

**2011 HOUSE POLITICAL SUBDIVISIONS**

**HB 1076**

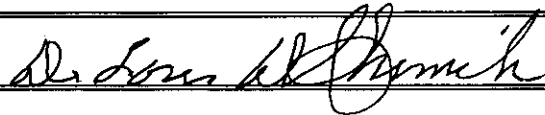
# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Political Subdivisions Committee Prairie Room, State Capitol

HB1076  
January 13, 2011  
Job # 12877

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to compensation of members of public library boards; and to declare an emergency.

### Minutes:

Testimony 1, 2, 3

Chairman Johnson: Opened the hearing on HB 1076.

Rep. DeKrey: This is a bill from Kidder County and anyone serving on a library board does not get any kind of compensation. It is hard in any community to find people to do something for nothing. These are dedicated people that support their library and so Kidder County was given a mileage and per diem so when they came to town for their meetings they would at least get their expenses. They were informed by the state board that is not allowable either. The statute says no enumeration it means it. They got a state attorney opinion that means just that. (See testimony #1). They just wanted me to put this bill in to give them some compensation for a thankless job.

Rep. Zaiser: I thought the definition of enumeration was pay instead of reimbursement for travel expenses.

Rep. DeKrey: According to the opinion written by the Kidder County State's Attorney enumeration means any type of compensation whatsoever.

### Opposition:

Kelly Steckler, Legislative Chair for NDLA Library Assoc.: (See testimony #2 & 3).

Rep. Klemin: As I read this bill it only applies to the Board of Directors for our public library and it seems like everything in this bill; other than the language on Page 2, Subsection 3 has probably been put in by the Legislative Council staff to conform to their method of drafting legislation. It looks like the only thing of substance it changes on Page 2 lines 10-12 and the emergency clause on line 18. Reading that section on Page 2 lines 10-12 changes it from a mandatory no payment for compensation to permissive payment, if the government body provides by ordinance or resolution for the payment of compensation.

You are asking us to defer allowing them provide by ordinance or solution that they can pay compensation?

Kelly Stickler: We are already of the understanding it is perfectly acceptable to reimburse for mileage and things and this would change it to make it become a paid position rather than a volunteer in which case it could easily end up with issues of whether your library board member is an employee or a trustee versus the roll of your library director and things like that. Even though this does say you may or may not it is still understood that it is ok to reimbursement of mileage and per diem.

Rep. Klemin: Maybe the problem in this is the word compensation and if there was an amendment made to change the word compensation like something like expenses. I know there is another section of law that deals with expenses and mileage; would that be acceptable?

Kelly Stickler: I think that may help. At least we could have some discussion on it and we could have our membership provide more input. I have also asked out State Librarian to come today with any other advice that he may have from various areas. We do have the other handout the outlines the role of the other librarian duties as paid employees. I think we would still like to take it back and make sure it is a benefit for all the membership in the state.

Rep. Koppelman: All this bill does is make it permissive to pay compensation and it is up to the counties to decide and we like local control typically in the legislature. With county budgets being what they are I doubt we have a lot of counties rushing out create very highly paid library board positions. I see you are a legislative chair of the NDLA and just a word of advice; things move fast as you may know in the legislature, and so I realize it is hard to follow when a bill comes up, but it might be wise for your organization to have some kind of a response mechanism or committee that you can fax or email on short notice and get some feedback in a timely manner on the bills you have concerns on. So if this bill does pass it would be over in the Senate and you would have another chance at it over there to offer amendments or oppose it or whatever.

Rep. Maragos: In your written testimony you make a comment in the last paragraph of the membership most affected by this legislation. Can you site an adverse application of this bill would have for any of your members?

Kelly Stickler: One concern that the public library chair brought; he was concerned if this ended up becoming required; then they would have to pay for attending a meeting, such as a stipend they just merged libraries and because of that they have been meeting weekly so it would be a financial issue for them to pay X amount of dollars for say 10 members to meet weekly.

Rep. Maragos: I assume that you did not read the States Attorney's opinion in Kidder County regarding their reimbursement of expenses issue. Is that correct?

Kelly Stickler: Yes.

Rep. Maragos: I am surprised your association was not aware of that or did not discuss it when it happened because it would seem to me that it would have an effect on the whole association, which tells me somebody is not paying attention. You have testified that you are already paying expenses in some cases. Do you know if that is contrary to state law?

Kelly Stickler: The expenses we have reimbursed were just for mileage, which is in the law.

Rep. Maragos: If I understand the Kidder County thing that is exactly what they did was reimburse for expenses and the states attorney said that was unlawful. Did your association react to that at all?

Kelly Stickler: It is mostly on my shoulders and this did just come up. After hearing about the Kidder County Attorney General's report for that I guess we do need to go back and look at that.

Rep. Kilichowski: You stated your library board meets once a week. Normally do all library boards meet that often?

Kelly Stickler: This was the Stutsman County library board that was meeting weekly to do the consolidation. Normally in our state public libraries meet monthly.

Rep. Devlin: I don't know anything about your association or how many members you have or all cities and towns in the state are members in the state. Can you give us any information on that?

Kelly Stickler: We have over 120 members. It is made up of public, private, academic and university libraries across the state. This would affect the public library portion. This is a larger part of the NDLA membership; the school library part is the next largest.

Rep. Devlin: Do you know how many public libraries there are in the state, by chance?

Kelly Stickler: 90

Rep. Kilichowski: Of the private libraries so you know if any of that board of directors is paid mileage or a stipend for the meetings?

Kelly Stickler: There are some in the area. Mostly it seems to be any that have joined with counties. Because the county librarian may have the distance to travel. The city trustee representatives are already there and cannot be submitted for mileage and that is the case for my board. We have a merged board and there are only two members that submit for mileage.

Rep. Zaiser: Would you provide that legal opinion from the Kidder County State's Attorney. (It is now attached as testimony #1).

Rep. DeKrey: Yes I can. Our local librarian was having a discussion with the State Librarian and the state librarian got to talking about they were paying mileage and I think a

\$10/ stipend per meeting and the state librarian said you have to stop that because that is in violation of state law because it says no compensation in the statute. In other court cases compensation has been to mean any type of numeration for expenses or whatever. Kidder County library board thought it didn't sound right to them because they didn't think expenses was compensation so they asked me to get an Attorney General's opinion so I approached the Attorney General and he told me you had to start at your State's Attorney. That is what prompted the local State's Attorney opinion. I put in the bill it is permissive.

Hearing closed.

Discussion:

Chairman Johnson: I think the request is to get a hold of that State's Attorney opinion and review that.

Rep. Shirley Meyer: Is compensation defined in the code? I have heard so many times that it is not mileage and compensation is referring to wages, but is that defined anywhere?

