
7 ownership; and
8 c. The number of candidates the shareholder or beneficial owner intends to
9 nominate.
- 10 3. The date fixed by the articles or bylaws for submission by a shareholder or
11 beneficial owner of a notice of intention to nominate a candidate for election as a
12 director may not be earlier than:
- 13 a. In the case of a meeting held within five business days before or after the
14 anniversary of the previous year's regular meeting, ninety days before the
15 anniversary date of the prior regular meeting; or
16 b. In the case of a meeting not held within five business days before or after the
17 anniversary of the previous year's regular meeting, the later of:
- 18 (1) Twenty days after the public corporation announces the date of the
19 meeting in the body of a public filing, and not solely in an exhibit or
20 attachment to a filing, regardless of whether the exhibit or attachment
21 has been incorporated by reference into the body of the filing, with the
22 commission under the Exchange Act; and
23 (2) Ninety days before the date of the meeting.
- 24 4. A provision of the articles or bylaws requiring a shareholder or beneficial owner to
25 provide notice of an intention to nominate a candidate for election as a director
26 must provide a period of at least twenty days during which the shareholder or
27 beneficial owner may submit the notice to the public corporation.
- 28 5. The adoption or amendment of a bylaw requiring advance notice of nominations
29 may not take effect in the one hundred twenty-day period before the next meeting
30 of shareholders, unless the adoption or amendment of the bylaw has been
31 approved by the shareholders.

- 1 **10-35-08. Access to corporation's proxy statement.**
- 2 1. If a qualified shareholder provides notice of an intention to nominate one or more
- 3 candidates for election to the board of directors that satisfies both section 10-35-07
- 4 and this section, the public corporation must:
- 5 a. Include the name of each nominee and a statement not longer than five
- 6 hundred words without counting the information required under subdivisions a
- 7 through e of subsection 2 supplied by the qualified shareholder in support of
- 8 each nominee in the corporation's proxy statement; and
- 9 b. Make provision for a shareholder to vote on each nominee on the form of
- 10 proxy solicited on behalf of the corporation.
- 11 2. The public corporation may not require the notice from the qualified shareholder to
- 12 include more than:
- 13 a The name of the shareholder or the names of the members of the group of
- 14 shareholders;
- 15 b. A statement that the shareholder or group of shareholders satisfies the
- 16 definition of a qualified shareholder in subsection 3;
- 17 c. A statement that the shareholder or group of shareholders does not have
- 18 knowledge that the candidacy or, if elected, board membership of any of its
- 19 nominees would violate controlling state or federal law or rules other than
- 20 rules regarding director independence of a national securities exchange or
- 21 national securities association applicable to the corporation;
- 22 d. The information regarding each nominee that is required to be included in the
- 23 corporation's proxy statement by the rules and regulations adopted by the
- 24 commission under the Exchange Act;
- 25 e. A statement from each nominee that the nominee consents to be named in
- 26 the corporation's proxy statement and form of proxy and, if elected, to serve
- 27 on the board of directors of the corporation, for inclusion in the corporation's
- 28 proxy statement; and
- 29 f. The supporting statement permitted by subdivision a of subsection 1.
- 30 3. "Qualified shareholder" means a person or group of persons acting together that
- 31 satisfies the following requirements:

- 1 a. On the date of the notice, the person or group owns beneficially in the
2 aggregate more than five percent of the outstanding shares of the public
3 corporation that are entitled to vote generally at the time for the election of
4 directors; and
- 5 b. The person or each member of the group has beneficially owned the shares
6 that are used for purposes of determining the ownership threshold in
7 subdivision a continuously for at least one year and beneficially owns the
8 shares on both:
- 9 (1) The record date for the meeting at which there is a vote on a director
10 candidate nominated by the qualified shareholder; and
- 11 (2) The date of the meeting.

