

**2015 SENATE JUDICIARY**

**SB 2053**

# 2015 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Fort Lincoln Room, State Capitol

SB 2053  
1/7/2015  
21737

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



### Minutes:

Attachments #1,2,3

Ch. Hogue: We will open the hearing on SB 2053.

John Walstad, Legislative Council, Attachment #1 and #2: (Explained the amendments) I'm in favor of correcting errors. The first section in the bill pulls out a starting date for a section about appointing a Labor Commissioner. The second section pulls out a starting date a section. Then there are some repeals, chapter 4-21 of the Code; it provided for payment of a tree bounty - \$2.00 for every row of 80 rods of trees planted. The bounty was for planting them, but it was declared unconstitutional in 1941 and just been in there. Section 11-11.1-05 permitted a county one mill levy for job development authority. It only allowed it for 1985; it can be taken out. The next section being repealed is the elections title. That one is being relocated. There is another amendment prepared by John Bjornson (see attachment 2). The first 11 sections we were requested to include were from the child support division. They are operating under one of those programs that have federal oversight. The Feds. are very insistent that the language they recommend be adopted precisely as they wrote it. So these provisions have been incorporated in law with a contingent effective date, but the Feds. looked at those provisions, made these suggested changes to comply with their view of how our statutes should read. The changes being made here are non-substantive just to satisfy someone in Washington DC. Section 12 in these amendments makes a correction in the start date. Anita Thomas was requested to make this change. It's a change from September to August, just to match up with the actual beginning of the formal school year start date. There's a new section 16 added here. It relates to the Garrison Diversion Conservancy District. The statute here lists the member counties, but it fails to list all of them; the two missing are McKenzie and Williams. Those are added with this amendment. The other amendment, 02002 is the one that was prepared by Mr. Bjornson, requested by the office of the Attorney General. It relates to military spouse licensing and the draft as submitted last session to our office had "the Board shall adopt rules regarding licensing military spouse and shall grant on a case-by-case basis exceptions. In the processing, the "and" was changed to an "or" and nobody noticed that that change had been made. Since then it was noticed and it was requested that we reinstate the "or" that they intended to be there from the beginning.

Ch. Hogue: The ones from the federal government are regarded as technical corrections?

John Walstad: Yes.

Sen. Armstrong: It's not a particular occupation; it's the electrical board, state appraisers, state commissioners, there is a list of seven of them.

John Walstad: Yes, the military spouse related to a number of professions where the spouses relocated here in the state and were having an issue with getting licensed.

Ch. Hogue: Any further questions? Further testimony in support of SB 2053.

Merri Mooridian, Administrative Officer, Garrison Diversion Conservancy District: (See attachment 3).

Ch. Hogue: Can you give the committee a little background on the conservancy district. Does each county then have an elected representative who serves on the district?

Merri Mooridian: Yes. We were created in the federal 1944 flood control act; and in 1955 the ND legislature created the Garrison Diversion Conservancy district and as far as our board of directors, each member county, 28 counties, elects a board member at the general election. They serve four year terms.

Ch. Hogue: So the board consists of the 28 members.

Merri Mooridian: Yes, we have 28 members.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Testimony in neutral. We will close the hearing. What are the committee's wishes?

Sen. Armstrong: I move that we amend 2053 with amendment 15.0168.02001.

Sen. C. Nelson: Second the motion.

Ch. Hogue: Discussion? We will take a voice vote. Motion carried.

Sen. Grabinger: I move amendment 15.0168.02002.

Sen. C. Nelson: Second the motion.

Ch. Hogue: We will take a voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes?

Sen. Armstrong: I move SB 2053 as amended.

Sen. Grabinger: Second the motion.

Ch. Hogue: We will take a roll call vote.

6 YES   0 NO   0 ABSENT   DO PASS AS AMENDED   CARRIER: Sen. Nelson

PROPOSED AMENDMENTS TO SENATE BILL NO. 2053

Page 1, line 1, after "reenact" insert "sections 14-12.2-47.1, 14-12.2-47.2, 14-12.2-47.4, 14-12.2-47.5, 14-12.2-47.6, 14-12.2-47.7, 14-12.2-47.8, 14-12.2-47.9, 14-12.2-47.10, 14-12.2-47.11, and 14-12.2-47.13, subsection 4 of section 15.1-32-01,"

Page 1, line 2, replace "section" with "sections"

Page 1, line 2, after "54-44.1-18" insert "and 61-24-02"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 14-12.2-47.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.1. (Contingent effective date - See note) (701) Definitions.**

In sections 14-12.2-47.1 through 14-12.2-47.13:

1. "Application" means a request under the convention by an obligee, obligor, or on behalf of a child, made through a central authority for assistance from another central authority.
2. "Central authority" means the entity designated by the United States or a foreign country described in subdivision d of subsection 5 of section 14-12.2-01 to perform the functions specified in the convention.
3. "Convention support order" means ~~ana support~~ order of a tribunal of a foreign country in which the convention is in force with respect to the United States described in subdivision d of subsection 5 of section 14-12.2-01.
4. "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.
5. "Foreign central authority" means the entity designated by a foreign country ~~in which the convention is in force with respect to the United States~~ described in subdivision d of subsection 5 of section 14-12.2-01 to perform the functions specified in the convention.
6. "Foreign support agreement" ~~means an agreement for support in a record, also known as a maintenance arrangement in the convention, that:~~
  - a. Means an agreement for support in a record that:
    - (1) Is enforceable as a support order in the country of origin;
    - (2) Has been:
      - (a) Formally drawn up or registered or has been authenticated by, or concluded, registered, or filed with a foreign tribunal;  
or



