

HEALTH AND SAFETY

CHAPTER 255

HOUSE BILL NO. 1436
(Walsh, Dick, Henry, Livingston)

NOISE POLLUTION CONTROL

AN ACT to create and enact section 23-01-17 of the North Dakota Century Code, relating to authority for the state health council to make rules and regulations concerning noise that is hazardous to health and safety, and providing a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) Section 23-01-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-01-17. NOISE HARMFUL TO HEALTH AND SAFETY - POWER TO REGULATE - HEARINGS - APPEAL - PENALTY - INJUNCTION.)

1. The state health council shall establish reasonable standards, rules, and regulations necessary to prevent and minimize hazards to health and safety caused by the excessive noise or other similar disturbances of farm machinery, tools, construction equipment, motor-powered vehicles, musical instruments or groups, and other devices, operations, objects, or activities producing noise levels determined by the health council as hazardous to health and safety. Before establishing any standards, rules, or regulations as herein provided, the council shall hold public hearings thereon with appropriate notice to interested parties. An appeal from any established standard, rule, or regulation may be taken to the courts by any affected person pursuant to chapter 28-32. Any person, firm, corporation, partnership, association, or other legal entity willfully violating these established standards, rules, or regulations shall be guilty of a misdemeanor and punishable by a fine of not more than one thousand dollars. The state health council shall have the power to apply to the state's courts to enjoin repeated violations of the standards, rules, and regulations established hereby.
2. This section shall not apply to the actual operation of all types of aircraft, including, but not limited to, landing, taking off, taxiing, and in-flight

operations. Other aeronautically related activities, including activities associated or connected with airports or the flying industry, shall be covered by this section. This section shall not apply to the control and abatement of aircraft noise and sonic booms as covered by the Federal Aviation Act of 1958, as amended, and regulations issued pursuant thereto.

3. The state health council shall report progress in the promulgation of standards, rules, and regulations pursuant to this Act to the governor of the state of North Dakota prior to the Legislative Session of 1973.

Approved March 27, 1971

CHAPTER 256

SENATE BILL NO. 2087
(Lips, Morgan, Sanstead)
(Legislative Council Study)

RABIES CONTROL

AN ACT to provide that the state department of health shall be responsible for rabies control; and to repeal chapter 23-22 of the North Dakota Century Code, relating to the rabies control committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. STATE DEPARTMENT OF HEALTH RESPONSIBLE FOR CONTROL OF RABIES.) The state department of health shall be responsible for the prevention and control of rabies. The department shall place its primary emphasis on human exposure cases but shall also be authorized to provide rabies vaccine for dogs and cats and may employ a veterinarian to administer such vaccine. The department shall also provide rabies vaccine for humans if requested to do so by the attending physician of the person to receive such vaccine. In addition, the department shall have the authority to quarantine, vaccinate, or exterminate any animal suspected of rabies. If requested to do so by local authorities, the department shall assist them in the prevention and control of rabies where an emergency exists.

SECTION 2. EXTERMINATION OF RABIES.) The state department of health shall obtain the cooperation and assistance of the game and fish department, the state veterinarian, and the predatory animal and rodent control division of the department of agriculture in carrying out the provisions of this Act. It shall be the duty of the game and fish department and the department of agriculture, upon request of the state department of health, to exterminate or quarantine those animals suspected of having rabies and to carry out such other preventative measures as the department may from time to time request.

SECTION 3. REPEAL.) Chapter 23-22 of the North Dakota Century Code is hereby repealed.

Approved February 19, 1971

CHAPTER 257

HOUSE BILL NO. 1347
(Brekke, Walsh, Hildebrand)

BIRTH AND DEATH
CERTIFICATE FEES

AN ACT to amend and reenact section 23-02-05 of the North Dakota Century Code, relating to the fees collected by the state registrar for birth and death certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 23-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-02-05. FEES OF STATE REGISTRAR.) The state registrar shall prescribe and collect fees which shall not exceed:

1. For a certified copy of a birth or death certificate, two dollars.
2. For a registrar's certificate of record of birth, two dollars.
3. For filing a delayed registration of birth for any person twelve years of age and over, two dollars. This fee shall be collected in addition to the prescribed fee for registrar's certificate or certified copy.

The registrar may also prescribe a fee, not to exceed two dollars, for a search of the files and records when no copy is made. Such fees shall be paid by the applicant to the state registrar, who shall keep a correct account thereof and turn the same over to the state treasurer.

