

AERONAUTICS

CHAPTER 72

SENATE BILL NO. 2243
(Committee on Transportation)
(At the request of the Governor)

DEPARTMENT OF TRANSPORTATION

AN ACT to create and enact six new sections to chapter 24-02, a new subsection to section 57-43.1-01, a new section to chapter 57-43.1, a new subsection to section 57-43.2-01, and a new section to chapter 57-43.2 of the North Dakota Century Code, relating to a department of transportation, its director, its assumption of functions and structure, administrative rules and references, and cooperative agreements that may be entered into by the director of the department of transportation with other states for exchange of information and auditing of users of motor fuels and special fuels used in fleets of motor vehicles that operate interstate; to amend and reenact section 2-05-03, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-03-03, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, section 49-18-41.1, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, and subsection 6 of section 57-40.3-01 of the North Dakota Century Code, relating to reporting by the director of aeronautics to the director of the department of transportation, substituting the department of transportation or its director for the state highway department or department of motor vehicles in definitions under titles 24 and 39, highway contracts, junkyard and billboard regulation, financial responsibility, snowmobile regulation, railroad service contracts, interstate motor carrier registration stamps, reports to the governor, tax revenue distribution and motor vehicle excise tax; to repeal sections 24-02-01, 24-02-02, 24-02-03, 24-02-04, 24-02-05, 24-02-06, and 24-02-38, subsection 14 of section 39-01-01, and sections 39-02-01, 39-02-02, and 39-02-04, relating to the state highway department, highway commissioner and commissioner's duties, highway chief engineer, additional highway appropriations, the motor vehicle registrar, and the registrar's salary, powers, and duties; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-05-03. Powers and duties of director. The director shall be the executive officer of the commission. ~~He~~ The director shall attend all meetings of the commission, but has no voting power. At the direction of the commission, he the director shall, together with the chairman of the commission, execute all contracts entered into by the commission which are legally authorized. The director shall appoint, subject to the approval of the commission, such employees as may be necessary for the proper discharge

of the functions of the commission. The director shall act as the agent of the tax commissioner for purposes of enforcement of chapter 57-40.5. Whenever requested by the director of the department of transportation as provided in section 4 of this Act, the director shall report administratively concerning all activities of the aeronautics commission.

SECTION 2. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department of transportation and director of the department of transportation to be substituted for motor vehicle department, registrar of motor vehicles, highway department, and highway commissioner. Wherever the terms "motor vehicle department", "registrar of motor vehicles", "highway department", or "highway commissioner", or any derivative of those terms which, when used in context indicates an intention to refer to those persons or departments, shall appear in the North Dakota Century Code, the term "department of transportation", or the term "director of the department of transportation", as the case may be, shall be substituted therefor. It is the intent of the legislative assembly that the department of transportation and the director of the department of transportation must be substituted for, shall take any actions previously taken by, and shall perform all duties previously performed by the motor vehicle department, the registrar of motor vehicles, the highway department, and the highway commissioner.

SECTION 3. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department of transportation - Creation - Transfer of functions. There is hereby established an executive department of this state to be known as the department of transportation. There are hereby transferred to and vested in the department of transportation all the functions, powers, and duties of the following governmental agencies:

1. The highway department, the highway commissioner, and the chief engineer, including titles 24 and 39, chapter 49-17.1, and sections 49-10.1-17, 49-17.2-27, 55-01-01, and 55-08-02.1.
2. The motor vehicle department and the registrar of motor vehicles, including title 39, chapter 57-40.3, and sections 26.1-23-03 and 26.1-41-02.

SECTION 4. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Director of the department of transportation - Appointment - Compensation. The department of transportation must be managed and directed by the director of the department of transportation, who must be appointed by, and serve at the pleasure of, the governor. The director shall take the oath of office required of civil officers by section 44-01-05 and must be bonded as required of civil officers by section 44-01-06. The director shall receive compensation in the amount established by the governor within the limits of legislative appropriations.

SECTION 5. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Structure of the department of transportation. The department of transportation must be structured to promote efficient and effective operations consistent with fulfilling its statutory duties. The department of transportation must be organized into offices, divisions, and districts as the director of the department of transportation determines necessary, and as provided in this section.