Chairman Johnson reopened the hearing on HB 1076. Jessica Braun did check on title 1 has no definition that she could find of what compensation is and the section of Code that 1076 is under Section 40-01.01 there was no definition of compensation either. We have a couple of options, we could amend in there a definition for this particular portion of the code that would say what the compensation is or just say expenses.

Rep. Hatelstad: I am surprised in his belief that it includes expenses. We don't pay any taxes of any kind on our mileage or reimbursement for our rooms so if the state is not requiring us to pay taxes why would it be considered compensation?

Rep. Klemin: Maybe the way to do this is to amend this bill to continue to provide that no compensation shall be paid or allowed to a director; then use this permissive language allowing them to by resolution agree to pay for those expenses and mileage. I know that we have some standard language that we used for a lot of different boards and commissions for payment of expenses etc. Maybe we can use that here.

Rep. Koppelman: The way the bill is written it is permissible that it will allow compensation, which even based on the letter from the States Attorney would include or be limited to expense reimbursement, but could also be a stipend or something else. I am not sure we should prohibit paying librarians in state law. This bill would allow the county commission to decide so maybe it is OK as is.

Rep. Beadle: It is read as permissible, it is not requiring that they be paid so it is the local control mentality. Looking back to Ms. Stickler's testimony it doesn't really seem like she is really directly expressing opposition to the bill. She just wants to survey the NDLA so that they can at least talk about this first. They thought that the expenses could be paid also.

Rep. Zaiser: Motion Made for a Do Pass. Seconded by Rep. Beadle

Rep. Maragos: As I am looking at the Kidder County opinion, would it be easier to define compensation, not to include reimbursement of expenses and be done with it.

Rep. Klemin: We heard testimony saying they are paying expenses and if we pass this bill the way it is now they will be to go back and get a resolution or ordinances adopted by the City of Mandan and the County of Morton in order to pay those expenses. I am not sure that is what we should be doing and it sounds like they have been paying mileage elsewhere around that state too. I think it might be need to check into that. I think this will cause a problem because of those people now allowing the payment of expenses and it would require them to go back to the county commissioners to an ordinance adopted.

Rep. Maragos: I think if we amend the bill to define compensation to include expenses then they wouldn't be in violation of the law.

Rep. Zaiser: I am willing to withdraw my motion: Rep. Beadle withdrew his second.

Motion withdrawn.

Rep. Klemin: I still would like to see that standard language that we are using in other cases and it maybe that we might want to amend this to say no compensation other than expenses.

Rep.Devlin: I don't have a problem if a local board or commissioners want to pay their library boards. That is a local decision.

Rep. Zaiser: That is why I proceeded with passing the motion as is since it is permissive. Maybe some counties choose to pay and that is up to them.

Rep. Beadle: I agree if the local people want to pay why we should stop them. But amending it so the compensation doesn't include expenses so they don't have to go to a board or commission or whatever the governing body is in order to make sure their expenses get reimbursed seems fine.

Rep. Koppelman: I think we are dealing with two issues; one is the policy question which is what we have been discussing whether if we pass the bill or should it just be permissible for expense reimbursement or permissible for compensation. The other question we have this definition of compensation. Is that anywhere in law and do we need to clarify that in law. When the states attorney wrote this opinion he couldn't find anything in law that defined it.

Chairman Johnson: I am hoping with the amendment she would have an opportunity to talk about the stipend expense reimbursement compensation; maybe that might help us clarify it a little bit more.

Hearing closed.

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Political Subdivisions Committee Prairie Room, State Capitol

HB 1076  
January 20, 2011  
Job # 13158

☐ Conference Committee

Committee Clerk Signature



### Minutes:

Proposed Amendment #1

Chairman Johnson: Reopened the hearing on HB 1076. We worked on defining the definition of compensation so it would be expenses covered and not just flat out compensation. When we were looking at it earlier the people from the library association came in and they were concerned about wanting some time to see how it worked and they indicated they were already paying mileage for their people. The States Attorney opinion from Kidder County they were told they could not pay any mileage. So the amendment drafted would allow them to reimburse for mileage expenses.

Rep. Koppelman: I think most of these counties are strapped for funds anyway and the county commissioners will go out and create huge tax dollars for library folks who are currently volunteering. If there is some small stipend; or whatever they want to set.

Chairman Johnson: (handed out Proposed Amendment #1). Went over the proposal. They may be paid, but it would have to be by the governing body making that decision.

Rep. Zaiser: If the governing body chooses to pay them it is at their own cost. I support the bill as is; if we were to amend it would put some restrictions on it.

Rep. Koppelman: Your intent is to say they can pay reimbursement. If the county commissioners agree they can also pay compensation.

Chairman Johnson: They could automatically reimbursement for expenses, but if they want to give a stipend or something else then the governing body would have to agree to that. Went over the proposed amendment again. No other expenses would be allowed unless the governing body or municipality agrees to it.

Motion Made by Rep. Koppelman to approve the amendment; Seconded by Rep. Maragos:

Voice Vote Carried.

Do Pass As Amended by Rep. Hatelstad: Seconded By Rep. Beadle

Discussion: None

House Political Subdivisions Committee

HB 1076

January 20, 2011

Page 2

Vote: 14 Yes 0 No 0 Absent Carrier: Rep. Kilichowski

Hearing closed.



#1

PROPOSED AMENDMENT TO HOUSE BILL 1076

Page 2, line 10, after "3." insert "A director is entitled to payment for mileage and travel expenses as provided for in sections 44-08-04 and 54-06-09."

Page 2, line 10, after "No" insert "other"

Date: 1-20-11  
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1076

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt  
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Vain  
Vote Carried

January 20, 2011

VR  
1/21/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1076

Page 2, line 10, after the underscored period insert "A director is entitled to payment for mileage and travel expenses as provided for in sections 44-08-04 and 54-06-09."

Page 2, line 10, after "No" insert "other"

Renumber accordingly

Date: 1-20-11  
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1076

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt  
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Hatelstad Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer	✓	
Rep. Beadle	✓		Rep. Mock	✓	
Rep. Devlin	✓		Rep. Zaiser	✓	
Rep. Heilman	✓				
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Pietsch	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Kilichowski

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1076: Political Subdivisions Committee (Rep. N. Johnson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1076 was placed on the Sixth order on the calendar.

Page 2, line 10, after the underscored period insert "A director is entitled to payment for mileage and travel expenses as provided for in sections 44-08-04 and 54-06-09."

Page 2, line 10, after "No" insert "other"

Renumber accordingly

**2011 SENATE POLITICAL SUBDIVISIONS**

**HB 1076**

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Political Subdivisions Committee Red River Room, State Capitol

HB 1076  
March 3, 2011  
14890

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to compensation of members of public library boards.