12 **10-35-09. Election of directors.**

- 13 1. After a quorum is established at a meeting of the shareholders of a public
14 corporation at which directors are to be elected, the polls must be opened for the
15 election of directors before the meeting may be recessed or adjourned. If the polls
16 have not been previously closed, the polls close for the election of directors upon
17 the first recess or adjournment of the meeting.
- 18 2. Except as provided in subsection 3, if the articles of a public corporation provide
19 that the shareholders do not have the right to cumulate their votes in an election of
20 directors:
- 21 a. Each share in the corporation entitled to vote on the election of directors shall
22 be entitled to vote noncumulatively for or against, or to abstain with respect to,
23 each candidate for election.
- 24 b. To be elected, a candidate must receive the affirmative vote of at least a
25 majority of the votes cast for or against the candidate's election.
- 26 c. An individual who is not elected under subdivision b may not be appointed by
27 the board of directors to fill a vacancy on the board at any time thereafter
28 unless the individual is subsequently elected as a director by the
29 shareholders.
- 30 d. If a director who was a candidate for reelection is not elected under
31 subdivision b, the director may continue to serve under subdivision b of

- 1 subsection 1 of section 10-19.1-35 for not longer than ninety days after the
2 date of the first public announcement of the results of the election.
- 3 e. If no directors are elected under subdivision b, the current directors continue
4 to serve under subdivision b of subsection 1 of section 10-19.1-35, and
5 another meeting of the shareholders for the election of directors must be held
6 not later than eighty-nine days after the date of the first public announcement
7 of the results of the election.
- 8 3. Subsection 2 does not apply to an election of directors by a voting group if there
9 are more candidates for election by the voting group than the number of directors
10 to be elected by the voting group and one or more of the candidates has been
11 properly nominated by the shareholders. An individual is not counted as a
12 candidate for election under this subsection if the board of directors reasonably
13 determines before the notice of meeting is given that the individual's candidacy
14 does not create a bona fide election contest. The determination of the number of
15 candidates for purposes of this subsection shall be made as of:
- 16 a. The expiration of the time fixed by the articles or bylaws for advance notice by
17 a shareholder of an intention to nominate directors; or
- 18 b. Absent such a provision at a time publicly announced by the board of
19 directors which is not more than fourteen days before notice is given of the
20 meeting at which the election is to occur.
- 21 4. A public corporation may not compensate an individual, directly or indirectly, as a
22 result of the fact, in whole or in part, that the individual is not elected or reelected
23 as a director, and without regard to whether the compensation would be paid to the
24 individual as a director or officer or on any other basis.
- 25 5. The shareholders may act by consent in a record to elect directors, but the consent
26 will be in lieu of a regular meeting of shareholders only if:
- 27 a. The shareholders are not entitled to vote cumulatively for the election of
28 directors;
- 29 b. The election by consent takes effect within the one hundred twenty-day period
30 before the anniversary of the most recent regular meeting; and
- 31 c. The full board is elected by the consent.

1 **10-35-10. Reimbursement of proxy expenses.**

2 1. A shareholder of a public corporation who nominates one or more candidates for
3 election as directors who are not nominated by management or the board of
4 directors must be reimbursed by the corporation for the reasonable actual costs of
5 solicitation of proxies incurred by the shareholder in an amount equal to the
6 shareholder's total reasonable actual costs of solicitation multiplied by a fraction,
7 the numerator of which is the number of candidates nominated by the shareholder
8 who are elected, and the denominator of which is the total number of candidates
9 nominated by the shareholder.

10 2. As used in this section, "actual costs of solicitation" means amounts paid to third
11 parties relating to the solicitation, including lawyers, proxy solicitors, public
12 relations firms, printers, the United States postal service, and media outlets.

13 **10-35-11. Director supermajority provisions prohibited.** Neither the articles nor the
14 bylaws of a public corporation may provide for a greater quorum or voting requirement for the
15 board or a committee of the board than a majority of the number of directors that would
16 constitute the full board or committee assuming there are no vacancies.

17 **10-35-12. Regular meeting of shareholders.**

18 1. Unless directors are elected by consent in lieu of a regular meeting as provided in
19 subsection 5 of section 10-35-09, a public corporation must hold a meeting of
20 shareholders annually for the election of directors and the conduct of such other
21 business as may be properly brought before the meeting by the board or the
22 shareholders.

23 2. The articles or bylaws of a public corporation must state the latest date in each
24 calendar year by which the regular meeting of shareholders must be held. The
25 date so fixed by the articles or bylaws may not be later than one hundred eighty
26 days after the end of the prior fiscal year of the corporation.

27 3. Any shareholder of a public corporation may demand a regular meeting of
28 shareholders under subsection 2 of section 10-19.1-71 or apply for an order of
29 court directing the holding of a regular meeting of shareholders under section
30 10-19.1-72.1, in each case without regard to the percentage of the voting power
31 held by the shareholder.

