

MILITARY

CHAPTER 253

SENATE BILL NO. 2090

(Judiciary Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-01-03, 37-01-22, and 37-01-43 and subsection 7 of section 37-28-02 of the North Dakota Century Code, relating to operation of the North Dakota national guard.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-03 of the North Dakota Century Code is amended and reenacted as follows:

37-01-03. Articles of uniform code of military justice applicable in state - Regulations governing - Punishment for offenses while on duty.

The articles of uniform code of military justice governing the armed forces of the United States as codified in the Manual for Courts-Martial, United States, ~~1984 (1998 edition)~~ as effective through 2010, now in effect, are a part of this title so far as the same are applicable and not modified by any provision of this title. A person who commits an offense while on duty may be tried by a court-martial lawfully appointed even after such duty has terminated, and if found guilty, the accused must be punished according to the articles of uniform code of military justice and the rules and regulations governing the armed forces of the United States and within the limits prescribed in this title and by federal law for the courts-martial in the national guard. In any case in which the person alleged to have committed the offense could be charged either under the code of military justice or the civil law of this state, the officer whose duty it is to approve such charge, in the officer's discretion, may order the person charged or subject to being charged to be turned over to the civil authorities for trial. Whenever reference is made to the articles of uniform code of military justice, to the military service, or to the armed forces of the United States, such reference shall be deemed to include the military service of this state. The intent of this title and of all laws of this state affecting the military forces is to conform to all acts and regulations of the United States affecting the same subjects, and all laws of this state shall be construed to effect this purpose.

SECTION 2. AMENDMENT. Section 37-01-22 of the North Dakota Century Code is amended and reenacted as follows:

37-01-22. Governor may make rules and regulations governing military forces in state - Limitations - Effect.

The governor may make such rules and regulations as deemed expedient for the government of the military forces of this state, but such rules and regulations must conform to the provisions of this title and, as nearly as practicable, to those governing the ~~United States army~~ armed forces of the United States. When promulgated, such

rules and regulations have the same force and effect as the provisions of this title and may not be repealed, altered, amended, or added to except by the commanding officer of the national guard with the approval of the governor.

SECTION 3. AMENDMENT. Section 37-01-43 of the North Dakota Century Code is amended and reenacted as follows:

37-01-43. North Dakota military civil relief act.

A person called or ordered to active service for thirty consecutive days or longer has all of the protections afforded to persons in the military service of the United States under the ~~Soldiers and Sailors Civil Relief Act of 1940 [Pub. L. 102-12; 405 Stat. 34; 50 U.S.C. 501-548 and 560-593]~~Servicemembers Civil Relief Act, as effective through December 2003 [50 U.S.C. App. sections 501-596].

SECTION 4. AMENDMENT. Subsection 7 of section 37-28-02 of the North Dakota Century Code is amended and reenacted as follows:

7. a. "Resident" means a veteran who was a bona fide resident of the state of North Dakota at the time of mobilization or, in the case of an active component member, at the time of deployment for which the member received an expeditionary medal or campaign badge, as determined under the rules of the adjutant general and the laws of this state. "Resident" includes all mobilized members of the North Dakota national guard.
- b. "Veteran" means a member of the national guard or reserve component who was activated under 10 U.S.C. 12301, as effective through October 2004, and 10 U.S.C. 12302, as effective through 2004, and who completed honorable and faithful service of more than thirty days on active duty in the armed forces of the United States at any time during the period of service, or active component member awarded the expeditionary medal or campaign badge for service after December 5, 1992, who was a resident of the state of North Dakota, and who has not received bonus or adjusted compensation from another state for the period of service.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 254

HOUSE BILL NO. 1271

(Representatives Boehning, Amerman, Winrich)
(Senators Berry, Marcellais)

AN ACT to amend and reenact subsection 2 of section 37-01-42 of the North Dakota Century Code, relating to honorary high school diplomas for Korean conflict veterans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 37-01-42 of the North Dakota Century Code is amended and reenacted as follows:

2. Any Korean conflict veteran who did not receive a high school diploma may apply for an honorary high school diploma, provided:
 - a. The veteran was a member of the United States armed forces between June ~~25~~27, 1950, and ~~July 27, 1953~~January 31, 1955; and
 - b. The veteran was honorably discharged from the United States armed forces.