(b) Authenticated by, or concluded, registered, or filed with a foreign tribunal; and

(3) May be reviewed and modified by a foreign tribunal; and

b. ~~Has been formally drawn up or registered or has been authenticated by, or concluded, registered, or filed with a foreign tribunal; and~~Includes a maintenance arrangement or authentic instrument under the convention.

c. ~~May be reviewed and modified by a foreign tribunal.~~

7. "United States central authority" means the secretary of the United States department of health and human services.

**SECTION 2. AMENDMENT.** Section 14-12.2-47.2 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.2. (Contingent effective date - See note) (702) Applicability.**

Sections 14-12.2-47.1 through 14-12.2-47.13 apply only to a support proceeding involving a foreign country in which under the convention is in force with respect to the United States. In such a proceeding, if a provision of sections 14-12.2-47.1 through 14-12.2-47.13 is inconsistent with a provision of sections 14-12.2-01 through 14-12.2-46.4, sections 14-12.2-47.1 through 14-12.2-47.13 control.

**SECTION 3. AMENDMENT.** Section 14-12.2-47.4 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.4. (Contingent effective date - See note) (704) Initiation by department of human services of support proceeding subject to under convention.**

1. In a support proceeding subject to under the convention, the department of human services of this state shall:
  - a. Transmit and receive applications; and
  - b. Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.
2. The following support proceedings are available to an obligee under the convention:
  - a. Recognition or recognition and enforcement of a foreign support order;
  - b. Enforcement of a support order issued or recognized in this state;
  - c. Establishment of a support order if there is no existing order, including, where necessary, determination of parentage of a child;
  - d. Establishment of a support order if recognition of a foreign support order is refused under subdivision b, d, or i of subsection 2, 4, or 9 of section 14-12.2-47.8;
  - e. Modification of a support order of a tribunal of this state; and

- f. Modification of a support order of a tribunal of another state or foreign country.
3. The following support proceedings are available under the convention to an obligor against whom there is an existing support order:
  - a. Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;
  - b. Modification of a support order of a tribunal of this state; and
  - c. Modification of a support order of a tribunal of another state or foreign country.

**SECTION 4. AMENDMENT.** Section 14-12.2-47.5 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.5. (Contingent effective date - See note) (705) Direct request.**

1. A petitioner may file a direct request ~~in a tribunal of this state~~ seeking the establishment or modification of a support order or determination of parentage of a child. In such a proceeding, the law of this state applies.
2. A petitioner may file a direct request ~~in a tribunal of this state~~ seeking the recognition and enforcement of a support order or support agreement. In such a proceeding, the provisions of sections 14-12.2-47.6 through 14-12.2-47.13 apply.
3. In a direct request for recognition and enforcement of a convention support order or foreign support agreement:
  - a. ~~No~~A security, bond, or deposit ~~shall be~~ is not required to guarantee the payment of costs and expenses ~~related to the proceedings~~; and
  - b. The obligee or obligor, who in the issuing country has benefited from free legal assistance, shall be entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.
4. An individual filing ~~directly with a tribunal will not receive~~ a direct request is not entitled to assistance from the department of human services.
5. Nothing in sections 14-12.2-47.1 through 14-12.2-47.13 prevents the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or support agreement.

**SECTION 5. AMENDMENT.** Section 14-12.2-47.6 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.6. (Contingent effective date - See note) (706) Registration of convention support order.**

1. Except as otherwise provided in sections 14-12.2-47.1 through 14-12.2-47.13, a party who is an individual or a support enforcement

agency seeking recognition of a convention support order shall register the order in this state as provided in sections 14-12.2-35 through 14-12.2-46.4.

2. Notwithstanding section 14-12.2-23 and subsection 1 of section 14-12.2-36, a request for registration of a convention support order must be accompanied by:
  - a. A complete text of the support order, or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague conference on private international law;
  - b. A record stating that the support order is enforceable in the issuing country;
  - c. If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;
  - d. A record showing the amount of arrears, if any, and the date the amount was calculated;
  - e. A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and
  - f. If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.
3. A request for registration of a convention support order may seek recognition and partial enforcement of the order.
4. A tribunal of this state may vacate the registration of a convention support order ~~on its own motion~~, without the filing of a contest under section 14-12.2-47.7 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.
5. The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order.

**SECTION 6. AMENDMENT.** Section 14-12.2-47.7 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.7. (Contingent effective date - See note) (707) Contest of registered convention support order.**

1. Except as otherwise provided in sections 14-12.2-47.1 through 14-12.2-47.13, sections 14-12.2-39 through 14-12.2-42 apply to a contest of a registered convention support order.
2. A party contesting a registered convention support order must file a contest ~~within~~not later than thirty days after notice of the registration ~~unless~~but if

the contesting party does not reside in the United States, ~~in which case the contest must be filed within~~not later than sixty days after notice of the registration.