1 4. An amendment of the bylaws of a public corporation that changes the latest date
2 by which the regular meeting of shareholders must be held may not take effect until
3 after the regular meeting has been held for the year during which the amendment
4 is adopted, unless the amendment has been approved by the shareholders.

5 5. The committee of the board of a public corporation that has authority to set the
6 compensation of executive officers must report to the shareholders at each regular
7 meeting of shareholders on the compensation of the corporation's executive
8 officers. The shareholders that are entitled to vote for the election of directors shall
9 also be entitled to vote on an advisory basis on whether they accept the report of
10 the committee.

11 **10-35-13. Call of special meeting of shareholders.**

12 1. A public corporation shall hold a special meeting of shareholders upon the demand
13 of its shareholders as provided in section 10-19.1-72, except that, regardless of the
14 purpose for the meeting, the shareholders demanding the meeting must own
15 beneficially ten percent or more of the voting power of all shares entitled to vote on
16 each issue proposed to be considered at the special meeting.

17 2. The articles or bylaws of a public corporation may not restrict:

18 a. The period during which shareholders may call a special meeting of
19 shareholders; or

20 b. The business that may be conducted at a special meeting.

21 **10-35-14. Shareholder proposals of business at a regular meeting.**

22 1. A public corporation may not require a shareholder or beneficial owner to provide
23 notice of an intention to propose a matter for consideration or a vote at a regular
24 meeting of shareholders except as provided in a provision of the article or bylaws
25 that satisfies the requirements of this section.

26 2. A provision of the articles or bylaws requiring a shareholder or beneficial owner to
27 provide notice of an intention to propose a matter for consideration or a vote by the
28 shareholders may not require the notice to include more than:

29 a. The name of the shareholder or beneficial owner;

- 1 b. A statement that the shareholder or beneficial owner is the beneficial owner of
2 one or more shares in the corporation and reasonable evidence of that
3 ownership; and
- 4 c. The general nature of the business to be proposed.
- 5 3. The date fixed by the articles or bylaws for submission by a shareholder or
6 beneficial owner of a notice of intention to propose a matter for consideration or a
7 vote by the shareholders may not be earlier than:
- 8 a. In the case of a meeting held within five business days before or after the
9 anniversary of the previous year's regular meeting, ninety days before the
10 anniversary date of the prior regular meeting; or
- 11 b. In the case of a meeting not held within five business days before or after the
12 anniversary of the previous year's regular meeting, the later of:
- 13 (1) Twenty days after the public corporation announces the date of the
14 meeting in the body of a public filing, and not solely in an exhibit or
15 attachment to a filing regardless of whether the exhibit or attachment
16 has been incorporated by reference into the body of the filing, with the
17 commission under the Exchange Act; and
- 18 (2) Ninety days before the date of the meeting.
- 19 4. A provision of the articles or bylaws requiring a shareholder or beneficial owner to
20 provide notice of an intention to propose a matter for consideration or a vote by the
21 shareholders must provide a period of at least twenty days during which the
22 shareholder or beneficial owner may submit the notice to the public corporation.
- 23 5. The adoption or amendment of a bylaw requiring advance notice of business to be
24 proposed by a shareholder or beneficial owner may not take effect in the one
25 hundred twenty-day period before the next regular meeting of shareholders, unless
26 the adoption or amendment of the bylaw has been approved by the shareholders.
- 27 6. This section does not apply to the proposal by a shareholder or beneficial owner of
28 an amendment of the articles of a public corporation.

29 **10-35-15. Shareholder proposals of amendment of the articles.**

- 1 1. A proposal of an amendment of the articles of a public corporation by a
2 shareholder or shareholders under subsection 2 of section 10-19.1-19 need not
3 include more than:
- 4 a. The name of the shareholder or the names of the members of the group of
5 shareholders;
- 6 b. A statement of the number of shares of each class owned beneficially or of
7 record by the shareholder or group of shareholders; and
- 8 c. The text of the proposed amendment.
- 9 2. The articles or bylaws of a public corporation may not impose any requirements on
10 the proposal of an amendment of the articles by a shareholder.
- 11 3. An amendment proposed by a shareholder or shareholders pursuant to
12 subsection 1 and approved by the shareholders does not need to approved by the
13 board to be adopted and become effective.