Approved February 26, 1971

CHAPTER 258

HOUSE BILL NO. 1374
(Wagner)

DEATH WITHOUT MEDICAL ATTENDANCE

AN ACT to amend and reenact section 23-02-35 of the North Dakota Century Code, relating to death without medical attendance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 23-02-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-02-35. DEATH WITHOUT MEDICAL ATTENDANCE - DUTY OF UNDERTAKER AND LOCAL CORONER.) If any death occurs without medical attendance, the undertaker shall notify the local coroner of such death for immediate investigation and certification, and shall inform the local health officer. If the circumstances of the case render it probable that death was caused by unlawful or suspicious means, the coroner shall fully investigate the case in the manner prescribed by law.

Approved March 27, 1971

CHAPTER 259

SENATE BILL NO. 2362
(Just)

DISSOLUTION OF
HOUSING AUTHORITY

AN ACT to provide for the dissolution of city housing authorities and to amend and reenact subsection 2 of section 23-11-01 and section 23-11-30 of the North Dakota Century Code relating to the definition of a city and the reports of housing authorities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. DISSOLUTION OF CITY HOUSING AUTHORITIES AUTHORIZED - PROCEDURE - EFFECT.) The governing body of any city may, by resolution, dissolve the housing authority of such city for the purpose of electing to participate in a county housing authority pursuant to section 54-40-08. Upon the adoption of such a resolution the city authority shall cease to exist, except for the purpose of winding up its affairs and executing a deed to the county housing authority pursuant to the agreement executed between the city and the county under the provisions of section 54-40-08. All the rights, contracts, obligations and property, real and personal, of the city authority shall be transferred to and become vested in the county authority, provided that all bonded indebtedness issued by the city authority shall remain a lien against the income and revenues of the housing project pledged to the payment of such bonds. All rights and remedies of any person against the city authority may be asserted and enforced against the county authority to the same extent as they might have been against the city authority.

SECTION 2. AMENDMENT.) Subsection 2 of section 23-11-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "City" shall mean any city having a population of more than five thousand inhabitants according to the last federal census and "the city" shall mean the particular city for which a particular housing authority is created, except that it shall not mean a city which has agreed to or will so elect to participate in a county housing authority pursuant to section 54-40-08, provided that any city with less than five thousand population which has an activated city housing authority prior to July 1, 1971, shall be included within this definition;

SECTION 3. AMENDMENT.) Section 23-11-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-11-30. REPORTS.) At least once every year, an authority shall file with the city auditor or county auditor, as the case may be, and with the state planning division, a report of its activities for the preceding year and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this chapter.

Approved March 29, 1971

CHAPTER 260

SENATE BILL NO. 2506
(Delayed Bills Committee)

TAX EXEMPTION FOR
INDIAN HOUSING AUTHORITY

AN ACT to amend and reenact section 23-11-28 and 23-11-29 of the North Dakota Century Code, relating to exemption of real property of a housing authority created under Indian laws recognized by the federal government from execution sales, taxes and special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 23-11-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-11-28. EXEMPTION OF REAL PROPERTY FROM EXECUTION SALE.) All real property of an authority including an authority created under Indian laws recognized by the federal government shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against any authority be a charge or lien upon its real property. The provisions of this section, however, shall not apply to nor limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of an obligee to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, or revenues.

SECTION 2. AMENDMENT.) Section 23-11-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-11-29. TAX EXEMPTIONS AND PAYMENTS IN LIEU OF TAXES.) The property of an authority including an authority created under Indian laws recognized by the federal government is declared to be public property used for essential public and governmental purposes and shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision thereof. In lieu of such taxes or special assessments, an authority may agree to make payments to the city, county, state, or any such political subdivision for improvements, services, and facilities furnished thereby for the benefits of a housing project, but in no event shall such payments exceed the estimated cost to such city, county, or political subdivision of the improvements, services, or facilities to be so furnished.

Approved March 2, 1971

CHAPTER 261

HOUSE BILL NO. 1090
(W. Erickson, Hickle, Hilleboe, Rivinius, Rundle)
(From Legislative Council Study)

SAFETY COMMITTEE

AN ACT to repeal sections 23-13-09 and 23-13-10 of the North Dakota Century Code, relating to the safety committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL.) Section 23-13-09 of the 1969 Supplement to the North Dakota Century Code and section 23-13-10 of the North Dakota Century Code are hereby repealed.