Approved April 8, 2011
Filed April 11, 2011

CHAPTER 255

SENATE BILL NO. 2069

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to create and enact a new section to chapter 37-01 of the North Dakota Century Code, relating to reimbursement of certain medical expenses for North Dakota national guard members while on state active duty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-01 of the North Dakota Century Code is created and enacted as follows:

Reimbursement of certain medical expenses for North Dakota national guard members while on state active duty.

The North Dakota national guard is authorized to pay medical expenses for national guard members who are called to state active duty when the member sustains an injury or illness that is found to have occurred within the line of duty and is not covered by workforce safety and insurance and when such treatment occurred while on state active duty. Payments shall be made only for costs not covered by other health insurance. Coverage of qualifying medical expenses is subject to rules set forth by the office of the adjutant general and subject to available funds.

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

Approved April 1, 2011
Filed April 1, 2011

CHAPTER 256

HOUSE BILL NO. 1316

(Representatives Owens, Brandenburg, DeKrey)
(Senator Schaible)

AN ACT to amend and reenact section 37-14-12 of the North Dakota Century Code, relating to the appeal of an application for relief or assistance provided under a department of veterans' affairs program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-14-12 of the North Dakota Century Code is amended and reenacted as follows:

37-14-12. Decision of department appealable.

The department of veterans' affairs may grant or refuse an application for relief or assistance from financial assistance programs under the control of the department under policies set by the administrative committee on veterans' affairs. The committee shall adopt and establish an appeal process. The department's decisions are appealable to an appeals committee appointed by the chairman of the administrative committee, ~~and the decision of the committee is final.~~ A hearing before the appeals committee may be closed upon request of the applicant. An applicant who requests a closed hearing may invite to that hearing any two representatives and the applicant's spouse or one other family member. Each decision of the appeals committee must give the reasons for granting or refusing an application for relief or assistance. The decision of the appeals committee is final. The record of the hearing, including the identity of the applicant, is an exempt record.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 257

HOUSE BILL NO. 1468

(Representatives Porter, R. Kelsch, Wieland, Metcalf)
(Senators Cook, Dever)

AN ACT to amend and reenact section 37-14-14 of the North Dakota Century Code, relating to the veterans' postwar trust fund; and to provide for an appropriation to the department of veterans' affairs and for a transfer from the department of veterans' affairs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-14-14 of the North Dakota Century Code is amended and reenacted as follows:

37-14-14. Veterans' postwar trust fund.

The veterans' postwar trust fund is a permanent trust fund of the state of North Dakota and consists of moneys transferred or credited to the fund, ~~pursuant to~~ under this chapter and other laws. Investment of the fund is the responsibility of the state treasurer who shall invest the fund only in those legal investments authorized by section 21-10-07. All income received from investments is to be utilized only for programs of benefit and service to veterans or their dependents, and all income earned in a biennium is appropriated to the administrative committee on veterans' affairs on a continuing basis in the following biennium and not in the biennium the income is earned for expenditure on these programs as authorized by law.

SECTION 2. APPROPRIATION - TRANSFER - DEPARTMENT OF VETERANS' AFFAIRS. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$210,000, or so much of the sum as may be necessary, to the department of veterans' affairs to be used in lieu of income generated from the veterans' postwar trust fund for programs authorized by law to benefit and serve veterans or their dependents, for the biennium beginning July 1, 2011, and ending June 30, 2013. The income generated by the veterans' postwar trust fund during the biennium beginning July 1, 2011, and ending June 30, 2013, must be held with the corpus of the fund for appropriation to the department of veterans' affairs as income for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the department of veterans' affairs for the purpose of purchasing vans for the transport of veterans or their dependents, for the biennium beginning July 1, 2011, and ending June 30, 2013.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 258

SENATE BILL NO. 2071

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to create and enact a new subsection to section 37-17.1-05 of the North Dakota Century Code, relating to calling up retired former members of the North Dakota national guard to state active duty in times of disasters or emergencies; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

Authorize the adjutant general to recall to state active duty, on a volunteer basis, former members of the North Dakota national guard. Those recalled must possess the qualifications required by the disaster or emergency. Recall under this subsection is effective only for the duration of the disaster or emergency and recalled personnel will be released from state active duty upon competent authority that the requirement of their service under this subsection has passed. Compensation for personnel recalled under this subsection will be based upon section 37-07-05.