3. If the nonregistering party fails to contest the registered convention support order ~~in a timely manner~~by the time specified in subsection 2, the order is enforceable ~~by operation of law.~~
4. A contest of a registered convention support order may be based only on grounds set forth in section 14-12.2-47.8, and the contesting party bears the burden of proof.
5. In a contest of a registered convention support order, a tribunal of this state:
  - a. Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and
  - b. May not review the merits of the support order.
6. A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.
7. ~~An~~A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

**SECTION 7. AMENDMENT.** Section 14-12.2-47.8 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.8. (Contingent effective date - See note) (708) ~~Refusal of recognition~~Recognition and enforcement of registered convention support order.**

~~A tribunal of this state may refuse recognition and enforcement of a registered convention support order only on the following grounds:~~

1. Except as otherwise provided in subsection 2, a tribunal of this state shall recognize and enforce a registered convention support order.
2. The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:
  - a. Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;
  - b. The issuing tribunal lacked personal jurisdiction consistent with section 14-12.2-04;
  - c. The order is not enforceable in the issuing country;
  - d. The order was obtained by fraud in connection with a matter of procedure;
  - e. A record transmitted in accordance with section 14-12.2-47.6 lacks authenticity or integrity;

- 6. f. A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;
- 7. g. The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement in this state;
- 8. h. Payment, to the extent alleged arrears have been paid in whole or in part;
- 9. i. In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country when the law of that country:
  - a. (1) Provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
  - b. (2) Does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or
- 10. j. The order was made in violation of section 14-12.2-47.11.
- 3. If a tribunal of this state does not recognize a convention support order under subdivision b, d, or i of subsection 2:
  - a. The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order; and
  - b. The department of human services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 14-12.2-47.40.

**SECTION 8. AMENDMENT.** Section 14-12.2-47.9 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.9. (Contingent effective date - See note) (709) Partial enforcement –New support order.**

- 1. If a tribunal of this state ~~may~~does not recognize and enforce the whole of a convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order.
- 2. ~~If a tribunal of this state may not recognize a convention support order under subsection 2, 4, or 9 of section 14-12.2-47.8:~~
  - a. ~~The tribunal may not dismiss proceeding without allowing a reasonable time for a party to request the establishment of a new support order.~~

- b. ~~The department of human services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 14-12.2-47.4.~~

**SECTION 9. AMENDMENT.** Section 14-12.2-47.10 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.10. (Contingent effective date - See note) (710) Foreign support agreement.**

1. Except as provided in subsections 3 and 4, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.
2. An application or direct request for recognition and enforcement of a foreign support agreement shall be accompanied by:
  - a. A complete text of the foreign support agreement; and
  - b. A record stating that the foreign support agreement is enforceable as a decision or order of support in the issuing country.
3. A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.
4. In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:
  - a. Recognition and enforcement of the agreement is manifestly incompatible with public policy;
  - b. The agreement was obtained by fraud or falsification;
  - c. The agreement is incompatible with a support order involving the same parties and having the same purpose, ~~either in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this chapter~~ in this state; or
  - d. The record submitted under subsection 2 lacks authenticity or integrity.
5. A proceeding for recognition and enforcement of a foreign support agreement shall be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or foreign country.

**SECTION 10. AMENDMENT.** Section 14-12.2-47.11 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.11. (Contingent effective date - See note) (711) Modification of convention child support order ~~subject to convention~~.**

1. A tribunal of this state may not modify a convention child support order ~~subject to the convention~~ if the obligee remains a resident of the foreign country where the support order was issued unless:



- a. The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or
  - b. The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.
2. If a tribunal of this state ~~may~~does not modify ~~the~~a convention child support order ~~subject to the convention~~ because the order ~~may~~is not be recognized in this state, ~~subdivision a of subsection 23 of section 14-12.2-47.9~~14-12.2-47.8 applies.

**SECTION 11. AMENDMENT.** Section 14-12.2-47.13 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.13. (Contingent effective date - See note) (713) Record in original language - English translation required.**

A record filed with a tribunal of this state under sections 14-12.2-47.1 through 14-12.2-47.13 must be in the original language and, if ~~necessary~~not in English, must be accompanied by an English translation.

**SECTION 12. AMENDMENT.** Subsection 4 of section 15.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Student with a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before ~~September~~August first of the year in which the individual turns twenty-one and who requires special education and related services because of:
  - (1) An intellectual disability;
  - (2) A hearing impairment, including deafness;
  - (3) Deaf-blindness;
  - (4) A speech or language impairment;
  - (5) A visual impairment, including blindness;
  - (6) An emotional disturbance;
  - (7) An orthopedic impairment;
  - (8) Autism;
  - (9) A traumatic brain injury;
  - (10) Other health impairment; or
  - (11) A specific learning disability.
- b. "Student with a disability" includes a student age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program."