1. The director shall establish an office of motor vehicles to administer the department's regulatory authority over motor vehicle titling and registration, operator licensing and traffic safety, and motor carriers. Operating expenses for functions performed by the department under chapters 39-04 and 39-05 must be funded by appropriations from collections made under those chapters before deposit into the fund provided by section 54-27-19.
2. The director shall establish an office of state highways and engineering to administer the department's authority and responsibilities over the construction, maintenance, and repair of highways in this state, including the operation of district offices.
3. The director shall establish an office of transportation planning to administer the department's authority and responsibilities for planning all surface modes of transportation, budgeting, development of programs and projects, data collection and management, and research. Coordination must be established between the aeronautics commission planning section and the department of transportation office of planning for airport development as it pertains to surface access.
4. The director shall establish an office of management services in the department to provide for the employment of human resources, finance and inventory control, automation, and other administrative services.

SECTION 6. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 2 through 7 of this Act, according to chapter 28-32. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by this Act shall remain in effect until they are specifically amended or repealed by the department.

SECTION 7. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Legislative council - Authority to change references to new department of transportation. The legislative council is hereby authorized to delete, where appropriate, references to the highway department, highway commissioner, motor vehicle department, and registrar of motor vehicles, wherever they appear in the North Dakota Century Code or supplements thereto, and to replace each deleted reference with the department of transportation or the director of the department of transportation, as appropriate.

SECTION 8. AMENDMENT. Subsections 7 and 11 of section 24-01-01.1 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

7. "Commissioner" shall mean the ~~commissioner~~ director of the department of transportation of this state, ~~highway department~~ acting directly or through his authorized agents as provided in section 4 of this Act.
11. "Department" shall mean the ~~highway~~ department of transportation of this state as provided by section 3 of this Act.

SECTION 9. AMENDMENT. Section 24-02-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-13. Payment of estimates on contract or deposits in condemnation. Whenever any estimate or allowance for payment, except a final estimate or payment subsequent to a final estimate, is allowed, or granted, on a contract entered into by the department, or a deposit is to be made with the clerk of district court in a condemnation proceeding, and the estimate is vouchered by the department for presentation to the office of management and budget, instead of submitting the estimate to the contractor or clerk of district court for certification, the ~~chief engineer~~ director of the department or the ~~chief engineer's~~ director's authorized designee shall make the following certificate, in lieu of the certificate otherwise required by law, which shall be printed on the voucher or claim:

Estimate certificate. I hereby certify that the within estimate or claim is just and true, that the contractor herein named has rendered the services and furnished the material herein charged, that they are of the value claimed, that no part thereof has been paid, and that the foregoing estimate or claim is supported by a proper contract and bond on file in the department or that the purpose of the payment to a clerk of district court is pursuant to law and for the taking of property by condemnation.

~~Chief Engineer, State Highway Department~~
Director, Department of Transportation

After a certified estimate or deposit with a clerk of district court has been approved for payment by the ~~commissioner~~ director, the same shall be presented to the office of management and budget for payment. The office of management and budget thereupon shall prepare and issue a warrant therefor signed by the state auditor without submitting the voucher or claim to the office of the budget for examination and allowance. The foregoing procedure shall not apply to the final estimate or allowance to a contractor, nor to any estimate or allowance subsequent or supplemental to the final estimate, but the final estimate or supplemental allowance, shall conform to the provisions of law relative to the certification and approval of any other claim or demand; nor shall the procedure apply to payments to property owners involved in the taking of property in any condemnation proceeding.