Approved February 20, 1971

CHAPTER 262

SENATE BILL NO. 2173
(Lips)

LICENSING OF ADDICTION HOSPITALS

AN ACT to amend and reenact sections 23-17.1-01, 23-17.1-02, 23-17.1-03, 23-17.1-04, 23-17.1-05, 23-17.1-06, and 23-17.1-07 of the North Dakota Century Code, relating to the licensing of addiction hospitals; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 23-17.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.1-01. LICENSE REQUIRED.) No person, partnership, association, or corporation, shall establish, conduct, or maintain in the state of North Dakota, a hospital, sanitarium, or related institution for the care of persons addicted to alcohol or other drugs without first obtaining a license in the manner provided in this chapter, unless a license has already been issued for such care under the provisions of this title.

SECTION 2. AMENDMENT.) Section 23-17.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.1-02. APPLICATION - CONTENTS.) Any person, partnership, association, or corporation desiring a license hereunder shall file with the North Dakota state department of health a verified application containing the name of the applicant; the type of institution to be operated; the location thereof; the name of the person or persons in charge thereof; and such other information as the North Dakota state department of health may require.

SECTION 3. AMENDMENT.) Section 23-17.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.1-03. INSPECTION OF LICENSED PREMISES.) Every building, institution, or establishment for which a license has been issued under this chapter shall be periodically inspected by a sanitary engineer and firemen who shall report as to the

safety of the institution to the North Dakota state department of health which department shall also inspect the institution under the rules and regulations to be established by said department. No institution of any kind licensed pursuant to the provisions of this chapter shall be required to be licensed or inspected under the laws of this state relating to hotels, restaurants, or lodginghouses.

SECTION 4. AMENDMENT.) Section 23-17.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.1-04. SUSPENSION OR REVOCATION OF LICENSE.) The North Dakota state department of health is hereby authorized to issue licenses to operate addiction hospitals or other related institutions as herein defined, for a period of one year, which, after inspection, are to comply with the provisions of this chapter, and any regulations adopted by the department. The department is hereby authorized to suspend or revoke a license issued hereunder on any of the following grounds:

1. Violation of any of the provisions of this chapter or the rules and regulations issued pursuant thereto;
2. Permitting, aiding or abetting the department of any illegal act in such institution;
3. Conduct or practices detrimental to the welfare or health of any patient of such institution.

Before any license issued hereunder is suspended or revoked, thirty days' written notice shall be given the holder thereof of the date set for the hearing of the complaint. The holder of such license shall be furnished with a copy of the complaint and be entitled to be represented by legal counsel at such hearing. Such notice shall be given by the department by registered or certified mail. If a license is revoked as herein provided, a new application for license may be considered by the department when, and after, the conditions upon which revocation was based have been corrected and evidence of this fact has been satisfactorily furnished. A new license may then be granted after proper inspection has been made on all provisions of this chapter and the rules and regulations hereunder have been complied with.

SECTION 5. AMENDMENT.) Section 23-17.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.1-05. RULES AND REGULATIONS.) The North Dakota state department of health shall have the power to establish standards under this chapter which it finds necessary and in the public interest, and it may rescind, amend, or modify such regulations and standards from time to time as may be in the public interest, insofar as such action is not in conflict with

any of the provisions of this chapter. The provisions of chapter 28-32 shall apply to regulations and administrative proceedings under this chapter.

SECTION 6. AMENDMENT.) Section 23-17.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.1-06. INFORMATION CONFIDENTIAL.) Information received by the North Dakota state department of health through inspections of institutions under this chapter shall be confidential and shall not be disclosed except in a proceeding involving the question of licensure.

SECTION 7. AMENDMENT.) Section 23-17.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.1-07. INJUNCTION.) The department of health, in accordance with the laws of the state governing injunctions and other process, may maintain an action in the name of the state against any person, partnership, association, or corporation, for establishing, conducting, managing or operating any addiction hospital within the meaning of the chapter without first having a license therefor or herein provided or without first obtaining from the state department of health written approval of plans and specifications for major alterations of, additions to, or construction of addiction facilities.