Page 3, after line 12, insert:

**"SECTION 16. AMENDMENT.** Section 61-24-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-24-02. Garrison Diversion Conservancy District created.**

The "Garrison Diversion Conservancy District", hereinafter referred to as the "district" consists of that part of the state that is included within the boundaries of the following counties: Barnes, Benson, Bottineau, Burleigh, Cass, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoure, McHenry, McKenzie, McLean, Nelson, Pierce, Ramsey, Ransom, Renville, Richland, Sargent, Sheridan, Steele, Stutsman, Traill, Ward, and Wells, and Williams.

The district is a governmental agency, body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

Any county may join the district upon application of its board of county commissioners and the approval of the application by the board of directors of the district. Such county is authorized to levy taxes as may be necessary to carry out its part of the agreement for becoming a part of the district, which levy is in addition to the amount that may otherwise be legally levied for county purposes."

Re-number accordingly



January 6, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2053

Page 1, line 1, after the second comma insert "subsection 1 of section 43-51-11.1,"

Page 2, after line 5, insert:

**"SECTION 3. AMENDMENT.** Subsection 1 of section 43-51-11.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A board shall adopt rules regarding licensure of a military spouse ~~and~~or shall grant on a case-by-case basis exceptions to the board's licensing standards to allow a military spouse to practice the occupation or profession in the state if upon application to the board:
  - a. The military spouse demonstrates competency in the occupation or profession through methods or standards determined by the board which must include experience in the occupation or profession for at least two of the four years preceding the date of application under this section;
  - b. The military spouse pays any fees required by the board from which the applicant is seeking a license; and
  - c. The board determines the exception will not substantially increase the risk of harm to the public."

Renumber accordingly

January 7, 2015

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2053

Page 1, line 1, after "reenact" insert "sections 14-12.2-47.1, 14-12.2-47.2, 14-12.2-47.4, 14-12.2-47.5, 14-12.2-47.6, 14-12.2-47.7, 14-12.2-47.8, 14-12.2-47.9, 14-12.2-47.10, 14-12.2-47.11, and 14-12.2-47.13, subsection 4 of section 15.1-32-01,"

Page 1, line 1, after the second comma insert "subsection 1 of section 43-51-11.1,"

Page 1, line 2, replace "section" with "sections"

Page 1, line 2, after "54-44.1-18" insert "and 61-24-02"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 14-12.2-47.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.1. (Contingent effective date - See note) (701) Definitions.**

In sections 14-12.2-47.1 through 14-12.2-47.13:

1. "Application" means a request under the convention by an obligee, obligor, or on behalf of a child, made through a central authority for assistance from another central authority.
2. "Central authority" means the entity designated by the United States or a foreign country described in subdivision d of subsection 5 of section 14-12.2-01 to perform the functions specified in the convention.
3. "Convention support order" means ~~ana~~ a support order of a tribunal of a foreign country in which the convention is in force with respect to the United States described in subdivision d of subsection 5 of section 14-12.2-01.
4. "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.
5. "Foreign central authority" means the entity designated by a foreign country ~~in which the convention is in force with respect to the United States~~ described in subdivision d of subsection 5 of section 14-12.2-01 to perform the functions specified in the convention.
6. "Foreign support agreement" ~~means an agreement for support in a record, also known as a maintenance arrangement in the convention, that:~~
  - a. Means an agreement for support in a record that:
    - (1) Is enforceable as a support order in the country of origin;
    - (2) Has been:

- 2/9
- (a) Formally drawn up or registered as an authentic instrument by a foreign tribunal; or
  - (b) Authenticated by, or concluded, registered, or filed with a foreign tribunal; and
  - (3) May be reviewed and modified by a foreign tribunal; and
  - b. ~~Has been formally drawn up or registered or has been authenticated by, or concluded, registered, or filed with a foreign tribunal; and~~
  - c. ~~May be reviewed and modified by a foreign tribunal~~ Includes a maintenance arrangement or authentic instrument under the convention.
7. "United States central authority" means the secretary of the United States department of health and human services.

**SECTION 2. AMENDMENT.** Section 14-12.2-47.2 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.2. (Contingent effective date - See note) (702) Applicability.**

Sections 14-12.2-47.1 through 14-12.2-47.13 apply only to a support proceeding ~~involving a foreign country in which~~ under the convention is in force with respect to the United States. In such a proceeding, if a provision of sections 14-12.2-47.1 through 14-12.2-47.13 is inconsistent with a provision of sections 14-12.2-01 through 14-12.2-46.4, sections 14-12.2-47.1 through 14-12.2-47.13 control.

**SECTION 3. AMENDMENT.** Section 14-12.2-47.4 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.4. (Contingent effective date - See note) (704) Initiation by department of human services of support proceeding subject to ~~under~~ convention.**

1. In a support proceeding subject to ~~under~~ the convention, the department of human services of this state shall:
  - a. Transmit and receive applications; and
  - b. Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.
2. The following support proceedings are available to an obligee under the convention:
  - a. Recognition or recognition and enforcement of a foreign support order;
  - b. Enforcement of a support order issued or recognized in this state;
  - c. Establishment of a support order if there is no existing order, including, where necessary, determination of parentage of a child;
  - d. Establishment of a support order if recognition of a foreign support order is refused under subdivision b, d, or i of subsection 2, 4, or 9 of section 14-12.2-47.8;



- e. Modification of a support order of a tribunal of this state; and
  - f. Modification of a support order of a tribunal of another state or foreign country.
3. The following support proceedings are available under the convention to an obligor against whom there is an existing support order:
    - a. Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;
    - b. Modification of a support order of a tribunal of this state; and
    - c. Modification of a support order of a tribunal of another state or foreign country.