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

Approved April 7, 2011

Filed April 7, 2011

CHAPTER 259

SENATE BILL NO. 2091

(Judiciary Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact subsection 1 of section 37-17.1-16 of the North Dakota Century Code, relating to liability of federal government employees assisting in a state disaster; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 37-17.1-16 of the North Dakota Century Code is amended and reenacted as follows:

1. All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. The state, a county or city, any disaster or emergency worker, an employee of a federal agency on loan or leave to the state in support of emergency service response whether the emergency is declared or undeclared, or any other person providing goods or services during an emergency if the person is working in coordination with and under the direction of an appropriate governmental emergency or disaster response entity, complying with or reasonably attempting to comply with this chapter, or any executive order or disaster or emergency operational plan pursuant to this chapter, or pursuant to any ordinance relating to any precautionary measures enacted by any county or city of the state, except in case of willful misconduct, gross negligence, or bad faith, is not liable for the death of or injury to persons, or for damage to property, as a result of any such activity. This section does not affect the right of any person to receive benefits to which that person would otherwise be entitled under this chapter, or under workforce safety and insurance law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any Act of Congress.

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

Approved April 19, 2011
Filed April 20, 2011

CHAPTER 260

SENATE BILL NO. 2107

(Transportation Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-17.1-23 and 39-10-03.2 of the North Dakota Century Code, relating to the disaster or emergency loan funding process and removal of department of emergency services from blue light rulemaking.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-23 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-23. Disaster or emergency recovery funding - Loan authorization.

1. When approved by the emergency commission, the ~~division of homeland security~~office of the adjutant general is authorized to borrow from the Bank of North Dakota, to match federal funds under the Robert T. Stafford Disaster Emergency Assistance Act [Public Law 93-288, as amended]. In addition to the principal repayment, the Bank of North Dakota shall receive interest on the loan at a rate equal to other state agency borrowings. On behalf of the state, the ~~division of homeland security~~office of the adjutant general shall administer the disaster or emergency recovery program according to state procedures based on federal laws or regulations. After a county or group of counties have been declared a major disaster or emergency area by the president, the ~~division office of the adjutant general~~ shall submit a request to the emergency commission for:
 - a. Approval to make an application for a loan from the Bank of North Dakota;
 - b. Approval for additional personnel required to perform the anticipated recovery activities; and
 - c. Authority to spend additional state and federal funds for the recovery program.
2. If the request is acceptable, the emergency commission shall approve the request and issue a notice of its action to the ~~division office of the adjutant general~~, Bank of North Dakota, and the office of management and budget. The ~~division office of the adjutant general~~ shall keep the emergency commission apprised of the progress of the recovery operation and submit a final report upon completion of the project. The ~~emergency commission office of the adjutant general~~ is responsible to repay any loan, including accrued interest, from the Bank of North Dakota which is provided under this section. If at the end of the biennium a balance exists on the loan, the ~~emergency commission office of the adjutant general~~ shall request the legislative assembly for a deficiency appropriation to repay the loan.

SECTION 2. AMENDMENT. Section 39-10-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-10-03.2. Class C authorized emergency vehicles.

All class B specifications apply to class C authorized emergency vehicles except that a ~~rotating~~ blue flashing light must be displayed in place of an amber light as provided in section 39-10-03.1. ~~With respect to vehicles used by state and local disaster emergency services personnel, the division of homeland security is responsible for adopting rules for the use of flashing blue lights in accordance with chapter 28-32.~~

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 261

SENATE BILL NO. 2369

(Senators Stenehjelm, G. Lee, Wanzek, Robinson)
(Representatives Carlson, D. Johnson)
(Approved by the Delayed Bills Committee)

AN ACT to amend and reenact section 37-17.1-27 of the North Dakota Century Code, relating to the state disaster relief fund; to provide appropriations to the adjutant general for emergency snow removal grants, flood mitigation, and for state disasters; to provide for a transfer; to provide for a budget section report; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-27 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-27. State disaster relief fund - Creation - Uses.

There is created in the state treasury a state disaster relief fund. Moneys in the fund are to be used subject to legislative appropriations and emergency commission and budget section approval for providing the required state share of funding for defraying the expenses of state disasters, including providing funds required to match federal funds for expenses associated with presidential-declared disasters in the state. Any interest or other fund earnings must be deposited in the fund.