SECTION 10. AMENDMENT. Section 24-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-03-03. Construction program. Not later than the fifteenth day of January of each year there shall be submitted to the ~~commissioner~~ director by

the chief highway engineer of the department a statement showing what improvements, structures, and construction work have been requested and proposed, and may be undertaken, by the department. Such statement shall set forth the estimated quantities and the estimated unit cost of each class, type, and nature, together with the totals thereof for each and every project or improvement which may be made, and the totals of all such projects or improvements, and the average quantities and unit costs for all such projects or improvements. The commissioner director shall examine the same and shall proceed to adopt a construction program, wherein shall be determined what projects and improvements shall be undertaken by the said department during the ensuing construction season, and the order of priority thereof. Insofar as practicable, priority shall be given first to the improvement of the so-called primary system of the state highway system, and the total estimated cost of such construction program shall not exceed the total estimated income or allowance granted or set aside for construction purposes in the departmental budget. Nothing herein, however, shall prevent the commissioner director from adding to, amending, revising, or reducing from time to time and as circumstances may warrant, such construction program. The commissioner director shall proceed to advertise for bids for contracts at such time as he may elect, and in the manner and for the purposes in this chapter provided.

SECTION 11. AMENDMENT. Section 24-16-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-16-02. Definitions.

1. "Junk" shall mean old or scrap paper, copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.
2. "Automobile graveyard" shall mean any establishment or place of business or location which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, abandoned, ruined or dismantled motor vehicles, motor vehicle parts or machinery of all types.
3. "Junkyard" shall mean a business establishment or a place which is maintained, operated, or used for placing, storing, keeping, buying, or selling junk, or for the maintenance, use or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.
4. "Commissioner" shall ~~include~~ mean the North Dakota director of the department of transportation of this state ~~highway commissioner~~ or ~~his~~ authorized agents as provided by section 4 of this Act.
5. "Highway" shall mean any highway as defined in subsection 42 of section 24-01-01.1.

SECTION 12. AMENDMENT. Section 24-17-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-17-02. Definitions.

1. "Commissioner" shall mean the North Dakota director of the department of transportation of this state highway commissioner or his authorized agents as provided in section 4 of this Act.
2. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.
3. "Maintain" means to exist.
4. "Outdoor advertising" means a sign, display, or device of any kind or character including statuary, erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever may be placed for advertising purposes and shall include but not be limited to any card, cloth, paper, metal, painted, or wooden sign of any character placed for outdoor advertising purposes, on or affixed to the ground or any tree, wall, bush, rock, fence, building, structure, or thing, either privately or publicly owned. The terms "sign, display, or device" comprehend all forms of outdoor advertising and the use of one such term in this chapter includes all forms of outdoor advertising.
5. "State highway system" shall mean the state highway system as defined in subsection 42 of section 24-01-01.1.

SECTION 13. AMENDMENT. Subsections 8, 12, and 13 of section 39-01-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

8. "Commissioner" means the commissioner director of the North Dakota state highway department of transportation of this state, acting directly or through his authorized agents as provided by section 4 of this Act.
12. "Department" means the motor vehicle department of transportation of this state as provided by section 3 of this Act.
13. "Director" means the director of the division of public safety department of transportation of this state as provided by section 4 of this Act.

SECTION 14. AMENDMENT. Subsection 1 of section 39-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Commissioner" means the director of the department of transportation of this state highway commissioner of the state of North Dakota as provided by section 4 of this Act, acting directly or through his authorized agents.

SECTION 15. AMENDMENT. Subsection 7 of section 39-24-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. "Registrar" means the registrar of motor vehicles director of the department of transportation of this state as provided in ~~chapter 39-02~~ section 4 of this Act.

SECTION 16. AMENDMENT. Subsection 2 of section 49-17.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Department" means the ~~state highway~~ department of transportation of this state as provided in section 3 of this Act.

* SECTION 17. AMENDMENT. Section 49-18-41.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-41.1. Interstate carrier registration and identification. The public service commission is authorized to ~~collect~~ assess a seven dollar per vehicle fee as provided by rule for the registration and identification of interstate motor carriers operating within this state. The fee shall not exceed the maximums provided for by the laws of the United States. The collection of this fee and issuance of identification stamps must be performed by the director of the department of transportation, who shall act as the agent of the public service commission and be subject to the rules adopted by the commission under this section.