### Minutes:

You may make reference to "attached testimony."

**Chairman Andrist** opened the committee hearing on HB 1076, relating to compensation of members of public library boards.

**Representative DeKrey:** District 14, introduced HB1076. This is a bill that came to me from the Kidder County Library Board. They were notified by the State Librarian that in North Dakota State Law, when it says no compensation for library board members, and that is what it means. The Library Board went on the assumption then, the \$10 they were getting for a meeting would have to go away but that they could still get reimbursement for their mileage. Kidder County State's attorney wrote an opinion that said, that is not right. When state law says no compensation, it means no compensation. The Kidder County Library board wanted to be reimbursed for mileage. When the bill went through the House, the Political Subs committee amended it, so that it says reimbursement and compensation. If you look at the bill, it's permissive, it doesn't mandate that anybody does anything. If you like the way your county is running and the library board members are more than happy to serve for absolutely nothing, good, keep it that way. But in the rural counties, there are some counties paying both compensation and reimbursement for gas. According to our State's Attorney, they are in violation of state law. Our State's Attorney ruled that the members of the Kidder County Board would have to repay the reimbursement and the salary of \$10 a meeting back to when they started serving on the board. Even at \$10 a meeting, if it's going on for 20+ years that adds up too. Now this free service job your doing all of sudden becomes a headache. When we searched the Century Code we could find no other board or voluntary position in the Century Code where they are not at least compensated for their expenses. The bill is completely reasonable. It absolutely does not mandate that anybody has to do anything; there aren't any mandatory reimbursements, or mandatory salaries in there.

**Chairman Andrist:** The bill would say that a member is entitled to mileage, but only by action of the Board of County Commissioners. **Representative DeKrey:** The Board itself has to approve it. The Library Board or members just can't say here is my bill for mileage; it

has to be an action of the board to approve what is fair for their expenses or any kind of stipend.

**Senator Olafson:** How are typical libraries funded? **Representative DeKrey:** In Kidder County there is a mill levy. There is a lot of cities that are large enough to have their own library. Sometimes the county and the city have an arrangement where it's a joint library. If it's a city library, the city commissioners would have to fund it at whatever level they want to, or the county does it up to 4 mills for the county library.

**Senator Dotzenrod:** On page 2, lines 10 & 11, it says 'the director is entitled to payment for mileage and then on line 11, it says no other compensation may be made or allowed unless the governing body provides by ordinance for payment'. There isn't board action required for this mileage and travel expenses. **Representative DeKrey:** The way that reads now, you might be correct. **Senator Dotzenrod:** Personally I am fine with the idea that it is spelled out that they are entitled to their expenses. **Representative DeKrey:** I would agree with you the way it reads. **Chairman Andrist:** It would be my frame of reference that the members would likely get together to decide about paying mileage to the members. They would have a uniform policy. **Senator Olafson:** I think you would have to look in the chapter that it refers to there, because it says, as provided for in sections 44-08-04 and in 54:06:09 there could be that they are entitled to it if it is approved. **Representative DeKrey:** If you want to switch it back that even the mileage has to be an action of the governing board; that would be okay. **Senator Olafson:** There is a reason why there's a reference to those sections.

**Senator Judy Lee:** In 44:08:04, it talks about expense account amounts allowed for travel within the state.

**Chairman Andrist:** If we pass the bill as its come to us from the House, a library board member would be entitled to mileage if he wants to claim it, but he would only be entitled to compensation if the County Commission decided they should compensate.

**Senator Dotzenrod:** Rate of mileage is established by the Century Code. **Senator Laffen** and **Senator Judy Lee** looked in the Century Code the sections related to reimbursements. Chapter 44-08-04 was referenced, as well as 54:06:09 relating to mileage and travel expenses of state officers and employees.

**Chairman Andrist:** Do you just peg it to the federal rate? **Senator Judy Lee:** We do now. We do now have the same rate, but our reimbursement went down a few years ago when the price of gas went down. **Chairman Andrist:** It will go up again next year.

**Senator Olafson:** While reading 44:08-04 and Senator Lee would you agree this does not really spell out a requirement, it spells out a process. I think reading the bill, and referring to these two sections then, I would say without further investigation or further research, that the library board director would be entitled to payment for mileage and travel expenses without action of any board. That is how I would interpret it, which is fine with me.

**Chairman Andrist:** Any others wish to testify in support, opposition or neutral position on this bill?



**Chairman Andrist** closed the hearing on HB 1076.

Senator Judy Lee motions for a Do Pass

Senator Olafson- 2<sup>nd</sup>

Roll Call: 5 Yeas, 0 No, 0 Absent

Carrier: Senator Judy Lee

Date: 3/3/2011  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1076

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Sen. Judy Lee Seconded By Senator Olafson

Senators	Yes	No	Senators	Yes	No
Senator John Andrist	✓				
Senator Lonnie Laffen	✓				
Senator Judy Lee	✓				
Senator Curtis Olafson	✓				
Senator Jim Dotzenrod	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Senator Judy Lee

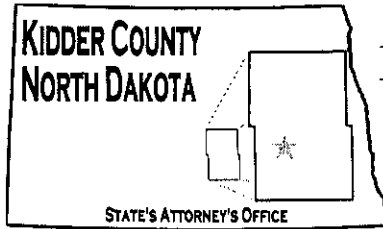
If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1076, as engrossed: Political Subdivisions Committee (Sen. Andrist, Chairman)**  
recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1076 was placed on the Fourteenth order on the calendar.

**2011 TESTIMONY**

**HB 1076**



HB1076 #1  
OFFICE OF THE  
**KIDDER COUNTY STATE'S ATTORNEY**

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7 October 2010

Kidder County Library Board of Directors  
115 W Broadway  
Steele, ND 58482

Members of the Board,

Duane DeKrey met me in my office this week and relayed a question regarding whether members of the library board may be reimbursed for expenses such as mileage or paid a per diem for their service to the library board.

I have reviewed this matter and have concluded that such a reimbursement or per diem would constitute "compensation" that is prohibited by N.D.C.C. § 40-38-03, which states in pertinent part: "No compensation shall be paid or allowed to a director." Naturally, the issue turns on whether a mileage reimbursement or a per diem payment would fall within the definition of "compensation." The word compensation is not given a definition for purposes of this statute, so its reasonable, ordinary meaning would apply. I believe the ordinary meaning of compensation as I understand it to be used includes both wages or fees for services and necessary expenses. This is confirmed by two dictionary references. Merriam Webster defines the term as "something that constitutes an equivalent or recompense (as for a service rendered or damage incurred)". Black's law dictionary defines the term as, among other things, "That which is necessary to restore an injured party to his former position," "making amends," "making whole," and "remuneration for services rendered." A per diem is ordinarily an estimate of expected expenses paid to someone on a daily basis in lieu of tracking receipts or other actual expenses incurred. In my opinion, the prohibition on compensation paid to a director would include reimbursement for expenses such as mileage or a per diem, as reimbursement for expenses is part of making the director whole or restoring the director to his former (financial) position that the director would hold absent the expenses incurred due to service on the board.