SECTION 2. APPROPRIATION - BUDGET SECTION REPORT. Notwithstanding the provisions of section 37-17.1-27, there is appropriated out of any moneys in the state disaster relief fund in the state treasury, not otherwise appropriated, the sum of \$9,000,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of providing emergency snow removal grants, for the period beginning with the effective date of this Act and ending June 30, 2011. A county, township, or city may apply to the department of emergency services for an emergency snow removal grant for reimbursement of up to sixty percent of the snow removal costs incurred by the county, township, or city for the period January 2011 through March 2011 that exceeded two hundred percent of the average snow removal cost for these months during the years 2004 through 2008. Each county, township, or city requesting reimbursement under this section shall submit the request in accordance with rules developed by the department of emergency services. The department of emergency services shall distribute the grants prior to June 30, 2011, and shall report to the budget section regarding the grants awarded under this section. The funding provided in this section is to be considered one-time funding and any unspent funds are not available for future snow removal assistance, but may be used for purposes as provided for in section 4 of this Act.

SECTION 3. APPROPRIATION - TRANSFER - PERMANENT OIL TAX TRUST FUND - STATE DISASTER RELIEF FUND. There is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$22,000,000, which the office of management and budget shall transfer to the state disaster relief fund during the period beginning with the effective date of this Act and ending June 30, 2011.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the state disaster relief fund in the state treasury, not otherwise appropriated, the sum of \$22,000,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of defraying expenses only associated with state disasters and flood mitigation efforts as authorized in subsections 1 through 5 for the period beginning with the effective date of this Act and ending June 30, 2013. The funds provided in this section may only be used by the adjutant general, subject to emergency commission and budget section approval, for:

1. State costs relating to flooding that occurs during the spring of 2011 associated with presidential-declared disasters in the state.
2. a. Notwithstanding the provisions of section 37-17.1-27, flood disaster relief or disaster mitigation projects in incorporated cities that:
 - (1) Are in imminent threat of being flooded;
 - (2) Are underserved by adequate flood protection measures; and
 - (3) Are expected to lose land due to flooding for one year or longer.
- b. The adjutant general may spend funds for purposes as provided for in this subsection only to the extent that federal funds are not available for this flood disaster relief or these disaster mitigation projects as certified by the adjutant general to the office of management and budget.
- c. Total expenses paid from the state disaster relief fund under this subsection may not exceed \$3,200,000.
3. a. Notwithstanding the provisions of section 37-17.1-27, grants to political subdivisions for a portion of the local share required to match federal funds on road grade raising projects located on any natural body of water that comprises more than one hundred fifty thousand acres at current water levels and has risen more than twenty-five feet since 1993, subject to the road:
 - (1) Qualifying for federal emergency management agency grade raise matching funds;
 - (2) Having been inundated for six months or more or being expected to become inundated for six months or more after April 1, 2011;
 - (3) Being the only access road to a residence; or
 - (4) Being identified as a primary road in the county strategic road plan.
- b. The state will pay the state share required to match federal funds on eligible road grade raising projects and:
 - (1) Fifty percent of the local share on eligible county or township roads for a county or township that has lost up to thirty-three percent of its taxable land within the township where the road is located due to inundated lands since 1993.
 - (2) Seventy-five percent of the local share on eligible county or township roads for a county or township that has lost more than thirty-three

percent but less than fifty percent of its taxable land within the township where the road is located due to inundated lands since 1993.

- (3) Ninety percent of the local share on eligible county or township roads for a county or township that has lost fifty percent or more of its taxable land within the township where the road is located due to inundated lands since 1993.
4. Grants to political subdivisions for a portion of the local share required to match federal emergency relief funding relating to disasters occurring from January 2011 through June 2011. A political subdivision may apply to the adjutant general for an emergency relief grant under this subsection for up to fifty percent of the local match required to receive the federal emergency relief funding.
5. State expenses associated with presidential-declared disasters in the state.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 27, 2011

Filed April 27, 2011

CHAPTER 262

SENATE BILL NO. 2279

(Senators G. Lee, Lyson, Sitte)
(Representatives Boehning, Nathe, Wrangham)

AN ACT to amend and reenact sections 37-19.1-01, 37-19.1-02, 37-19.1-03, and 37-19.1-04 of the North Dakota Century Code, relating to veterans' preference; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

37-19.1-01. Definitions.