SECTION 8. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 11, 1971

CHAPTER 263

SENATE BILL NO. 2307

(Longmire, Melland, Kautzmann, Lips, Litten)

EXPANSION OF HOSPITAL FACILITIES

AN ACT requiring a certificate of need for construction or expansion of hospitals and related medical facilities including services, defining the procedure for certification of need and the requirements thereof, providing for a public hearing, prohibiting licensing, and authorizing injunctions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. REVIEW AND EVALUATION OF PROPOSED CONSTRUCTION AND PROPOSED ADDITIONAL MEDICAL OR RESIDENT CARE SERVICES OF HOSPITALS AND RELATED MEDICAL FACILITIES - PUBLIC INTEREST.) It is declared to be the public policy of this state:

1. That the construction and expansion of medical care facilities and the institution of additional medical services shall be accomplished in a manner which is orderly, economical, and consistent with the effective development of necessary and adequate means of providing for the health care of the people of North Dakota, and to avoid a wasting of health care dollars.
2. That the general welfare and the protection of the lives, health, and property of the people of this state require that the type, level, and kind of care needed in proposed construction or expansion of services in hospitals and related medical facilities within this state be subject to review and evaluation before commencing construction in order that proper facilities are made available for such care, that proposed new or expanded medical facilities provide, within the economic means of this state, the type, level, and kind of care necessary for the continued well-being and comfort of the patients of such hospitals and related medical facilities and to ensure that medical facilities are not constructed or services expanded which exceed the needs of patients or of persons in the area to be served.

SECTION 2. DEFINITIONS.) As used in this Act, unless otherwise indicated by the context:

1. "Appearance" shall mean a notice in writing filed by any interested persons notifying the state health council of his interest in any application pending under this chapter.
2. "Community clinic" means a facility which has a small (usually interpreted as two to fourteen) number of beds for the purpose of care and treatment as is required in the practice of a general practitioner.
3. "Construction" means the proposed construction of any new facility or proposed program which would expand the scope of service, or any increase of bed count. However, construction shall not include the temporary increase of bed count by reason of an emergency not to exceed sixty days, or by changes required by state or federal health and safety regulatory bodies.
4. "Designated areawide comprehensive health planning council" means a voluntary, nonprofit organization independent of any governmental agency, formed for the purpose of comprehensive health planning in a definite geographical area, and which is recognized by the state health council for review and comment of applications for certificates of need as provided by this Act.
5. "Health council" means the state health council of the North Dakota state department of health.
6. "Hospitals and related facilities" means all the facilities requiring licenses as provided for in chapters 23-16, 23-17.1 and 25-16 of the North Dakota Century Code.
7. "Medical care service" means a health service provided by a medical care facility for the diagnosis, treatment or care of its patients, as the same may be further defined and limited for the purposes of this Act by rules and regulations of the state health council.
8. "Patient" means a person who is suffering from mental illness, acute or chronic illness or injury, or convalescent and who is in need of medical and nursing care on a continuing basis, or who is in need of obstetrical or other medical or nursing care.
9. "Person" means any individual, corporation, partner-

ship, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency as stated herein.

10. "Public body" means state of North Dakota, and any county or municipal corporation.
11. "Public funds" shall include all funds derived from taxation, fees, penalties, sale of bonds, or from any other source which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporations and for whatever purpose to be expended of which a public corporation or the state shall have legal custody. They shall include the funds of which any board, bureau, commission, or individual, created or authorized by public and state law, is authorized to have control as the legal custodian for any purpose whatsoever, whether such funds were derived from general or special taxation or the assessment of persons or corporations for a specific purpose.
12. "Public institution" means any hospital or related medical facility under the establishment and control of any public body.
13. "State comprehensive health planning advisory council" means the existing state comprehensive health planning advisory council of the North Dakota state department of health.

SECTION 3. FACILITIES INCLUDED.) The following types of public (excluding federal) and private institutions are designated and are deemed to come within the provisions of this Act: hospitals, community clinics, nursing homes, extended care facilities, chronic disease hospitals or units of hospitals, infirmaries and addiction hospitals.

SECTION 4. CERTIFICATE OF NEED.) No hospital or related medical facility shall be constructed or expanded and no new medical care service shall be instituted after the effective date of this Act except upon application for and receipt of a certificate of need as provided by this Act. This Act shall not apply to any facility that has submitted to the state health department preliminary architectural plans for expansion or remodeling during the calendar year 1970 and which plans are followed up by the awarding of a contract for construction by December 31, 1971.