Sincerely,

Jerod E. Tuftte  
Kidder County State's Attorney

**TESTIMONY ON HB1076**  
**Political Subdivisions Committee**

#2

January 13, 2011  
Kelly Steckler, NDLA Legislative Chair  
North Dakota Library Association  
c/o Morton Mandan Public Library  
667-5365

Dear Representative Johnson and Members of the Committee:

My name is Kelly Steckler and I am Legislative Chair for the North Dakota Library Association (NDLA). I am also the Director of the Morton Mandan Public Library. I am here to discuss HB1076.

The legislation proposes to provide for monetary compensation for service by one as a member of a public library's board. HB1076 comes with many issues that could affect public libraries.

The topic of this bill only surfaced last week. Typically, the NDLA discusses library issues pertinent to each section and roundtable at its annual conference held each fall. Those issues are then drafted in the form of a resolution, sent to our entire general membership, and voted upon at that conference. The process provides ample time to discuss issues and gain insight from various libraries affected by potential resolutions.

Members of the NDLA Legislative Committee comprised an initial list including but not limited to: trustee duties and responsibilities, duty of care by a public library trustee, loyalty/conflicts of interest, duty of obedience, ethics, and fiduciary responsibility for the use of public and private funds. These are further outlined in the next document.

In the essence of procedural accountability for surveying the NDLA membership most affected by this legislation and further fact-finding analysis, I recommend no action be taken on HB1076 at this session.

Sincerely,

Kelly Steckler  
NDLA Legislative Chair

**TESTIMONY****HOUSE BILL NO. 1076****JANUARY 13, 2011****The Issue**

The legislation as written proposes to provide for monetary compensation for service by one as a member of a public library's board. Prior to any conclusion as to the appropriateness of such legislation, it is suggested that strong consideration be given to the position of a board member and the duties associated with the position.

**Trustee Duties and Responsibilities – Generally**

First and foremost, public library board members owe an allegiance to the public library and must act in good faith with the best interest of the public library with full consideration given to the principal that the public library is an institution of the people. The conduct of a board member must therefore, at all times, further the public library's goals and mission.

The board member of a public library is a person to whom property is legally committed in trust. It follows then that the public library board member's commitment is to both the physical property and the resources of the library as well as the services the public library provides. Indeed, the library board has the final responsibility to see that its library provides the best possible service to its community.

**Duty of Care By A Public Library Trustee**

A trustee or board member must act in good faith and exercise the degree of diligence, care and skill that an ordinary prudent individual would use under similar circumstances in a like position.

**Duty of Loyalty/Conflicts of Interest**

Board members owe allegiance to the public library that they represent and must act in good faith with the best interest of the organization in mind. The conduct of a board member must, at all times, further the public library's goals and not the board member's personal or business interests. For this reason, a board member should avoid even the appearance of impropriety. Any and all acts of self-dealing constitute a severe breach of fiduciary responsibility that could, and quite properly should, result in

personal liability and the need for the removal of an individual from the public library board.

### **Duty of Obedience**

A board member has a responsibility to insure that the public library's resources are dedicated to the fulfillment of the public library's mission. The member also has a duty to ensure that the public library complies with all applicable laws and does not engage in any unauthorized activities.

In addition, there is a duty for the public library board member to ensure that the financial resources of the library are being used efficiently and effectively toward meeting the public library's goals; and to also assure that the library director retained by the library board manages the operation of the public library in a like manner, such being an element in the evaluation of his/her overall performance.

### **Responsibilities**

The particular responsibilities of public library board member's are few in number but broad in scope. They are:

- Create and develop the mission of the public library;
- Select, hire and regularly evaluate a qualified library director;
- Secure adequate funding for the library's service program;
- Exercise fiduciary responsibility for the use of public and private funds;
- Adopt policies and rules regarding library governance and use;
- Regularly plan and evaluate without prejudice the public library service program;
- Maintain a facility that meets the both the public library's and the community's needs;
- Promote the library in the local community and in society in general;
- Always conduct the business of the public library in an open and ethical manner in compliance with all applicable laws (federal, state, and local) with respect for the public library as an institution of the citizens.

It should be expressly understood that every public library board member makes a personal commitment to contribute the time and energy necessary to faithfully carry out these responsibilities (cited above). Although the board is legally responsible for all aspects of the library as an institution, it is unreasonable to expect a trustee or the whole board to be expert on every activity or concern that affects the library. Sometimes the most important thing a board can do is acknowledge that it does not have enough information or resources, and to ask for help. A board member must make decisions



based on the best information available. It is often wise to consult with your public library system staff or specialists such as lawyers, accountants, architects, computer analysts and other experts. Unbiased consultations are always acceptable.

Public library boards have broad and almost exclusive powers and authority to administer the library. Therefore, the board should not only be concerned with the internal operations of the public library but also alert to external trends and changes that can affect the library's program of services. Being proactive and open to change is imperative in order to survive and thrive in a world in which change is the only constant.

### **Ethics and Conflicts of Interest**

In today's political environment, accountability and ethics are critical ingredients for any public organization. As public libraries continue to develop and expand and rely to a far greater extent on the support of local taxpayers it is essential for every library board to have in place a policy clearly stating the ethical principles upon which they work. In every decision trustees should be sensitive to even the appearance of impropriety. In this context, trustees or their families may not enter into a business relationship with the library, even if they are providing a service below cost.

Conflicts of interest are defined in the North Dakota Century Code. While it is a question of law as to the extent that trustees of associations and, in a similar manner, the members of a public library board, may be considered as "public officers," it should be noted that under "common law" it is to be remembered that, regarding conflicts of interest, such is not limited to public officers and municipalities; it also applies to private positions of trust.

Therefore, if such liability could possibly attach to members of the public library board it would be wise to have a 'conflicts of interest policy' that clearly states the procedures to be followed if a board member's personal or financial interest may be advanced by an action of the board. Further, it would be advisable for the public library board to adopt for its members a code of ethics addressing such issues as transparency, disclosure in fundraising solicitations, integrity in governance and diversity.

In a similar fashion, library boards are strongly encouraged to adopt anti-nepotism policies to address the management and public relations issues surrounding the employment of both trustees' and staff family members.

### **Conclusion**

In view of the afore cited factors concerning the duties of public library board members, it is respectfully suggested that House Bill, Number 1076 be tabled at this time. Such an action would allow for study of the implications of the legislation as written and a full review by the entirety of the public library community of North Dakota.