14 **10-35-16. Quorum at shareholder meetings.**

- 15 1. If a proxy is given authority by a shareholder of a public corporation to vote on less
16 than all items of business considered at a meeting of shareholders, the
17 shareholder is considered to be present and entitled to vote by the proxy for
18 purposes of section 10-19.1-76 on all items of business to be considered at the
19 meeting.
- 20 2. A proxy who is given authority by a shareholder who abstains with respect to an
21 item of business is considered to have authority to vote on the item of business for
22 purposes of this section.

23 **10-35-17. Shareholder supermajority provisions prohibited.** Neither the articles nor
24 the bylaws of a public corporation may provide for a greater quorum or voting requirement for
25 shareholders than a majority of the voting power of the shares entitled to vote on the item of
26 business or, in the case of a class or series entitled to vote as a separate group, a majority of
27 the voting power of the outstanding shares of the class or series.

28 **10-35-18. Preemptive rights.** Unless otherwise provided in the articles, a shareholder
29 of a public corporation does not have the preemptive rights provided in section 10-19.1-65.

30 **10-35-19. Conduct and business of shareholder meetings.**

- 1 1. There must be a presiding officer at every meeting of the shareholders of a public
2 corporation. The presiding officer must be appointed in the manner provided in the
3 articles or bylaws or, in the absence of such a provision, by the board before the
4 meeting or by the shareholders at the meeting. If the articles or bylaws are silent on
5 the appointment of a presiding officer and the board and the shareholders fail to
6 designate a presiding officer, the president is the presiding officer.
- 7 2. Except as otherwise provided in the articles or bylaws or, in the absence of such a
8 provision, by the board before the meeting, the presiding officer determines the
9 order of business and has the authority to establish rules for the conduct of the
10 meeting.
- 11 3. The order of business and rules for the conduct of a meeting and any action by the
12 presiding officer must:
- 13 a. Be reasonable;
14 b. Be fair to all of the shareholders; and
15 c. May not favor or disadvantage the proponent of any action to be taken at the
16 meeting.
- 17 4. The presiding officer may announce at the meeting when the polls close for each
18 matter voted upon. If no announcement is made, the polls close upon the final
19 adjournment of the meeting, except as provided in subsection 1 of section
20 10-35-09. After the polls close, ballots, proxies, and votes may not be accepted,
21 and changes and revocations of ballots, proxies, or votes may not be made.
- 22 **10-35-20. Action by shareholders without a meeting.**
- 23 1. An action required or permitted to be taken at a meeting of the shareholders of a
24 public corporation may be taken without a meeting by one or more records signed
25 by shareholders who own voting power equal to the voting power that would be
26 required to take the same action at a meeting of the shareholders at which all
27 shareholders were present.
- 28 2. Action may not be taken by a public corporation by ballot of its shareholders
29 without a meeting.
- 30 **10-35-21. Financial statements.** Section 10-19.1-85 does not apply to a public
31 corporation.

- 1 **10-35-22. Duration of poison pills limited.**
- 2 1. If a public corporation adopts, creates, or issues a poison pill without a vote of its
- 3 shareholders authorizing that action, the poison pill must expire or be redeemed
- 4 and will otherwise be of no further force or effect not later than the earlier of:
- 5 a. One year after the date of its adoption, creation, or issuance; or
- 6 b. Ninety days after the first public announcement that a number of shares have
- 7 been tendered into an offer to purchase any and all shares of the corporation,
- 8 which number of shares tendered represents at least a majority of the
- 9 outstanding shares of each class or series of shares entitled to vote generally
- 10 for the election of directors when added to those shares owned beneficially or
- 11 of record by the person or group of persons making the offer or by any
- 12 affiliates of that person or group of persons.
- 13 2. If authorized by a vote of its shareholders, a public corporation may:
- 14 a. Adopt, create, or issue a poison pill that will be in effect for a period not longer
- 15 than the shorter of:
- 16 (1) Two years; and
- 17 (2) The period set forth in subdivision b of subsection 1; or
- 18 b. Extend the period during which a poison pill adopted, created, or issued
- 19 pursuant to subsection 1 will be in effect to not longer in the aggregate than
- 20 the period set forth in subdivision a.
- 21 3. A public corporation may not adopt, create, or issue a poison pill without the
- 22 approval of its shareholders until after it has held a regular meeting of shareholders
- 23 after its most recent prior poison pill has expired or been redeemed and otherwise
- 24 ceased to be of any force or effect. The date of the regular meeting of
- 25 shareholders must:
- 26 a. Comply with section 10-35-12:
- 27 b. Be at least ninety days after the date on which the prior poison pill expired,
- 28 was redeemed, or otherwise ceased to be of any force or effect; and
- 29 c. If the corporation has an advance notice requirement adopted pursuant to
- 30 section 10-35-07, give the shareholders the full period of time required by

1 subsection 4 of section 10-35-07 in which to provide notice to the corporation
2 of an intention to nominate candidates for election at the meeting.