SECTION 18. AMENDMENT. Subsection 1 of section 54-06-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The following executive and administrative officers and departments shall submit to the governor and the office of management and budget reports covering their operations for the two preceding fiscal years, except as otherwise provided by law, not later than the first day of December each year after the regular session of the legislative assembly:
 - a. Secretary of state.
 - b. State auditor.
 - c. Commissioner of insurance.
 - d. Attorney general.
 - e. Commissioner of agriculture.
 - f. Superintendent of public instruction.
 - g. State tax commissioner.
 - h. Public service commission.
 - i. State board of higher education.
 - j. Director of institutions.
 - k. ~~Highway commissioner~~ Department of transportation.
 - l. State department of health and consolidated laboratories.
 - m. Department of human services.

* NOTE: Section 49-18-41.1 was also amended by section 1 of House Bill No. 1259, chapter 573.

- n. Workers compensation bureau.
- o. Director of the office of management and budget.
- p. State treasurer.
- q. Commissioner of labor.

SECTION 19. AMENDMENT. Subsection 1 of section 54-27-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Sixty-three percent of such moneys shall be transferred monthly to the state ~~highway~~ department of transportation and placed in a state highway ~~department~~ fund.

SECTION 20. AMENDMENT. Subsection 6 of section 57-40.3-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Registrar" means the ~~registrar of motor vehicles who is the officer in charge of the motor vehicle~~ director of the department of transportation of this state as provided by section 4 of this Act, and who shall act as the agent of the state tax commissioner in administering the provisions of this chapter.

SECTION 21. A new subsection to section 57-43.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Director" means the director of the department of transportation.

SECTION 22. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cooperative agreements between states.

1. The director may enter into cooperative agreements with other states for exchange of information and auditing of users of motor fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement or amendment to an agreement is not effective until filed in writing with the director.
2. An agreement under this section may provide for determining the base state for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The director may, as required by the terms of the agreement, forward to officers of another state any information in the director's or commissioner's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuels by any person. The director may disclose to officers

of another state the location of officers, motor vehicles, and other real and personal property of users of motor fuels.

4. An agreement may provide for each state to audit the records of persons based in the state, to determine if the motor fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state, to each state in which the person has taxable use of motor fuels. For persons not based in this state and who have taxable use of motor fuel in this state, the director or the commissioner may serve the audit findings received from another state, in the form of an assessment, on the person as though an audit was conducted by the director or the commissioner.
5. Any agreement entered under this section does not preclude the director or the commissioner from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the director or the commissioner.

SECTION 23. A new subsection to section 57-43.2-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Director" means the director of the department of transportation.

SECTION 24. A new section to chapter 57-43.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cooperative agreements between states.

1. The director may enter into cooperative agreements with other states for exchange of information and auditing of users of special fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement or amendment to an agreement is not effective until filed in writing with the director.
2. An agreement under this section may provide for determining the base state for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of special fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The director may, as required by the terms of the agreement, forward to officers of another state any information in the director's or commissioner's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of special fuels by any person. The director may disclose to officers of another state the location of officers, motor vehicles, and other real and personal property of users of special fuels.

4. An agreement may provide for each state to audit the records of persons based in the state, to determine if the special fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state, to each state in which the person has taxable use of special fuels. For persons not based in this state and who have taxable use of special fuel in this state, the director or the commissioner may serve the audit findings received from another state, in the form of an assessment, on the person as though an audit was conducted by the director or the commissioner.
5. Any agreement entered under this section does not preclude the director or the commissioner from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the director or the commissioner.

SECTION 25. REPEAL. Sections 24-02-01, 24-02-02, 24-02-03, 24-02-04, 24-02-05, 24-02-06, 24-02-38, 39-02-01, 39-02-02, 39-02-04, and subsection 14 of section 39-01-01 of the North Dakota Century Code are hereby repealed.

SECTION 26. APPROPRIATION. All moneys appropriated by the fifty-first legislative assembly to the governmental agencies and functions listed in section 3 of this Act are hereby deemed appropriated to the department of transportation for the period beginning January 1, 1990, and ending June 30, 1991. The director of the office of management and budget shall transfer funds and accounts accordingly. All funds previously dedicated by statute or the constitution of this state to specific transportation functions covered by this Act shall continue to be appropriated and used for those dedicated purposes.

SECTION 27. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved April 28, 1989
Filed April 28, 1989