As used in this chapter:

1. "Agency" or "governmental agency" means all political subdivisions and the state, including any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ individuals either temporarily or permanently.
2. "Chief deputy" means the individual who is appointed by an elected or appointed official under express statutory authority to hire a chief deputy and who is authorized to act on behalf of that official. The term does not include an individual appointed to a position that must be filled under a competitive personnel system.
3. "Competitive personnel system" means a system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position.
4. "Disabled veteran" means a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration.
- ~~4-5.~~ "Justifiable cause" means grounds for action that are in accord with sufficient reason that can be justified or defended as correct. Justifiable cause not to hire a veteran must be something specific to that individual which renders the individual unsuitable for the position.
- ~~5.~~ "~~Personnel system" means a system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position.~~
6. "Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs individuals either temporarily or permanently.

7. "Private secretary" means the individual who is appointed by an elected or appointed official under express legal authority to hire a private secretary or administrative assistant and who is authorized to handle correspondence, keep files, schedule appointments, and do other clerical work of a more personal and confidential nature for that official, but does not include an individual appointed to a position that must be filled under a competitive personnel system.
8. "Veteran" means a North Dakota resident who is a wartime veteran as defined in subsection 2 of section 37-01-40.

⁹⁰ **SECTION 2. AMENDMENT.** Section 37-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

37-19.1-02. Public employment preference to veterans - Residency requirements.

1. Veterans are entitled to preference, over all other applicants, in ~~appointment or employment~~ recruitment and selection processes by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment. Veterans qualified for preference may not be disqualified from holding any position with an agency because of physical or mental disability, unless the disability renders them unable to properly perform the duties of the position applied for. To receive veterans' preference, an applicant must submit the following documentation:
 - a. An applicant claiming veterans' preference shall provide a copy of report of separation DD-214.
 - b. An applicant claiming disabled veterans' preference shall provide a copy of report of separation DD-214 and a letter less than one year old from the veterans' administration indicating the veteran's disability status.
 - c. An applicant claiming veterans' preference as an eligible spouse of a deceased veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and the veteran's death certificate.
 - d. An applicant claiming disabled veterans' preference as an eligible spouse of a disabled veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and a letter less than one year old from the veterans' administration indicating the veteran's disability status.
2. When a veteran applies for ~~appointment or employment under subsection 1 to a position that is not being filled through a competitive personnel system~~, the officer, board, or person whose duty it is to ~~appoint or employ~~ an individual to fill the available position shall, ~~except where the veteran has been qualified for the position applied for under a personnel system~~, investigate the qualifications of the veteran. If the veteran is found to possess the qualifications required for the position applied for, whether educational or by way of prior experience, and is physically and mentally able to perform the duties of the position applied for, the officer, board, or person shall ~~appoint or employ~~ the veteran. A disabled veteran is entitled to a preference superior to that given other veterans under this section, which preference must be

⁹⁰ Section 37-19.1-02 was also amended by section 1 of Senate Bill No. 2211, chapter 263.

accorded in the manner provided in this section. If the group of eligible individuals includes either veterans or disabled veterans, the employing authority of that particular agency or governmental agency shall make a selection for the available position as follows:

- a. A disabled veteran is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so employed. If the list includes two or more disabled veterans, then the employing authority shall fill the position from the group of eligible individuals to be considered. The employing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing. A disabled veteran from the group of eligible individuals is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so employed.
 - b. If the group of eligible individuals does not include one or more disabled veterans and consists only of veterans, then the employing authority shall fill the position from the group of eligible individuals to be considered. The employing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing. A veteran from the group of eligible individuals is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so employed.
 - c. If the group of eligible individuals includes nonveterans and veterans, but not disabled veterans, then the employing authority shall fill the position from the group of eligible individuals to be considered. The employing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing. A veteran from the group of eligible individuals is first entitled to the position and must be employed unless there is justifiable cause that is documented in writing for not employing that veteran.
3. ~~A disabled veteran is entitled to a preference superior to that given other veterans under this section, which preference must be accorded in the manner provided in this section.~~
 4. ~~Notwithstanding the preference provisions in subsections 1, 2, and 3, public employment preference for veterans by agencies filling positions through a personnel system are governed by the following: When a veteran applies for employment to a position that is being filled through a competitive personnel system, the officer, board, or person whose duty it is to employ an individual to fill the available position shall investigate the qualifications of the veteran. If the veteran is found to possess the qualifications required for the position applied for, whether educational or by way of prior experience, and is physically and mentally able to perform the duties of the position applied for, the officer, board, or person shall employ the following:~~
 - a. No distinction or discrimination may be made in the administration of the competitive personnel system examination because the applicant may be a veteran.