SECTION 5. DEPARTMENT TO PROMULGATE RULES AND REGULATIONS
- FACILITIES SUBMIT PLAN - CRITERIA FOR CERTIFICATION - CONTENT

OF PLAN.) The state health council is hereby empowered to promulgate rules and regulations to promote and execute the purposes contemplated by this Act. Criteria for certification of need shall be set out by such rules and regulations, and medical facilities wishing to be certified must submit a plan to the state health council, and such plan shall comply with the criteria of the rules and regulations as set forth therein, including but not limited to the following:

1. Present patient population and projected future patient population of the existing or proposed hospital and related medical facility, by category of patient care and treatment level.
2. The needs of the patients for whom care is furnished or intended to be furnished by such facility.
3. The program, services, and facilities proposed or offered or available to patients the adequacy of each, and the extent of utilization or intended utilization.
4. The economies, efficiencies, and advantages that may accrue to the state and its citizens through location or expansion of a facility at a particular locality.
5. The necessity for the new or expanded medical facility within the area proposed to be served, the utility of such proposed facility for future as well as for present patient needs, and the immediate cost and funding of such facility or services and the effect of such new facility or services on future cost of patient care and treatment.
6. The actual or estimated cost of care and treatment and whether public funds are available or contemplated to be available for reimbursement under programs supervised or administered by the state or public agency for capital expenditures and services at the proposed levels to patients intended to receive services.
7. The number and availability of present and future employees and their occupational classification, length of service, levels of education attained, and academic degrees earned.
8. The type, level, and kind of patient care offered or proposed.
9. The maximum number of patients who can be properly cared for at the existing and proposed medical

facility and the number, if any, presently receiving care in each classification of level of care.

10. Any other information reasonably requested by the state health council which will aid the state health council in making a determination of certification of need of the proposal.

The state health council shall consider the plan and determine from its findings whether such plan qualifies the medical facility for certification of need under criteria as set forth in section 6 of this Act. The determination shall be made after receipt of recommendations from the state comprehensive health planning advisory council and areawide comprehensive health planning councils and the determination shall be communicated to the facility or its owners or operators, the state comprehensive health planning advisory council, and all persons filing an appearance immediately after being made.

SECTION 6. ROLE OF NORTH DAKOTA STATE HEALTH COUNCIL - POWERS AND DUTIES OF THE NORTH DAKOTA STATE HEALTH COUNCIL.)
The state health council shall:

1. Establish minimum guidelines for use by the area-wide health planning councils to be used for their review and comment of proposals.
2. Refer to the state comprehensive health planning advisory council all applications for certificates of need and notify all designated areawide health planning councils in the state of North Dakota of such application.
3. Assist the areawide comprehensive health planning councils in their review of proposals by supplying information and data, coordinating decisions where area boundaries are adjacent to one another, and commenting on those proposals which have statewide implications.
4. Assist the North Dakota state comprehensive health planning advisory council in their review and comment of proposals which come from those areas not served by areawide comprehensive health planning councils.
5. Perform all functions necessary to carry out the intent of this Act.
6. Give notice of all hearings provided for in this chapter to all persons who have filed an appearance in the particular application.
7. From time to time, review progress on any project covered by an issued certificate of need, and may

require a showing by the holder of such certificate of substantial and timely progress to implement the project, and, if, in the opinion of the council, such progress is lacking may revoke the certificate of need.

SECTION 7. ROLE OF STATE COMPREHENSIVE HEALTH PLANNING ADVISORY COUNCIL.) Upon receipt of an application referred to it by the state health council, the comprehensive health planning advisory council shall immediately refer such application to the areawide comprehensive health planning council within which the proposed facility is located and shall give such assistance to the areawide comprehensive health planning council as requested, in processing the application for recommendation. Upon receipt of the areawide comprehensive health planning council recommendation regarding any application, the comprehensive health planning advisory council shall review such application and make its recommendation to the state health council within thirty days of its receipt from the areawide comprehensive health planning council.

SECTION 8. ROLE OF AREAWIDE COMPREHENSIVE HEALTH PLANNING COUNCILS.) The areawide comprehensive health planning councils, so designated by the state health council, shall review proposals initially and render recommendations to the state comprehensive health planning advisory council of any proposed plan requiring certification of need within sixty days of receipt of notice of application from the state comprehensive health planning advisory council. The areawide comprehensive health planning advisory councils shall consider the information provided by the state comprehensive health planning advisory council of the North Dakota state health council, and may, when appropriate, consult with any other boards, councils, or commissions established by law. Where there is no designated areawide comprehensive health planning council, the state comprehensive health planning advisory council of the North Dakota state health council shall perform these functions.