**SECTION 4. AMENDMENT.** Section 14-12.2-47.5 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.5. (Contingent effective date - See note) (705) Direct request.**

1. A petitioner may file a direct request ~~in a tribunal of this state~~ seeking the establishment or modification of a support order or determination of parentage of a child. In such a proceeding, the law of this state applies.
2. A petitioner may file a direct request ~~in a tribunal of this state~~ seeking the recognition and enforcement of a support order or support agreement. In such a proceeding, the provisions of sections 14-12.2-47.6 through 14-12.2-47.13 apply.
3. In a direct request for recognition and enforcement of a convention support order or foreign support agreement:
  - a. ~~No~~A security, bond, or deposit ~~shall be~~ is not required to guarantee the payment of costs and expenses ~~related to the proceedings~~; and
  - b. The obligee or obligor, who in the issuing country has benefited from free legal assistance, shall be entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.
4. An individual filing ~~directly with a tribunal will not receive~~ a direct request is not entitled to assistance from the department of human services.
5. Nothing in sections 14-12.2-47.1 through 14-12.2-47.13 prevents the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or support agreement.

**SECTION 5. AMENDMENT.** Section 14-12.2-47.6 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.6. (Contingent effective date - See note) (706) Registration of convention support order.**

1. Except as otherwise provided in sections 14-12.2-47.1 through 14-12.2-47.13, a party who is an individual or a support enforcement

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agency seeking recognition of a convention support order shall register the order in this state as provided in sections 14-12.2-35 through 14-12.2-46.4.

2. Notwithstanding section 14-12.2-23 and subsection 1 of section 14-12.2-36, a request for registration of a convention support order must be accompanied by:
  - a. A complete text of the support order, or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague conference on private international law;
  - b. A record stating that the support order is enforceable in the issuing country;
  - c. If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;
  - d. A record showing the amount of arrears, if any, and the date the amount was calculated;
  - e. A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and
  - f. If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.
3. A request for registration of a convention support order may seek recognition and partial enforcement of the order.
4. A tribunal of this state may vacate the registration of a convention support order ~~on its own motion~~, without the filing of a contest under section 14-12.2-47.7 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.
5. The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order.

**SECTION 6. AMENDMENT.** Section 14-12.2-47.7 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.7. (Contingent effective date - See note) (707) Contest of registered convention support order.**

1. Except as otherwise provided in sections 14-12.2-47.1 through 14-12.2-47.13, sections 14-12.2-39 through 14-12.2-42 apply to a contest of a registered convention support order.
2. A party contesting a registered convention support order must file a contest within not later than thirty days after notice of the registration ~~unless~~ but if

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the contesting party does not reside in the United States, in ~~which case~~ the contest must be filed ~~within~~not later than sixty days after notice of the registration.

3. If the nonregistering party fails to contest the registered convention support order ~~in a timely manner~~by the time specified in subsection 2, the order is enforceable ~~by operation of law~~.
4. A contest of a registered convention support order may be based only on grounds set forth in section 14-12.2-47.8, and the contesting party bears the burden of proof.
5. In a contest of a registered convention support order, a tribunal of this state:
  - a. Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and
  - b. May not review the merits of the support order.
6. A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.
7. ~~An~~A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

**SECTION 7. AMENDMENT.** Section 14-12.2-47.8 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.8. (Contingent effective date - See note) (708) Refusal of recognitionRecognition and enforcement of registered convention support order.**

~~A tribunal of this state may refuse recognition and enforcement of a registered convention support order only on the following grounds:~~

1. Except as otherwise provided in subsection 2, a tribunal of this state shall recognize and enforce a registered convention support order.
2. The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:
  - a. Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;
  - b. The issuing tribunal lacked personal jurisdiction consistent with section 14-12.2-04;
  - c. The order is not enforceable in the issuing country;
  - d. The order was obtained by fraud in connection with a matter of procedure;
  - e. A record transmitted in accordance with section 14-12.2-47.6 lacks authenticity or integrity;

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- 6. f. A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;
  - 7. g. The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement in this state;
  - 8. h. Payment, to the extent alleged arrears have been paid in whole or in part;
  - 9. i. In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country when the law of that country:
    - a. (1) Provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
    - b. (2) Does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or
  - 10. j. The order was made in violation of section 14-12.2-47.11.
  - 3. If a tribunal of this state does not recognize a convention support order under subdivision b, d, or i of subsection 2:
    - a. The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order; and
    - b. The department of human services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 14-12.2-47.4.