3 **10-35-23. Protection of power of current directors over poison pill.** A poison pill
4 adopted, created, or issued by a public corporation, with or without the approval of its
5 shareholders, may not include a provision that limits in any way the power of the board of
6 directors, as it may be constituted at any point in time, to take any action at any time with
7 respect to the poison pill, including without limitation what is commonly referred to as a "dead
8 hand", "no hand", or "slow hand" provision.

9 **10-35-24. Minimum share ownership triggering level for poison pills.** A poison pill
10 adopted, created, or issued by a public corporation, with or without the approval of its
11 shareholders, may not provide that beneficial ownership or announcement of an intention to
12 seek beneficial ownership by a person or group of persons of shares equal to less than
13 twenty-five percent of the total number of outstanding shares of all classes and series of shares
14 of the corporation will result, either immediately or after the passage of a period of time, in:

- 15 1. A distribution or distribution date for rights certificates or other securities as defined
16 in subdivision d of subsection 5 of section 10-35-02;
- 17 2. The person or group of persons becoming what is commonly referred to as an
18 "acquiring person" or "adverse person" or otherwise having the status of a person
19 intended to be diluted or subject to dilution by the poison pill;
- 20 3. What is commonly referred to as a "flip-in" or "flip-over" event or the poison pill
21 otherwise being triggered or becoming operative; or
- 22 4. The poison pill otherwise having a dilutive, discriminatory, or other adverse effect
23 on the person or group of persons.

24 **10-35-25. Optional prohibition on adoption of poison pills.**

- 25 1. The articles or bylaws of a public corporation may restrict or prohibit the
26 corporation from adopting, creating, or issuing a poison pill.
- 27 2. A provision of the articles or bylaws adopted pursuant to subsection 1 at a time
28 when a public corporation has a poison pill in effect must be adopted by the
29 affirmative vote of a majority of the outstanding shares entitled to vote on adoption
30 of the provision. In every other instance, a provision of the articles or bylaws
31 adopted pursuant to subsection 1 must be adopted by the affirmative vote of a

1 majority of the votes cast by holders of shares entitled to vote on adoption of the
2 provision.

3 **10-35-26. Adoption of antitakeover provisions.**

4 1. The articles or bylaws of a public corporation may not contain an antitakeover
5 provision unless it has been approved by the required vote.

6 2. As used in this section:

7 a. Except as provided in subdivision b, "antitakeover provision" means a
8 provision that:

9 (1) Would block an acquisition by any person or group of persons of
10 beneficial ownership of any shares of the corporation or a change in
11 control of the corporation absent compliance with the provision;

12 (2) Restricts the price that may be paid by any person or group of persons
13 in an acquisition of beneficial ownership of any shares of the
14 corporations;

15 (3) Restricts the terms of a transaction after the occurrence of a change in
16 control of the corporation or limits the price that may be paid in such a
17 transaction, when it may be conducted, or how it must be approved by
18 the directors or shareholders;

19 (4) Requires an approval of the directors or shareholders in addition to, or
20 in a different manner from, whatever approvals are required under this
21 chapter and chapter 10-19.1 for a transaction involving an acquisition
22 by any person or group of persons of beneficial ownership of any
23 shares of the corporation or a change in control of the corporations;

24 (5) Requires the approval of a nongovernmental third party for an
25 acquisition by any person or group of persons of beneficial ownership of
26 any shares of the corporation or a transaction that would involve a
27 change in control of the corporation;

28 (6) Requires the corporation, directly or indirectly, to take an action that it
29 would not have been required to take if it had not been the subject of an
30 acquisition by any person or group of persons of beneficial ownership of

1 any of its shares or a transaction that would involve a change in control
2 of the corporation;

3 (7) Limits, directly or indirectly, the power of the corporation if it is the
4 subject of an acquisition by any person or group of persons of beneficial
5 ownership of any of its shares or a transaction that would involve a
6 change in control of the corporation to take an action that the
7 corporation would have had the power to take, without that limit, if the
8 acquisition of beneficial ownership or transaction had not occurred;