SECTION 9. APPLICATION FOR CERTIFICATE OF NEED.) Applicants for certificate of need shall file applications under oath with the state health council upon forms prescribed by the health council. Applications shall be signed by the owner, or in the case of a corporation by two of its officers, or in the case of a public institution by the head of such governmental unit or agency having jurisdiction over it. Applications shall set forth the full name and address of the owner of the institution for which certificate of need is sought, the names of the persons in control thereof, and such additional information as the state health council may require including affirmative evidence of ability to comply with licensing requirements when constructed.

SECTION 10. TIME LIMITS FOR APPROVAL.) The state

health council must render its decision within one hundred twenty days from date of receipt of recommendations from the state comprehensive health planning advisory council and areawide health planning councils on a completed application. The time limit may be extended by mutual agreement of the state health council and the applicant because of procedural delays requested by the applicant or by the failure of the applicant to comply with the published procedures of the state health council. Failure of the state health council to render a decision within the one hundred twenty day time limit, unless extended as herein provided, shall constitute approval of the application.

SECTION 11. AUTHORITY TO ISSUE OR DENY CERTIFICATE OF NEED.) The state health council:

1. Shall issue certificates of need for the construction or expansion of institutions subject to this chapter which are found to comply with the provisions of this chapter and such regulations as are lawfully promulgated by the health council. Notice of determination by the state health council granting, denying, or revoking the certification of need, or deferring the application for further information, shall be communicated to the applicant, the state comprehensive health planning advisory council, all areawide comprehensive health planning councils, and other persons who have filed an appearance.
2. May deny the issuance of a certificate of need hereunder on any of the following grounds:
 - a. Violation of any of the provisions of this chapter or the rules and regulations promulgated pursuant thereto.
 - b. Conduct or practices detrimental to the health or safety of patients and employees of said existing institutions or proposed institutions.
 - c. The issuance of a certification of need is not warranted.

Within thirty days from date of mailing the determination, the applicant, any recognized areawide health planning council, or any person who has filed an appearance may petition the state health council for a public hearing, in the case of either a certification approval, denial, or revocation. The public hearing shall be held before the health council in accordance with the provisions of chapter 28-32 pursuant to written notice to persons who have filed an appearance, served by registered or certified mail, which shall concisely state the grounds for such approval, denial, or revocation and shall fix the time and place of hearing which shall not be less

than thirty days after the date of the mailing of such notice. After such hearing, the council shall make an order denying or granting the application for certification, or revoking the certification previously granted. The council shall send a copy of its order to all persons who have filed an appearance by registered or certified mail, which shall contain its findings and conclusions, and such order shall become final thirty days after the date of mailing unless an appeal is taken therefrom in the manner provided by section 13.

SECTION 12. NOT APPLICABLE TO CERTAIN LAWS.) This chapter shall not be construed in any way to restrict or modify any law pertaining to the placement and adoption of children or the care of unmarried mothers.

SECTION 13. APPEAL.) An appeal may be taken to the district court from any order of the state health council denying or approving an application for certificate of need or the revocation of a certificate of need previously granted. Any such appeal shall be taken in the manner provided in chapter 28-32.

SECTION 14. LICENSING PROHIBITED.) Any person, partnership, association, or corporation establishing, conducting, managing, or operating any institution within the meaning of this chapter without first obtaining a certificate of need therefor as herein provided, or who shall violate any of the provisions of this chapter shall not be eligible for licensure and all licensing agencies are prohibited from issuing a license to operate in violation hereof.

SECTION 15. INJUNCTION.) The department of health, in accordance with the laws of the state governing injunctions and other process, may maintain an action in the name of the state against any person, partnership, association, or corporation, for establishing, conducting, managing, or operating any hospital or related medical facility without first having a certificate of need therefor as herein provided.

Approved March 27, 1971

CHAPTER 264

HOUSE BILL NO. 1413

(Wilkie, McGauvran, McGeehan, Olienyk, Raymond)

MEMBERSHIP OF AIR AND WATER
POLLUTION CONTROL AUTHORITIES

AN ACT to amend and reenact subsections 2 and 3 of section 23-25-02 and section 61-28-03 of the North Dakota Century Code, relating to the membership of the state air pollution control advisory council and the state water pollution control board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsections 2 and 3 of section 23-25-02 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. There is hereby established an air pollution control advisory council, hereinafter referred to as "the advisory council", of nine members to include the state health officer, the state geologist, and the state highway commissioner, and six other members to be appointed by the governor, one of whom shall be a representative of county or municipal government, one a representative of the solid fuels industry, one a representative of the fluid and gas fuels industry, and three appointed at large;
3. The term of office for the appointed members of the advisory council shall be six years, but of those four first appointed, two shall serve for two years and two for four years, and the lengths of their terms shall be designated by the governor at the time of appointment;