Specifically, it is believed that study by North Dakota's public library community should be given to the Bill's implication on issues such as:

- Confidentiality of library records (Freedom To Read; Freedom To View);
- Fiduciary responsibility for the usage of public and private funds;
- Implications on the conducting of business in an open and ethical manner;
- Ability to represent the needs and interests of the community vs. a payor authority;
- Freedom to establish short and long term goals (Long Range Planning) for the public without undue influence of an entity with a prescribed agenda;
- Independence to set conditions of employment according to law without undue influence of another party (compliance with EEOC, Title VII, and internal grievance procedures);
- Any impact on the unbridled ability to act independent as an individual public library board member and then to merge into a unified voice to the service are community;
- A concise factual understanding of liabilities that may attach to the actions of a public library board member who because of compensation received ceases to be independent but, rather, becomes a funded agent of the payor; and
- An analysis and understanding of the differences between an elected and compensated board member vs. an unelected and appointed board member.

It is therefore requested that this legislation be tabled until a positive and thoughtful consideration of this Testimony is accomplished with a full review of all legal and social implications of the legislation as written.

### **Attachment**

See: Internal Controls and Financial Accountability for Not-For-Profit Boards published by: New York State Office of the Attorney General; Charities Bureau, page 4, item E: Conflicts of Interest Policies and Code of Ethics.

exceeding the specifications set out in the invitation for bids. In the event that two or more bids contain identical pricing or receive identical evaluation scores, preference must be given to bids submitted by North Dakota vendors.

Source: S.L. 1967, ch. 360, § 1; 2005, ch. 381, § 1.

#### Cross-References.

Licensing of contractors: public construction contracts awarded only to licensed contractors, information required in bid or proposal, see § 43-07-12.

#### Collateral References.

Counties ⇨ 115-120; Municipal Corporations ⇨ 234-242; Public Contracts ⇨ 5-12; Schools and School Districts ⇨ 80(2); States ⇨ 98.

64 Am. Jur. 2d, Public Works and Contracts, §§ 62-73.

20 C.J.S. Counties, §§ 287-289, 291-295, 297, 299-306; 63 C.J.S. Municipal Corporations, §§ 917-933; 73A C.J.S. Public Con-

tracts, §§ 6, 14-24, 41; 78 C.J.S. Schools and School Districts, §§ 409-414; 81A C.J.S. States, §§ 280-288.

Municipal corporations: right of municipal corporation to recover back from contractor payments made under contract violating competitive bidding statute, 33 A.L.R.3d 397.

Municipal corporations: liability of municipal corporation on quasi contract for value of property or work furnished without compliance with bidding requirements, 33 A.L.R.3d 1164.

Public contracts: authority of state or its subdivision to reject all bids, 52 A.L.R.4th 186.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract, 65 A.L.R.4th 93.

**44-08-02. Resident North Dakota bidder, seller, and contractor defined.** The term "a resident North Dakota bidder, seller, or contractor" when used in section 44-08-01, unless the context thereof clearly provides otherwise, means a bidder, seller, or contractor who has maintained a bona fide place of business within this state for at least one year prior to the date on which a contract was awarded.

Source: S.L. 1935, ch. 218, § 1; 1943, ch. 198, § 1; R.C. 1943, § 44-0802; S.L. 1985, ch. 500, § 2.

**44-08-03. Traveling expenses — What allowed.** No elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may willfully make claim upon, or willfully receive, any public funds for traveling expenses, while engaged upon public business, in an amount in excess of that allowed by law for such travel. If more than one public officer, employee, representative, or agent travels in the same car while engaged upon official duty, whether belonging to different departments, subdivisions, boards, or commissions or not, no claim may be made for more than one mileage; such claim to be made by the owner or lessee of such car.

Source: S.L. 1933, ch. 197, § 1; R.C. 1943, § 44-0803; S.L. 1965, ch. 304, § 1.

#### Cross-References.

County officials, mileage and travel expenses, see § 11-15-15.

Legislators' mileage and mileage, see § 54-03-20.

Political activity, state officers and employees not to receive travel expenses for time spent in, see §§ 39-01-05 to 39-01-07.

Sheriff's mileage in performance of duty, see § 11-15-12.

State officers and employees, mileage and travel expenses, see § 54-06-09.

#### Collateral References.

Counties ⇨ 73; Municipal Corporations ⇨ 163; Officers ⇨ 99; Schools and School Districts ⇨ 48(5), 54; States ⇨ 62.

63C Am. Jur. 2d, Public Officers and Employees, §§ 287-290.

20 C.J.S. Counties, § 202; 62 C.J.S. Municipal Corporations, §§ 382, 383; 67 C.J.S. Of-

ficers and Public Employees, § 121; 78 C.J.S. Schools and School Districts, §§ 99, 140, 141; 81A C.J.S. States, §§ 201-204.

Constitutional provision fixing or limiting salary of public officer as precluding allowance for mileage or traveling expenses, 5 A.L.R.2d 1182.

#### 44-08-04. Expense account — Amount allowed — Verification.

1. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals that are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. Reimbursement is allowed only for overnight travel or other travel, away from the normal place of employment, for four hours or more. Verification of expenses by receipt is required only for lodging expenses.

2. For travel within the state, the following rates for each quarter of any twenty-four-hour period must be used:

- First quarter is from six a.m. to twelve noon and the sum must be five dollars. First quarter reimbursement may not be made if travel began after seven a.m.
- Second quarter is from twelve noon to six p.m. and the sum must be seven dollars and fifty cents.
- Third quarter is from six p.m. to twelve midnight and the sum must be twelve dollars and fifty cents.
- Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed fifty-five dollars plus any additional applicable state or local taxes. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

3. The allowance for out-of-state meals, within the continental United States, is equal to the per diem meals rate in effect for which a claim is made on that day as established by rule for federal employees by the United States general services administration and

must be allocated twenty percent to the first quarter, thirty percent to the second quarter, and fifty percent to the third quarter.

4. The allowance for meals in noncontinental United States and overseas nonforeign areas, including Alaska, Hawaii, and Guam, is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees established by the United States per diem committee.
5. The allowance for meals outside the United States is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees established by the United States department of state.
6. The allowance for lodging outside the state must be the actual lodging expense.
7. A department, institution, or agency of this state may set a rate for travel expenses outside the state less than those set forth in this section. Verification of any other type of expense not prescribed by this section must be as prescribed by the office of the budget except no receipt may be required for taxi or cab fares of ten dollars or less. The office of management and budget shall disapprove any claim it determines to be in error or unlawful or not within the limits of legislative appropriations.