9 (8) Changes or limits the voting rights of any shares of the corporation
10 following a transaction involving an acquisition by any person or group
11 of persons of beneficial ownership of any shares of the corporation or a
12 change in control of the corporation;

13 (9) Would give any beneficial or record owner of shares of the corporation
14 a direct right of action against a person or group of persons with respect
15 to the acquisition by the person or group of persons of beneficial
16 ownership of any shares in the corporation or control of the corporation;
17 or

18 (10) Is designed or intended to operate as, or that has the effect of, what is
19 commonly referred to, either on July 1, 2007, or at any time thereafter,
20 as a "business combination", "control share acquisition", "control share
21 cash out", "freeze out", "fair price", "disgorgement", or other
22 "antitakeover" provision.

23 b. "Antitakeover provision" does not include a provision in the terms of a class or
24 series of shares that are issuable upon the exercise of a poison pill, but only
25 so long as the shares of the class or series are not issued by the corporation
26 except pursuant to the exercise of a poison pill.

27 c. "Control" has the same meaning as in the rules and regulations of the
28 commission under the Exchange Act.

29 **10-35-27. Liberal construction.** The provisions of this chapter and of chapter 10-19.1
30 must be liberally construed to protect and enhance the rights of shareholders in public
31 corporations.

- 1 **10-35-28. Annual report - Franchise fee.**
- 2 1. Instead of filing an annual report under section 10-19.1-146, each public
- 3 corporation shall file under this section, within the time provided in section
- 4 10-25-29, an annual report setting forth:
- 5 a. The name of the public corporation;
- 6 b. A statement that it is a public corporation;
- 7 c. The name of the public corporation's registered agent and the address of the
- 8 registered office of the public corporation;
- 9 d. The address of the principal executive office of the public corporation;
- 10 e. A brief statement of the character of the business, if any, in which the public
- 11 corporation is actually engaged in this state; and
- 12 f. The names and respective business addresses of the executive officers and
- 13 directors of the public corporation.
- 14 2. The annual report must be submitted on forms prescribed by the secretary of state.
- 15 The information provided must be given as of the date of the execution of the
- 16 report. The annual report must be signed as provided in subsection 52 of section
- 17 10-19.1-01, the articles or the bylaws, or by a resolution approved by the
- 18 affirmative vote of the required proportion or number of the directors. If the public
- 19 corporation is in the hands of a receiver or trustee, it must be signed on behalf of
- 20 the public corporation by the receiver or trustee. The secretary of state may
- 21 destroy all annual reports provided for in this section after they have been on file
- 22 for six years.
- 23 3. Instead of the fees provided for annual report filings in section 10-19.1-147, the
- 24 secretary of state shall collect a franchise fee with the annual report from every
- 25 public corporation for each calendar year in an amount equal to sixty dollars for
- 26 each ten thousand shares of authorized capital stock of the public corporation.
- 27 a. In the case of a public corporation that has not been a public corporation
- 28 during an entire twelve-month calendar year, the amount of the public
- 29 corporation franchise fee due, as provided in this section, shall be prorated on
- 30 a monthly basis for the portion of the year during which the public corporation

- 1 was a public corporation. For this purpose, any portion of a month shall be
2 regarded as a whole month.
- 3 b. In no case shall the public corporation franchise fee imposed by this section
4 be more than eighty thousand dollars or less than sixty dollars.
- 5 c. If a public corporation changes during a calendar year the number of shares
6 of its authorized capital stock, the total annual public corporation franchise fee
7 payable as provided in this section shall be arrived at by adding together the
8 franchise fees calculated as set forth in this section as prorated for the several
9 periods of the year during which each distinct authorized amount of shares of
10 capital stock was in effect.
- 11 d. For the purpose of computing the franchise fee imposed by this section, the
12 authorized capital stock of a public corporation shall be considered to be the
13 total number of shares of all classes and series that the public corporation is
14 authorized to issue, whether or not the number of shares that may be
15 outstanding at any one time is a lesser number.
- 16 e. Except as provided in this subsection, the public corporation franchise fee
17 shall be in addition to any other taxes or fees imposed by this state on the
18 public corporation.