SECTION 2. AMENDMENT.) Section 61-28-03 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-28-03. STATE WATER POLLUTION PREVENTION AGENCY - BOARD.) There is hereby created and established a state water pollution control board. The board shall consist of ten persons. It shall include the heads of the departments of health, water conservation, game and fish, and state geologist, and six citizen members appointed by the governor. Municipal,

industrial, agricultural, and wildlife interests shall each be represented by a citizen member. Two citizen members shall represent at large interests. The executive secretary of the board shall be the chief sanitary engineer of the department.

Of the six members appointed by the governor, each shall serve six-year terms, except that of those four first appointed, two shall be appointed for three years, and two shall be for six years. The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.

The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of his department to perform the duties of the member making the designation. Such person, if any, designated pursuant to this section, shall have the powers and be subject to the duties and responsibilities of the appointing office.

All members of the board shall serve without compensation for their duties, but shall be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement shall be paid out of funds allocated to the department for water pollution control.

The department shall provide the board with copies of maps, plans, documents, studies, surveys, and all other necessary information in order that the board may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise and direct the department in development of programs for the prevention and control of pollution of the waters in the state and to direct actions to abate any existing pollution problems that may be brought to its attention.

Approved March 18, 1971

CHAPTER 265

HOUSE BILL NO. 1382
(Henning, Lundene, H. Johnson)

CERTIFICATION OF
WASTEWATER SYSTEM OPERATORS

AN ACT to require certification of water and wastewater system operators, and providing a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. STATEMENT OF POLICY.) It is hereby declared to be the policy of the state of North Dakota to act to protect the public health and welfare of the people of the state and to protect the state's water resources by classifying all public water supply and wastewater treatment plants in the state and by requiring the examination of operators and the certification of their competency to supervise the operations of such facilities.

SECTION 2. DEFINITIONS.) For the purpose of this Act, the following words and phrases shall have the meanings ascribed to them in this section.

1. "Department" shall mean the North Dakota state department of health.
2. "Board" shall mean the board of certification.
3. "Certificate" shall mean a certificate of competency issued by the state health officer stating that the operator holding the certificate has met the requirements for the specified operator classification in the certification program.
4. "Water supply system" shall mean the system of pipes, structures, and facilities through which a public water supply is obtained, treated and sold or distributed for human consumption or household use. Such system shall serve at least ten or more families or shall serve an industry employing ten or more persons.
5. "Water treatment plant" shall mean that portion of the water supply system which in some way alters the physical, chemical or bacteriological quality of the water.
6. "Water distribution system" shall mean that portion

of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.

7. "Wastewater treatment plant" shall mean the facility or group of units used for the treatment of wastewater from public sewer systems and for the reduction in handling of solids removed from such wastes and which serves ten or more families or an industry employing ten or more persons.
8. "Operator" shall mean the person in direct responsible charge of the operation of a water treatment plant, a water distribution system, or a wastewater treatment plant. Operators of plants or systems serving less than ten families are excluded from this Act.

SECTION 3. CLASSIFICATION OF PLANTS AND SYSTEMS.) The state department of health shall classify all water treatment plants, water distribution systems, and wastewater treatment plants with due regard to the size, type, character of water and wastewater to be treated and other physical conditions affecting such treatment plants and distribution systems, and according to the skill, knowledge, and experience that an operator in responsible charge must have to successfully supervise the operation of such water treatment plants, water distribution systems, and wastewater treatment plants so as to protect the public health and prevent pollution of the waters of the state.

SECTION 4. ADVISORY BOARD CERTIFICATION.) The department shall appoint an advisory board of certification to advise and assist the department in the administration of the program of certification. The members of the advisory board shall be the chief, environmental health and engineering services, state department of health, or his duly authorized representative, and four members who shall be appointed by the department as follows: one member who is a waterworks operator holding a valid certificate of the highest qualification issued by the department; one member who is a wastewater works operator holding a valid certificate issued by the department; one member who is a university or college faculty member whose major field is related to water supply or wastewater collection and/or treatment; and one member who is an employee of a municipality required to employ a certified operator and who holds the position of either city manager, city engineer, director of public works, or an equivalent position.