- b. ~~Upon completion of the examination with a passing grade, the applicant must be informed of a veteran's rights to employment preference as hereinafter provided.~~
- e. ~~The applicant must be required to furnish proof of the applicant's status as a veteran and, if disabled, proof of the applicant's disability, as defined herein.~~
- d. ~~Upon receipt of proof required in subdivision e-subsection 1, on a one hundred point scale, the examiner shall add five points for a nondisabled veteran and ten points for a disabled veteran to the examination grade of the applicant. The total is the veteran's examination score. If a scale other than a one hundred point scale is used, the examiner shall add five percent of the scale used for a veteran and ten percent of the scale used for a disabled veteran to the examination grade of the applicant. The total is the veteran's examination score.~~
- e-c. ~~Upon request for the The employing authority shall designate a prescribed number of eligible individuals to be considered from the eligibility registry, ~~the number of eligible individuals must be certified from the top number of eligible individuals and with the certified list of eligible individuals there must also be submitted a statement as to which of those so certified are veterans, disabled veterans, or nonveterans~~ stop number of the group of eligible candidates in rank order, from highest to lowest, based on the applicant's final score.~~
- f. ~~If the certified list of eligible individuals includes either veterans or disabled veterans, the appointing or employing authority of that particular agency or governmental agency shall make a selection for the available position as follows:~~
 - (1) ~~A disabled veteran, without regard to the disabled veteran's examination grade, is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so appointed or employed. If the list includes two or more disabled veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so appointed or employed.~~
 - (2) ~~If the certified list of eligible individuals does not include one or more disabled veterans and consists only of veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, must be appointed or employed.~~
 - (3) ~~If the certified list of eligible individuals includes nonveterans and veterans, but not disabled veterans, then the one with the highest examination grade, whether a nonveteran or a veteran, is first entitled to the position and, in the absence of justifiable cause, must be so appointed or employed; and if the one with the highest examination grade is a veteran and is not appointed or employed, there must be justifiable cause documented in writing for not making that appointment or employment.~~

d. The employing authority shall fill the position from the group of eligible individuals to be considered. The employing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing.

5-4. This section does not apply when the position to be filled is that of a superintendent of schools, teacher, administrative head of a department required by law, or the chief deputy or private secretary of an elected or appointed official, the chancellor and vice chancellors of the board of higher education, presidents or executive deans, vice presidents, assistant to the president, provosts, and instructors of board institutions. Temporary committees and individual or group appointments made by the governor or legislative assembly are also excepted from the provisions of this section. If an exempt position is advertised, the advertisement must state that veterans' preference does not apply to the position being advertised.

5. An employee of a state agency is not eligible for preference when applying for a different job within the same state agency or other state agencies. An employee of a political subdivision is not eligible for preference when applying for a different job within the same political subdivision.

SECTION 3. AMENDMENT. Section 37-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

37-19.1-03. Preferences to be granted veterans' spouses.

1. The unremarried spouse of a veteran who died while in service, or later died from a service-connected cause or causes, is entitled, if the person is otherwise qualified, to the ~~appointment~~ or employment preference given to a veteran under section 37-19.1-02 in the manner provided therein.
2. The spouse of a disabled veteran, who ~~is disabled due to a service-connected cause or causes~~ has a one hundred percent service-connected disability as determined by the department of veterans' affairs, or who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, is, if the disabled veteran is unable to exercise the veteran's right to a veteran's employment preference due to the veteran's disability, entitled, if the person is otherwise qualified, to the ~~appointment~~ or employment preference given to a veteran under section 37-19.1-02 in the manner provided therein.

SECTION 4. AMENDMENT. Section 37-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

37-19.1-04. Refusal to give preference - Retaliatory action or removal - Remedies - Procedures.