19 **10-35-29. Filing of annual report and payment of public corporation franchise fee.**

- 20 1. Except for the first annual report and public corporation franchise fee, the annual
21 report and public corporation franchise fee must be delivered to the secretary of
22 state before December second of each year. The first annual report and payment
23 of the public corporation franchise fee must be delivered before the date provided
24 in the year following the calendar year in which the statement described in
25 subdivision b of subsection 6 of section 10-35-02 takes effect.
- 26 2. An annual report and public corporation franchise fee in a sealed envelope
27 postmarked by the United States postal service before the date provided in
28 subsection 1, or an annual report in a sealed packet with a verified shipment date
29 by any other carrier service before the date provided in subsection 1, is compliance
30 with this requirement. When the filing date falls on Saturday, Sunday, or other

1 holiday as defined in section 1-03-01, a postmark or verified shipment date on the
2 next business day is compliance with this requirement.

3 3. The secretary of state must file the annual report if the annual report conforms to
4 the requirements of section 10-35-28 and the public corporation franchise fee has
5 been paid.

6 a. If the annual report does not conform or adequate payment has not been
7 made, the secretary of state must notify the public corporation of any
8 necessary corrections or payment.

9 b. If the annual report is corrected and filed with the payment before the date
10 provided in subsection 1, or within thirty days after the public corporation was
11 notified of corrections or payment by the secretary of state, then the penalties
12 provided in section 10-35-31 for failure to file an annual report within the time
13 provided do not apply.

14 4. The secretary of state may extend the annual report filing date provided in
15 subsection 1 for a period not to exceed eleven months after the filing date provided
16 in subsection 1 if a written application for an extension is delivered before the date
17 provided in subsection 1.

18 **10-35-30. Collection of public corporation franchise fee - Preferred debt.** The
19 public corporation franchise fee shall be a debt due from the public corporation to the state for
20 which an action at law may be maintained after the same shall have been in arrears for a period
21 of one month. The public corporation franchise fee shall also be a preferred debt in case of
22 insolvency.

23 **10-35-31. Penalties - Administrative dissolution.**

24 1. The secretary of state shall charge and collect additional fees for late filing of the
25 annual report and payment of the public corporation franchise fee as follows:

26 a. Within ninety days after the date provided in subsection 1 of section 10-35-29,
27 two hundred fifty dollars.

28 b. Ninety days after the date provided in subsection 1 of section 10-35-29, the
29 public corporation becomes not in good standing. The secretary of state shall
30 notify the public corporation that its certificate of incorporation is not in good
31 standing and that it may be dissolved as provided in subsection 2.

- 1 (1) The secretary of state shall mail the notice of impending dissolution to
2 the last registered agent at the last registered office of record.
- 3 (2) If the public corporation files its annual report after the notice is mailed,
4 together with the public corporation franchise fee and a late filing
5 penalty of one thousand dollars, then the secretary of state shall restore
6 its certificate of incorporation to good standing.
- 7 2. A public corporation that fails to file its annual report or to pay the public
8 corporation franchise fee due within one year after the date provided in
9 subsection 1 of section 10-35-29 ceases to exist as a corporation and is
10 considered involuntarily dissolved by operation of law.
- 11 a. The secretary of state shall note the dissolution of the certificate of
12 incorporation of the public corporation on the records of the secretary of state
13 and shall give notice of the action to the dissolved public corporation.
- 14 b. Notice by the secretary of state must be mailed to the last registered agent at
15 the last registered office of record.
- 16 3. A public corporation dissolved for failure to file an annual report or to pay a public
17 corporation franchise fee due may be reinstated within one year following the
18 dissolution by:
- 19 a. Filing a past-due annual report with the public corporation franchise fee due;
20 b. Paying a late filing penalty of one thousand dollars; and
21 c. Paying a reinstatement free of one hundred thirty-five dollars.
- 22 4. Reinstatement under this subsection does not affect the rights or liabilities arising
23 during the time from the dissolution to the reinstatement.
- 24 5. Fees paid to the secretary of state according to this chapter are not refundable if
25 an annual report submitted to the secretary of state cannot be filed because it lacks
26 information required by section 10-35-28 or the annual report lacks sufficient
27 payment as required by section 10-35-28 or as required by this section.
- 28 **10-35-32. Secretary of state - Powers - Enforcement - Penalty - Appeal.**
- 29 1. The secretary of state has the power and authority reasonably necessary to
30 efficiently administer this chapter and to perform the duties imposed thereby.