**Source:** S.L. 1935, ch. 220, § 1; 1943, ch. 200, § 1; R.C. 1943, § 44-0804; S.L. 1949, ch. 293, § 1; 1957, ch. 108, § 2; 1957 Supp., § 44-0804; S.L. 1959, ch. 324, § 1; 1965, ch. 304, § 2; 1969, ch. 399, § 1; 1971, ch. 448, § 1; 1973, ch. 363, § 1; 1975, ch. 418, § 1; 1977, ch. 418, § 1; 1979, ch. 479, § 1; 1981, ch. 454, § 1; 1981, ch. 455, § 1; 1983, ch. 82, § 89; 1983, ch. 495, § 2; 1985, ch. 501, § 1; 1987, ch. 542, § 1; 1987, ch. 543, § 1; 1993, ch. 444, § 1; 1995, ch. 426, § 1; 1995, ch. 427, § 1; 1997, ch. 385, § 1; 1999, ch. 402, § 1; 2001, ch. 398, § 1; 2001, ch. 399, § 1; 2005, ch. 382, § 1; 2005, ch. 383, § 1; 2007, ch. 391, § 2; 2007, ch. 390, § 1.

#### **Effective Date.**

The 2007 amendment of this section by section 1 of chapter 390, S.L. 2007 became effective August 1, 2007.

The 2007 amendment of this section by section 2 of chapter 391, S.L. 2007 became effective August 1, 2007.

#### **Note.**

Section 44-08-04 was amended 2 times by the 2007 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in section 1 of chapter 390, S.L. 2007, Senate Bill 2246 and section 2 of chapter 391, S.L. 2007, Senate Bill 2093.

**44-08-04.1. Per diem allowance for long-term travel.** With the approval of the office of the budget, any state agency may adopt a per diem allowance in lieu of expenses as allowed by section 44-08-04 for its officials and employees whose official duties require that they remain on travel status away from their normal working and living residence for extended periods of time. No per diem allowed may be in excess of the total allowance for meals and lodging as allowed by section 44-08-04. Travel status when less may not be considered long-term or extended travel. Rental receipts must be used to verify travel status under this section.

#### **44-08-04.2. Travel advances.**

1. Any state agency shall advance at the request of the agency employees of that agency funds to be used for payment of lodging expenses incurred while the official or employee is on official business of this state, provided that such travel planned to be in excess of five days per month, whether consecutive, and provided that the funds advanced do not exceed eighty percent of estimated expenses for the period. Travel must be approved by the chief executive officer or a designee of the agency involved. Funds advanced for meals and lodging under this section must be accounted for as required under section 44-08-04.1.
2. As used in this section, and section 44-08-04.1:
  - a. "Official business of this state" includes travel to attend courses.
  - b. "State agency" means agencies, boards, commissions, offices, departments, institutions, and any other state or local governmental entities, and specifically includes the legislative, executive, and judicial branches of state government.

**Source:** S.L. 1973, ch. 363, § 3; 1981, ch. 455, § 2; 1985, ch. 502, § 1; 2003, ch. 388, § 1.

**44-08-04.3. Moving expense — Allowances — Verification.** The head of any department, institution, or agency may authorize the payment of moving expenses incurred by a permanent employee who is employed in that department, institution, or agency not less than 90 days when that employee is transferred from one city in the state to another for the purpose of assuming a new duty assignment of a permanent nature within that department, institution, or agency. Relocation costs paid by the state shall be limited to the following:

1. All actual costs of moving personal household goods and effects, not to exceed eleven thousand pounds [4989.60 kilograms] in weight.
2. The expenses of transportation to the new residence, limited to one round trip, and actual meal and lodging costs for the employee and spouse, for three days.
3. The expenses of transportation, lodging, and meals incurred by the employee and the immediate family while en route to the new station.
4. The expenses for the employee and immediate family while occupying temporary living quarters within the state, not to exceed five days.

Provided, however, that payment of the expenses itemized in subsections 1 through 4 may not exceed five thousand dollars. Verification for

Source: S.L. 1965, ch. 343, § 1; 1989, ch. 633, § 1; 1995, ch. 497, § 1.

**Cross-References.**

Public fund depositories, see chapter 21-04.

**54-06-08.2. Payment by credit card — State credit card processor.**

A state agency, board, or commission, the judicial branch, or any political subdivision may accept payment by credit card of any fee, interest, penalty, tax, or other payment that is due or collectible by the agency, board, or commission. The Bank of North Dakota is the state credit card administrator for credit card transactions of state agencies, boards, or commissions. The Bank of North Dakota shall select a credit card processor or processors to provide credit card services to state agencies, boards, and commissions. All funds from credit card transactions must be deposited in the respective entity's account in the Bank of North Dakota. If on January 1, 1997, any state agency, board, or commission uses a credit card processor other than a credit card processor selected by the Bank of North Dakota, it may continue using that processor until June 30, 1999, or until transition to the state processor is available with minimal fee or penalty, whichever is earlier. The judicial branch may accept payment by credit card for any fees, costs, or other assessments required or imposed under state law or court rule.

Source: S.L. 1995, ch. 498, § 1; 1997, ch. 437, § 1.

**54-06-09. Mileage and travel expense of state officers and employees.**

1. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, must be allowed and paid for mileage and travel expense the following amounts:
  - a. The sum of forty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by motor vehicle, the use of which is required by the employing entity. The sum of seventy cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by private airplane. Mileage by private aircraft must be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage must be based on the road mileage between the geographical points. Reimbursement for private airplane travel must be calculated as follows:
    - (1) If reimbursement is for one properly authorized and reimbursable passenger, reimbursement must be paid on a per mile basis as provided in this subsection.
    - (2) If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular

coach fare on a commercial flight, if one is scheduled between the point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.