**SECTION 8. AMENDMENT.** Section 14-12.2-47.9 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.9. (Contingent effective date - See note) (709) Partial enforcement –~~New support order.~~**

- 1. If a tribunal of this state ~~may~~does not recognize and enforce the whole of a convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order.
- 2. ~~If a tribunal of this state may not recognize a convention support order under subsection 2, 4, or 9 of section 14-12.2-47.8:~~
  - a. ~~The tribunal may not dismiss proceeding without allowing a reasonable time for a party to request the establishment of a new support order.~~



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- b. ~~The department of human services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 14-12.2-47.4.~~

**SECTION 9. AMENDMENT.** Section 14-12.2-47.10 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.10. (Contingent effective date - See note) (710) Foreign support agreement.**

1. Except as provided in subsections 3 and 4, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.
2. An application or direct request for recognition and enforcement of a foreign support agreement shall be accompanied by:
  - a. A complete text of the foreign support agreement; and
  - b. A record stating that the foreign support agreement is enforceable as a decision or an order of support in the issuing country.
3. A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.
4. In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:
  - a. Recognition and enforcement of the agreement is manifestly incompatible with public policy;
  - b. The agreement was obtained by fraud or falsification;
  - c. The agreement is incompatible with a support order involving the same parties and having the same purpose, ~~either~~ in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this chapter in this state; or
  - d. The record submitted under subsection 2 lacks authenticity or integrity.
5. A proceeding for recognition and enforcement of a foreign support agreement shall be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or foreign country.

**SECTION 10. AMENDMENT.** Section 14-12.2-47.11 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.11. (Contingent effective date - See note) (711) Modification of convention child support order ~~subject to convention~~.**

1. A tribunal of this state may not modify a convention child support order ~~subject to the convention~~ if the obligee remains a resident of the foreign country where the support order was issued unless:



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- a. The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or
  - b. The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.
2. If a tribunal of this state ~~may~~does not modify ~~the~~a convention child support order ~~subject to the convention~~ because the order ~~may~~is not be recognized in this state, ~~subdivision a of subsection 23 of section 14-12.2-47.9~~14-12.2-47.8 applies.

**SECTION 11. AMENDMENT.** Section 14-12.2-47.13 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.13. (Contingent effective date - See note) (713) Record in original language - English translation required.**

A record filed with a tribunal of this state under sections 14-12.2-47.1 through 14-12.2-47.13 must be in the original language and, if ~~necessary~~not in English, must be accompanied by an English translation.

**SECTION 12. AMENDMENT.** Subsection 4 of section 15.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Student with a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before ~~September~~August first of the year in which the individual turns twenty-one and who requires special education and related services because of:
  - (1) An intellectual disability;
  - (2) A hearing impairment, including deafness;
  - (3) Deaf-blindness;
  - (4) A speech or language impairment;
  - (5) A visual impairment, including blindness;
  - (6) An emotional disturbance;
  - (7) An orthopedic impairment;
  - (8) Autism;
  - (9) A traumatic brain injury;
  - (10) Other health impairment; or
  - (11) A specific learning disability.
- b. "Student with a disability" includes a student age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program."

Page 2, after line 5, insert:

**"SECTION 15. AMENDMENT.** Subsection 1 of section 43-51-11.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A board shall adopt rules regarding licensure of a military spouse ~~and~~ shall grant on a case-by-case basis exceptions to the board's licensing standards to allow a military spouse to practice the occupation or profession in the state if upon application to the board:
  - a. The military spouse demonstrates competency in the occupation or profession through methods or standards determined by the board which must include experience in the occupation or profession for at least two of the four years preceding the date of application under this section;
  - b. The military spouse pays any fees required by the board from which the applicant is seeking a license; and
  - c. The board determines the exception will not substantially increase the risk of harm to the public."

Page 3, after line 12, insert:

**"SECTION 17. AMENDMENT.** Section 61-24-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-24-02. Garrison Diversion Conservancy District created.**

The "Garrison Diversion Conservancy District", hereinafter referred to as the "district" consists of that part of the state that is included within the boundaries of the following counties: Barnes, Benson, Bottineau, Burleigh, Cass, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoure, McHenry, McKenzie, McLean, Nelson, Pierce, Ramsey, Ransom, Renville, Richland, Sargent, Sheridan, Steele, Stutsman, Traill, Ward, ~~and Wells, and Williams~~.

The district is a governmental agency, body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

Any county may join the district upon application of its board of county commissioners and the approval of the application by the board of directors of the district. Such county is authorized to levy taxes as may be necessary to carry out its part of the agreement for becoming a part of the district, which levy is in addition to the amount that may otherwise be legally levied for county purposes."

Renumber accordingly

Date: 1/7/2015  
Roll Call Vote #: 1  
Voice

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTE  
BILL/RESOLUTION NO. 2053

Senate

**JUDICIARY**

Committee

☐ Subcommittee

Amendment LC# or  
Description:

15.0168.02001

Recommendation:

☒ Adopt Amendment

☐ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☐ As Amended

☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions:

☐ Reconsider

☐

Motion Made By

Sen Armstrong

Seconded By

Sen Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) 6 No 0

Absent 0

Floor

Assignment

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

Voice Vote.

## Voice

**BILL/RESOLUTION NO.** 2053

Voice Vote.