1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not given the preference provided in section 37-19.1-02 or 37-19.1-03, the applicant, within fifteen calendar days after notification by certified mail that employment has been refused, may request a hearing as provided in subsection 3. The notification from the employer must include the reasons for nonselection, inform the applicant of the right to an appeal hearing, inform the applicant of the requirement that the request for a hearing must be filed by certified mail within fifteen calendar days after the notification, inform the

applicant that a request for an appeal hearing must be made to the commissioner of veterans' affairs at the included commissioner's mailing address, and inform the applicant that if the applicant requests an appeal, the applicant must mail a copy of the request for an appeal hearing to the employer or employing agency. The applicant's request for a hearing must be in writing, must include a copy of the employer's notification that employment has been refused, and must be ~~delivered~~mailed to the commissioner of veterans' affairs by certified mail. A copy of the written request must be mailed to the employer or employing agency by certified mail. The applicant is entitled to immediate employment in the position for which application was originally made, or an equivalent position, together with backpay and benefits from the date the appointment should have been made less amounts otherwise earnable through due diligence, if the hearing officer finds in favor of the applicant.

2. Any person who has exercised the right to an employment preference under this chapter, and who, within one year after exercise of that right:
 - a. Is discharged;
 - b. Has had compensation reduced; or
 - c. Is otherwise subject to action by the employing agency designed to cause the veteran or qualified veteran's spouse to resign or quit employment, is entitled to a hearing if the person believes that the employing agency took any of the above-described action due to the exercise of employment preference. The hearing must be held before a hearing officer as provided in subsection 3. If the hearing officer finds that the employing agency took any of the actions described in subdivision a, b, or c due to the person's exercise of the right to an employment preference, the hearing officer shall order the employing agency to cease and desist from such action or to reinstate the veteran or qualified veteran's spouse. The request for a hearing under this subsection must be in writing addressed to the commissioner of veterans' affairs. The request for a hearing must identify the employer or employing agency that took any action described in subdivision a, b, or c and describe the action taken. A copy of the written request must be mailed to the employer or employing agency. The request, addressed to the commissioner of veterans' affairs and the copy to the employer or employing agency, must be made by certified mail within fifteen calendar days after any action described in subdivision a, b, or c is taken by the employing agency.
3. Within fifteen calendar days after receiving a request from an applicant or person under subsection 1 or 2, the commissioner of veterans' affairs may request the director of the office of administrative hearings to designate a hearing officer to hear the grievance arising under subsection 1 or 2. The commissioner shall notify the employer or employing agency that a request for a hearing has been made. The office of administrative hearings is entitled to be reimbursed by the employer or employing agency for all hearing officer services rendered and expenses incurred in performing these duties. The hearing officer shall hold the hearing within thirty calendar days after the hearing officer request is received by the director of the office of administrative hearings. Notwithstanding the time limitation, the hearing officer may postpone or continue the hearing for good cause, at the request of a party. At the hearing, both parties may be represented by counsel. If the hearing is

requested pursuant to subsection 1, the employing agency has the burden of proving that the veteran or the qualified veteran's spouse did not possess the qualifications required for the position. If the hearing is requested pursuant to subsection 2, the employing agency has the burden of proving that any action which was taken was not taken because of exercise of the right to an employment preference. The hearing officer shall issue findings of fact, conclusions of law, and an order within fifteen calendar days after the hearing is concluded, briefs filed, and arguments closed. The order is binding on both parties, subject to appeal.

4. Any party aggrieved by the findings of fact, conclusions of law, and order of the hearing officer may appeal in the manner provided for in chapter 28-32, except that the appellant need not execute an undertaking.

SECTION 5. LEGISLATIVE MANAGEMENT VETERANS' PREFERENCE LAWS STUDY. During the 2011-12 interim, the legislative management shall consider studying the North Dakota veterans' preference laws. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 263

SENATE BILL NO. 2211

(Senators Grindberg, Wardner, Robinson)
(Representatives Hawken, Kreun, Mueller)

AN ACT to amend and reenact subsection 5 of section 37-19.1-02 of the North Dakota Century Code, relating to exemptions to veterans' preference and public employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹¹ **SECTION 1. AMENDMENT.** Subsection 5 of section 37-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

5. This section does not apply when the position to be filled is that of a superintendent of schools, teacher, or the chief deputy or private secretary of an elected or appointed official; ~~the chancellor and vice chancellors of the board of higher education;~~ and presidents or executive deans, vice presidents, ~~assistant~~ assistants to the president, provosts, ~~and~~ instructors, and athletic team coaches of board institutions. Temporary committees and individual or group appointments made by the governor or legislative assembly are also excepted from the provisions of this section.

Approved April 25, 2011
Filed April 25, 2011

⁹¹ Section 37-19.1-02 was also amended by section 2 of Senate Bill No. 2279, chapter 262.