- b. Except as provided in subdivision a, when travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the amount actually and necessarily expended therefor in the performance of official duties.
2. No reimbursement may be paid for leased private aircraft, except for leased or rented private aircraft from a recognized fixed base aviation operator who is in the business of leasing and renting private aircraft and is located on an airport open for public use.
3. If only one person engages in such travel in a motor vehicle exceeding at any geographical point three hundred miles [482.80 kilometers] beyond the borders of this state, reimbursement is limited to eighteen cents per mile [1.61 kilometers] for miles driven in excess of six hundred miles [965.60 kilometers] of round trip out-of-state travel.
4. An official, deputy, assistant, clerk, or other employee, when required to travel by motor vehicle or truck in the performance of official duty, shall use a state-owned vehicle whenever possible unless exempted under section 24-02-03.3. However, an agency, institution, department, board, bureau, or commission may allow use of an official's, deputy's, or employee's personal motor vehicle in circumstances authorized by the official, deputy, or the employee's supervisor. If personal motor vehicle use is authorized under this subsection, the agency may also allow mileage reimbursement at a rate less than that otherwise provided in this section. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision of the state, no allowance may be made or paid for such mileage, except that governmental entities may share expenses when officials or employees of those entities travel in the same motor vehicle or aircraft.
5. Notwithstanding the other provisions of this section, state employees permanently located outside the state or on assignments outside the state for an indefinite period of time, exceeding at least thirty consecutive days, must be allowed and paid forty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle, and the three-hundred-mile [482.80-kilometer] restriction imposed by subsection 3 does not apply.
6. Before any allowance for any such mileage or travel expenses may be made, the official, deputy, assistant, clerk, or other employee

## Source

p. 496;  
 § 54-060;  
 Supp., §  
 1963, ch.  
 ch. 382, §  
 § 2; 1973  
 1975, ch.  
 ch. 479, §  
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 1993, ch.  
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shall file with the employee's department, institution, board, commission, or agency an itemized statement showing the mileage traveled, the hour of departure and return, the days when and how traveled, the purpose thereof, and such other information and documentation as may be prescribed by rule of the employee's department, institution, board, commission, or agency. The statement must be submitted to the employee's department, institution, board, commission, or agency for approval and must be paid only when approved by the employee's department, institution, board, commission, or agency.

**Source:** I.M. June 29, 1932, § 1, S.L. 1933, p. 496; 1937, ch. 187, § 1; R.C. 1943, § 54-0609; S.L. 1949, ch. 313, § 1; 1957 Supp., § 54-0609; S.L. 1959, ch. 325, § 1; 1963, ch. 347, § 1; 1965, ch. 304, § 5; 1967, ch. 382, § 1; 1969, ch. 399, § 2; 1971, ch. 448, § 2; 1973, ch. 413, § 1; 1973, ch. 414, § 1; 1975, ch. 418, § 3; 1975, ch. 467, § 1; 1979, ch. 479, § 2; 1981, ch. 455, § 3; 1983, ch. 495, § 4; 1985, ch. 501, § 2; 1991, ch. 569, § 1; 1993, ch. 507, § 1; 1995, ch. 427, § 2; 1997, ch. 41, § 10; 1997, ch. 435, § 2; 2001, ch. 472, § 1; 2001, ch. 473, § 2; 2005, ch. 475, § 1; 2007, ch. 455, § 1.

#### **Effective Date.**

The 2007 amendment of this section by section 1 of chapter 455, S.L. 2007 became effective August 1, 2007.

#### **Cross-References.**

Traveling expenses, see §§ 44-08-03 to 44-08-05.1.

#### **Applicability.**

This section is not applicable to members

of the legislative or judicial branch of government. *Verry v. Trenbeath*, 148 N.W.2d 567 (N.D. 1967).

#### **State-Owned Vehicle in Lieu of Mileage.**

The purchase of an automobile for the use of the governor in connection with the performance of his official duties in lieu of payment or reimbursement for the expense of travel merely changes the mode of transportation available to the governor and did not increase the emoluments of his office. *State ex rel. Lyons v. Guy*, 107 N.W.2d 211 (N.D. 1961).

#### **Out-of-State Travel.**

This section and N.D.C.C §§ 28-26-06 and 31-01-16 do not limit allowable disbursements for travel expense to travel within this state. *Richter v. Jones*, 378 N.W.2d 209, 55 A.L.R.4th 1213 (N.D. 1985).

#### **Collateral References.**

Constitutional provision fixing or limiting salary of public officer as precluding allowance for mileage or traveling expenses, 5 A.L.R.2d 1182.

**54-06-09.1. Certification of unlawful expense and traveling account — Penalty — Action for violation.** Repealed by S.L. 1975, ch. 106, § 673.

**54-06-10. Out-of-state travel — Authorization necessary.** Repealed by S.L. 1993, ch. 508, § 1.

**54-06-11. Amounts of bonds of state officers.** Repealed by S.L. 1999, ch. 113, § 24.

**54-06-12. Publishing false statements — Penalty.** No state official may publish willfully any false statement in regard to any state department, institution, or industry which tends to deceive the public and create a distrust of any state official or employee in charge of such department, institution, or industry, or which tends to obstruct, hinder, and delay the

**54-06-25. State employees compensation commission — Appointment of members.**

1. The state employees compensation commission shall make recommendations on appropriate levels of state employee compensation and fringe benefits. The commission may not consider conditions of employment other than salary and fringe benefit issues. The division shall provide staff services for the commission.
2. The governor or the governor's designee is a member of the commission and serves as chairman. Four members of the legislative assembly appointed by the chairman of the legislative management are members of the commission. Four state employees are members of the commission, three of whom must be members of the classified service of the state and one of whom must be a member of the nonclassified service of the state. The division shall conduct the election for the employee representatives. All elected commission members serve for a term of four years and may be reelected for additional terms of office. All appointed commission members serve for a term of two years and may be reappointed for additional terms of office. The state employee members' terms begin on October first of the year they are elected. The terms of office of members who are members of the legislative assembly and the governor's designee begin on October first of each odd-numbered year. Before the conclusion of each term, an election must be held to replace the two members whose terms will end in that year. The terms of those commission members elected on July 1, 1996, expire on September 30, 1999. No more than one employee from the same institution of higher education or agency may serve on the commission at the same time. If two or more employees from the same institution of higher education or agency appear on the ballot at the same time, the employee with the highest vote total is elected to the position. If a member of the commission moves to another agency where another current member of the commission is employed, then the moving member must resign. Vacancies among the elected members on the commission must be filled by the eligible person who received the next highest vote total in the previous election. If the eligible person is not available, the chairman of the commission may call a special election to fill the vacancy for the remainder of the unexpired term of the position vacated. The special election to fill a vacancy in an unexpired term must be conducted in the same manner as provided in this section. Vacancies among the legislative members of the commission may be filled for the remainder of the unexpired term by appointment by the chairman of the legislative management.
3. The commission shall meet at the call of the chairman as often as may be necessary, but at least once during each year of the biennium. The commission shall consider proper levels of compensation and fringe benefits for state employees and make its recommendations on these issues to the governor in time for consideration in preparation of the executive budget to be submitted to the next legislative assembly. The commission shall also submit its recommendations to the legislative management at the biennial meeting at which the legislative management receives the reports of its interim committees.
4. The members of the legislative assembly who are commission members are entitled to receive compensation from the legislative

council for each day in the same manner as provided in the ordinance for payment and reimbursement of other necessary expenses in the amounts provided. The state employee shall receive reimbursement of the commission meeting expenses under section 54-06 in the event of a loss of salary for a day of an employing agency for such expenses.