1. Members appointed. Each member of the board, with the exception of the member from the state department of health, shall be appointed for a three year term, except in the case of the initial appointments the municipal representative shall be appointed for one year, one operator and the faculty member for two

years, and the remaining operator for three years. Vacancies shall be filled by appointment by the department for unexpired terms.

2. Officers. Members of the original board, at the call of the department, shall organize and elect from their number a chairman. Thereafter, a chairman shall be elected at each annual board meeting. The state health department representative on the board shall serve as secretary of the board and be responsible for maintaining records.
3. Meetings of the board. The board shall meet as often as necessary to perform its duties. Three members shall constitute a quorum and shall have the authority to act on any matter falling within the scope of the board.
4. Expenses of the members. The members of the board shall serve without compensation except for the actual and necessary expenses incurred while discharging their official duties. Such expenses shall be figured at the same rate as allowed state employees.

SECTION 5. CERTIFICATION.) When the department is satisfied that an applicant is qualified by examination or otherwise to supervise the operation of such treatment plants and water distribution systems and upon recommendation of the advisory board, the department will issue a certificate attesting to the competency of the applicant as an operator. The certificate will indicate the classification of works which the operator is qualified to supervise. Such certificates shall continue in effect for one year from the date of issuance, unless sooner revoked by the department.

1. Revocation. The department may revoke or suspend the certificate of an operator issued hereunder if it is found that the operator has practiced fraud or deception in obtaining the certificate or in the performance of his duty as an operator; or when it is found that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or when it is found that the operator is incompetent and unable properly to perform his duties as an operator. No certificate shall be revoked or suspended except after a hearing before the chief, environmental health and engineering services, state department of health, or his designated representative. If a certificate is suspended or revoked as herein provided, a new application for certification may be considered by the department if when and after the conditions upon which suspension or revocation was based have been corrected and

evidence of this fact has been satisfactorily submitted to the department. A new certificate may then be granted by the department.

2. Prior certificates honored. Certificates in appropriate classification will be issued to operators, who, on the effective date of this Act, hold certificates of competency attained under the voluntary certification program in this state at such time they submit a proper application.
3. Certification without examination. Certificates of proper classification shall be issued without examination to operators of treatment works, collection systems or distribution systems, including the person who is in direct responsible charge, on the effective date of this Act. The governing body or owner must certify such persons in writing to the department. The certificates so issued will be valid only for that particular treatment plant or system, and shall be marked "restricted".

SECTION 6. FEES.) The department is authorized to charge a fee for certificates issued under this Act, but such fees shall not exceed ten dollars for the initial certificate, nor more than five dollars for the annual renewal certificate. All receipts from such fees shall be deposited in the state treasury to be credited to a special fund to be known as the "Operators' Certification Fund" to be used by the state department of health to administer and enforce the provisions of this Act; to pay the expenses of the advisory board; and financially assist the department in conducting operator training programs. Any surplus at the end of the fiscal year shall be retained by the department for future expenditures.

SECTION 7. DUTIES OF THE DEPARTMENT.) It shall be the duty of the state department of health to:

1. Hold at least one examination each year at the designated time and place for the purpose of examining candidates for certification.
2. Advise and promote the program of certification of wastewater operators.
3. Distribute applications and notices and to receive and evaluate applications.
4. Collect fees for both initial certification and annual renewal in an amount not to exceed that permitted by this Act.
5. Prepare, conduct and grade examinations.

6. Maintain records of operator qualifications and certification and to maintain a register of certified operators.
7. Promote and schedule regular training schools and programs.
8. Promulgate, with the advice of the advisory board, such rules and regulations as are necessary to carry out the provisions of this Act.

SECTION 8. UNLAWFUL OPERATION.) On and after one year following the effective date of this Act, it shall be unlawful for any person, firm, corporation, municipality, or any other governmental subdivision or agency, operating a water treatment plant, water distribution system, or wastewater treatment plant serving a demand equal to one thousand five hundred or more persons to operate same unless the competency of the operator to operate such a plant or system is duly certified to by the department in a grade corresponding to the classification of that portion of the system to be supervised. Provided, however, that plants and systems serving a demand equal to five hundred or more persons shall comply with the provisions of this Act not later than July 1, 1976.

SECTION 9. VIOLATIONS - PENALTY.) Any person, including any firm, corporation, municipality or other governmental subdivision or agency, violating any provisions of this Act or the rules and regulations adopted thereunder after written notice thereof by the department, is guilty of a misdemeanor. Each day of operation in such violation of this Act or any rules and regulations adopted thereunder shall constitute a separate offense.

Approved March 27, 1971