- 1 2. The secretary of state may propound to any public corporation that is subject to
2 this chapter and to any officer, director, or employee thereof, any interrogatory
3 reasonably necessary and proper to ascertain whether the public corporation has
4 complied with all provisions of this chapter applicable to the public corporation.
- 5 a. The interrogatory must be answered within thirty days after mailing or within
6 any additional time as must be fixed by the secretary of state. The answer to
7 the interrogatory must be full and complete and must be made in writing and
8 under oath.
- 9 b. If the interrogatory is directed:
- 10 (1) To an individual, it must be answered by that individual; or
11 (2) To a public corporation, it must be answered by the president, vice
12 president, secretary, or assistant secretary of the public corporation.
- 13 c. The secretary of state is not required to file any record to which the
14 interrogatory relates until the interrogatory has been answered, and not then if
15 the answers disclose the record is not in conformity with this chapter.
- 16 d. The secretary of state shall certify to the attorney general, for action the
17 attorney general may deem appropriate, and interrogatory and answers
18 thereto, which discloses a violation of this chapter.
- 19 e. Each officer, director, or employee of a public corporation who fails or refuses
20 within the time provided by subdivision a to answer truthfully and fully an
21 interrogatory propounded to that person by the secretary of state is guilty of
22 an infraction.
- 23 f. An interrogatory propounded by the secretary of state and the answers are
24 not open to public inspection. The secretary of state may not disclose any
25 facts or information obtained from the interrogatory or answers except insofar
26 as permitted by law or insofar as required for evidence in any criminal
27 proceedings or other action by this state.
- 28 3. If the secretary of state rejects any record required by this chapter to be approved
29 by the secretary of state before the record may be filed, then the secretary of state
30 shall give written notice of the rejection to the person that delivered the record,
31 specifying the reasons for rejection.

- 1 a. Within thirty days after the service of the notice of denial, the public
2 corporation may appeal to the district court in the judicial district serving
3 Burleigh County by filing with the clerk of court a petition setting forth a copy
4 of the record sought to be filed and a copy of the written rejection of the
5 record by the secretary of state.
- 6 b. The matter must be tried de novo by the court. The court shall either sustain
7 the action of the secretary of state or direct the secretary of state to take the
8 action the court determines proper.
- 9 4. If the secretary of state dissolves a public corporation pursuant to subsection 2 of
10 section 10-35-31, then the public corporation may appeal to the district court in the
11 judicial district serving Burleigh County by filing with the clerk of court a petition,
12 including:
- 13 a. A copy of the public corporation's articles of incorporation; and
14 b. A copy of the notice of dissolution given by the secretary of state.
- 15 5. The district court shall try the matter de novo. The court shall sustain the action of
16 the secretary of state or direct the secretary of state to take the action the court
17 determines proper.
- 18 6. If the court order sought is one for reinstatement of a public corporation that has
19 been dissolved as provided in subsection 2 of section 10-35-31, then together with
20 any other actions the court deems proper, and such order which reverses the
21 decision of the secretary of state shall require the public corporation to:
- 22 a. File all past-due annual reports;
23 b. Pay the public corporation franchise fees to the secretary of state for each
24 annual report as provided in subsection 3 of section 10-35-28; and
25 c. Pay the reinstatement fee to the secretary of state as provided in subsection 3
26 of section 10-35-31.
- 27 7. Appeals from all final orders and judgments entered by the district court under this
28 section in review of any ruling or decision of the secretary of state are treated as
29 other civil actions.
- 30 **10-35-33. Funds received.** Ten percent of the fees received by the secretary of state
31 for filing records of a public corporation as provided for in section 10-19.1-147 or this chapter

1 must be deposited in the secretary of state's general services operating fund to pay the cost to
2 administer this chapter.

3 **SECTION 2. AMENDMENT.** Section 54-09-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-09-08. Secretary of state's general services operating fund.** The secretary of
6 state's general services operating fund is a special fund in the state treasury. Moneys in the
7 fund are to be used pursuant to legislative appropriations for the provision of services under
8 section 16.1-02-15, subsection 6 of section 41-09-94, subsection 9 of section 54-09-04, and
9 sections 10-35-33, 54-09-10, and 54-09-11. At the close of each biennium, the secretary of
10 state shall transfer any unobligated balance remaining in the fund exceeding seventy-five
11 thousand dollars to the general fund.