5. Each member of the election to the state of the nonclassified commission if the proved position. In a vacancy on the classified service or position. Student and appointees of commission, participation, or vote for me commission, an employee that employee may regular expiration.
6. The division shall commission and the and institution. The the notice in a statement of voter requirements, nomination petition.
7. In order to be placed contact the division returned to the division publishing date of hundred signatures are not complete, declared void.
8. The ballot must be agency and institution shall provide the division upon must be distributed employee's regular.
9. Employees of the day that the ballots overseer present at as to its sufficiency may act as that designate a representative candidate must provide committee at the of more than one



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ment and reimbursement from the legislative council for travel and  
other necessary expenses incurred in performing commission duties  
in the amounts provided for state employees under section 54-06-09.  
The state employee members of the commission are entitled to  
receive reimbursement for necessary expenses incurred in attending  
commission meetings at the rates provided for state employees  
under section 54-06-09 and may not be assessed any annual leave or  
loss of salary for attendance at meetings of the commission. The  
employing agency of state employee members shall pay their  
expenses.

5. Each member of the classified service may be a candidate for election to the state employees compensation commission. A member of the nonclassified service may be a candidate for election to the commission if the employee occupies a regularly funded and approved position. In order to vote for a candidate in the election to fill a vacancy on the commission, an employee must be a member of the classified service or must occupy a regularly funded and approved position. Student and temporary employees, elected state officials, and appointees of the governor are not eligible to serve on the commission, participate as a candidate for election to the commission, or vote for members of the commission. If after election to the commission, an employee moves from one type of service to another, that employee may continue serving on the commission until the regular expiration of that employee's term.
6. The division shall ensure that a notice of an opening on the commission and the election is provided to an officer at each agency and institution. The officer at each agency and institution shall post the notice in a conspicuous place. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of the election, and where to obtain the nomination petitions for filing.
7. In order to be placed on the commission ballot, an employee shall contact the division for a petition form. The petition form must be returned to the division no more than twenty calendar days after the publishing date of the notice by the division with at least one hundred signatures of eligible state employees. Petition forms that are not complete, or are returned after the required date, must be declared void.
8. The ballot must be prepared by the division and distributed to each agency and institution payroll officer. An officer of each agency and institution shall provide mailing labels for all qualified employees to the division upon the division's request. A ballot for the election must be distributed with each employee's payroll check on the employee's regularly scheduled payday.
9. Employees of the division shall count the ballots following the final day that the ballots must be returned. Each candidate may have one overseer present at the ballot counting who may examine each ballot as to its sufficiency after the ballot has been counted. A candidate may act as that candidate's overseer. If a candidate wishes to designate a representative to act as that candidate's overseer, the candidate must provide a notarized authorization to the election committee at the counting of ballots. An overseer may act on behalf of more than one candidate; however, the overseer must show

required authorization from each candidate represented. The overseer may question the decision of the ballot counters regarding a ballot immediately after the counting of the ballot. If questioned, the comments of the overseer must be heard. The division or the division's representative shall decide if the complaint is valid and whether the ballot will be accepted. The decision of the division or the division's representative is final and must be given in writing. Once all ballots have been counted and all questions raised by the overseers have been decided by the division or the division's representative, the election is closed and results must be declared final. The division shall notify all candidates of the election results within ten working days of the election.

10. As used in this section, "division" means North Dakota human resource management services.

**Source:** S.L. 1993, ch. 513, § 1; 1995, ch. 501, §§ 1, 2; 1997, ch. 432, § 24; 1997, ch. 440, § 1; 2003, ch. 461, § 1; 2003, ch. 493, § 4; 2009, ch. 482, §§ 46, 97.

**Effective Date.**

The 2009 amendments of this section by sections 46 and 97 of chapter 482, S.L. 2009 became effective August 1, 2009.

**Note.**

Section 54-06-25 was amended 2 times by

the 2009 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in section 46 of chapter 482, Session Laws 2009, House Bill 1436; and section 97 of chapter 482, Session Laws 2009, House Bill 1436.

**54-06-27. Emergency service volunteers — Leave.** Upon issuance of an order or proclamation declaring a state of disaster or emergency pursuant to chapter 37-17.1, a search emergency by the air force rescue coordination center or by the department of emergency services, or a declaration of at least a level II disaster by the American red cross in this or any other state, the executive officer in charge of a state agency or the governing body of any political subdivision may grant a leave of absence to any full-time employee of that governmental entity who is an emergency medical service provider, a member of the civil air patrol, a firefighter, police officer, volunteer member of the North Dakota army or air national guard, or emergency radio operator, or who performs other services necessary in an emergency. The leave of absence must be for the purpose of allowing that employee to provide voluntary emergency services. An individual on leave under this section is not deemed to be an employee of the governmental entity for the purposes of workforce safety and insurance. The cumulative leave granted under this section may not exceed twenty working days during any calendar year. The leave may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

**Source:** S.L. 1999, ch. 448, § 1; 2003, ch. 561, § 3; 2009, ch. 16, § 15; 2009, ch. 313, § 2.

**Effective Date.**

The 2009 amendment of this section by section 15 of chapter 16, S.L. 2009 became effective May 19, 2009, pursuant to an emergency clause in section 16 of chapter 16, S.L. 2009.

The 2009 amendment of this section by section 2 of chapter 313, S.L. 2009 became effective March 24, 2009, pursuant to an emergency clause in section 3 of chapter 313, S.L. 2009.

**Note.**

Section 54-06-27 was amended 2 times by the 2009 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above

to harmonize and give effect to the changes made in section 15 of chapter 16, Session Laws 2009, House Bill 1016; and section 2

**54-06-30. State employee programs — Limitations.** State agency bonuses to their employees under

1. State agencies may pay bonuses:
  - a. The agency has had a policy in place for more than one year;
  - b. The written employee performance criteria must be in a subdivision of a must have criteria; and
  - c. The agency performance section must be a written each employee in the section must include input from
2. State employees are eligible only if:
  - a. The employee has held at least one year before a
  - b. The employee's overall the agency's performance bonus; and
  - c. The employee is a full-time employee holding a
3. An employee may not receive bonuses per fiscal year.
4. Except as provided in this section during a year of employees equal to twenty by the agency on July first. Upon a showing of special resource management services twenty-five percent limit on human resource management granted under this subject management. Each agency program from within its agency
5. Bonuses paid under this section shall not exceed an employee's base salary for purpose of increase.
6. Bonuses paid under this section shall not exceed section 54-14-03.1.

**Source:** S.L. 2001, ch. 475, § 1; 2003, ch. 462, § 1; 2009, ch. 458, § 1.

**Effective Date.**

The 2009 amendment of this section

**54-06-31. State employee programs — Criteria — Limitations.** to provide bonuses to recruit or re-