Date: 1/7/2015  
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTE  
BILL/RESOLUTION NO. 2053

Senate

**JUDICIARY**

Committee

☐ Subcommittee

Amendment LC# or  
Description:

15.0168.02003

Recommendation:

☐ Adopt Amendment

☒ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☒ As Amended

☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions:

☐ Reconsider

☐

Motion Made By

Sen. Armstrong

Seconded By

Sen. Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes)

6

No

0

Absent

0

Floor

Assignment

Sen. Nelson

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

**REPORT OF STANDING COMMITTEE**

**SB 2053: Judiciary Committee (Sen. Hogue, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2053 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "sections 14-12.2-47.1, 14-12.2-47.2, 14-12.2-47.4, 14-12.2-47.5, 14-12.2-47.6, 14-12.2-47.7, 14-12.2-47.8, 14-12.2-47.9, 14-12.2-47.10, 14-12.2-47.11, and 14-12.2-47.13, subsection 4 of section 15.1-32-01,"

Page 1, line 1, after the second comma insert "subsection 1 of section 43-51-11.1,"

Page 1, line 2, replace "section" with "sections"

Page 1, line 2, after "54-44.1-18" insert "and 61-24-02"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 14-12.2-47.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.1. (Contingent effective date - See note) (701) Definitions.**

In sections 14-12.2-47.1 through 14-12.2-47.13:

1. "Application" means a request under the convention by an obligee, obligor, or on behalf of a child, made through a central authority for assistance from another central authority.
2. "Central authority" means the entity designated by the United States or a foreign country described in subdivision d of subsection 5 of section 14-12.2-01 to perform the functions specified in the convention.
3. "Convention support order" means ana support order of a tribunal of a foreign country in which the convention is in force with respect to the United States described in subdivision d of subsection 5 of section 14-12.2-01.
4. "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.
5. "Foreign central authority" means the entity designated by a foreign country in which the convention is in force with respect to the United States described in subdivision d of subsection 5 of section 14-12.2-01 to perform the functions specified in the convention.
6. "Foreign support agreement" means an agreement for support in a record, also known as a maintenance arrangement in the convention, that:
  - a. Means an agreement for support in a record that:
    - (1) Is enforceable as a support order in the country of origin;
    - (2) Has been:
      - (a) Formally drawn up or registered as an authentic instrument by a foreign tribunal; or



- (b) Authenticated by, or concluded, registered, or filed with a foreign tribunal; and
    - (3) May be reviewed and modified by a foreign tribunal; and
  - b. ~~Has been formally drawn up or registered or has been authenticated by, or concluded, registered, or filed with a foreign tribunal; and~~
  - c. ~~May be reviewed and modified by a foreign tribunal~~Includes a maintenance arrangement or authentic instrument under the convention.
7. "United States central authority" means the secretary of the United States department of health and human services.

**SECTION 2. AMENDMENT.** Section 14-12.2-47.2 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.2. (Contingent effective date - See note) (702) Applicability.**

Sections 14-12.2-47.1 through 14-12.2-47.13 apply only to a support proceeding ~~involving a foreign country in which under the convention is in force with respect to the United States.~~ In such a proceeding, if a provision of sections 14-12.2-47.1 through 14-12.2-47.13 is inconsistent with a provision of sections 14-12.2-01 through 14-12.2-46.4, sections 14-12.2-47.1 through 14-12.2-47.13 control.

**SECTION 3. AMENDMENT.** Section 14-12.2-47.4 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.4. (Contingent effective date - See note) (704) Initiation by department of human services of support proceeding subject to under convention.**

1. In a support proceeding ~~subject to~~ under the convention, the department of human services of this state shall:
  - a. Transmit and receive applications; and
  - b. Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.
2. The following support proceedings are available to an obligee under the convention:
  - a. Recognition or recognition and enforcement of a foreign support order;
  - b. Enforcement of a support order issued or recognized in this state;
  - c. Establishment of a support order if there is no existing order, including, where necessary, determination of parentage of a child;
  - d. Establishment of a support order if recognition of a foreign support order is refused under subdivision b, d, or i of subsection 2, 4, or 9 of section 14-12.2-47.8;
  - e. Modification of a support order of a tribunal of this state; and
  - f. Modification of a support order of a tribunal of another state or foreign country.

3. The following support proceedings are available under the convention to an obligor against whom there is an existing support order:
  - a. Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;
  - b. Modification of a support order of a tribunal of this state; and
  - c. Modification of a support order of a tribunal of another state or foreign country.

**SECTION 4. AMENDMENT.** Section 14-12.2-47.5 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.5. (Contingent effective date - See note) (705) Direct request.**

1. A petitioner may file a direct request ~~in a tribunal of this state~~ seeking the establishment or modification of a support order or determination of parentage of a child. In such a proceeding, the law of this state applies.
2. A petitioner may file a direct request ~~in a tribunal of this state~~ seeking the recognition and enforcement of a support order or support agreement. In such a proceeding, the provisions of sections 14-12.2-47.6 through 14-12.2-47.13 apply.
3. In a direct request for recognition and enforcement of a convention support order or foreign support agreement:
  - a. ~~No~~A security, bond, or deposit ~~shall be~~ is not required to guarantee the payment of costs and expenses ~~related to the proceedings~~;
  - b. The obligee or obligor, who in the issuing country has benefited from free legal assistance, shall be entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.
4. An individual filing ~~directly with a tribunal will not receive~~ a direct request is not entitled to assistance from the department of human services.
5. Nothing in sections 14-12.2-47.1 through 14-12.2-47.13 prevents the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or support agreement.

**SECTION 5. AMENDMENT.** Section 14-12.2-47.6 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.6. (Contingent effective date - See note) (706) Registration of convention support order.**

1. Except as otherwise provided in sections 14-12.2-47.1 through 14-12.2-47.13, a party who is an individual or a support enforcement agency seeking recognition of a convention support order shall register the order in this state as provided in sections 14-12.2-35 through 14-12.2-46.4.
2. Notwithstanding section 14-12.2-23 and subsection 1 of section 14-12.2-36, a request for registration of a convention support order must be accompanied by:



- a. A complete text of the support order, or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague conference on private international law;
  - b. A record stating that the support order is enforceable in the issuing country;
  - c. If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;
  - d. A record showing the amount of arrears, if any, and the date the amount was calculated;
  - e. A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and
  - f. If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.
3. A request for registration of a convention support order may seek recognition and partial enforcement of the order.
  4. A tribunal of this state may vacate the registration of a convention support order ~~on its own motion~~, without the filing of a contest under section 14-12.2-47.7 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.
  5. The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order.

**SECTION 6. AMENDMENT.** Section 14-12.2-47.7 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.7. (Contingent effective date - See note) (707) Contest of registered convention support order.**

1. Except as otherwise provided in sections 14-12.2-47.1 through 14-12.2-47.13, sections 14-12.2-39 through 14-12.2-42 apply to a contest of a registered convention support order.
2. A party contesting a registered convention support order must file a contest ~~within not later than~~ thirty days after notice of the registration ~~unless but if~~ the contesting party does not reside in the United States, in which case the contest must be filed ~~within not later than~~ sixty days after notice of the registration.
3. If the nonregistering party fails to contest the registered convention support order ~~in a timely manner by the time specified in subsection 2~~, the order is enforceable ~~by operation of law~~.
4. A contest of a registered convention support order may be based only on grounds set forth in section 14-12.2-47.8, and the contesting party bears the burden of proof.

5. In a contest of a registered convention support order, a tribunal of this state:
  - a. Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and
  - b. May not review the merits of the support order.
6. A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.
7. ~~An~~A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

**SECTION 7. AMENDMENT.** Section 14-12.2-47.8 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.8. (Contingent effective date - See note) (708) ~~Refusal of recognition~~Recognition and enforcement of registered convention support order.**

~~A tribunal of this state may refuse recognition and enforcement of a registered convention support order only on the following grounds:~~

1. Except as otherwise provided in subsection 2, a tribunal of this state shall recognize and enforce a registered convention support order.
2. The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:
  - a. Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;
  2. b. The issuing tribunal lacked personal jurisdiction consistent with section 14-12.2-04;
  3. c. The order is not enforceable in the issuing country;
  4. d. The order was obtained by fraud in connection with a matter of procedure;
  5. e. A record transmitted in accordance with section 14-12.2-47.6 lacks authenticity or integrity;
  6. f. A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;
  7. g. The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement in this state;
  8. h. Payment, to the extent alleged arrears have been paid in whole or in part;
  9. i. In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country when the law of that country:

- a. (1) Provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
  - b. (2) Does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or
40. j. The order was made in violation of section 14-12.2-47.11.
3. If a tribunal of this state does not recognize a convention support order under subdivision b, d, or i of subsection 2:
- a. The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order; and
  - b. The department of human services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 14-12.2-47.4.

**SECTION 8. AMENDMENT.** Section 14-12.2-47.9 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.9. (Contingent effective date - See note) (709) Partial enforcement –New support order.**

4. If a tribunal of this state ~~may~~does not recognize and enforce the ~~whole of~~ a convention support order ~~in its entirety~~, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order.

- 2. ~~If a tribunal of this state may not recognize a convention support order under subsection 2, 4, or 9 of section 14-12.2-47.8:~~
- a. ~~The tribunal may not dismiss proceeding without allowing a reasonable time for a party to request the establishment of a new support order.~~
- b. ~~The department of human services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 14-12.2-47.4.~~

**SECTION 9. AMENDMENT.** Section 14-12.2-47.10 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.10. (Contingent effective date - See note) (710) Foreign support agreement.**

- 1. Except as provided in subsections 3 and 4, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.
- 2. An application or direct request for recognition and enforcement of a foreign support agreement shall be accompanied by:
  - a. A complete text of the foreign support agreement; and

- b. A record stating that the foreign support agreement is enforceable as ~~a decision~~ an order of support in the issuing country.
3. A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.
4. In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:
  - a. Recognition and enforcement of the agreement is manifestly incompatible with public policy;
  - b. The agreement was obtained by fraud or falsification;
  - c. The agreement is incompatible with a support order involving the same parties and having the same purpose, ~~either~~ in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this chapter in this state; or
  - d. The record submitted under subsection 2 lacks authenticity or integrity.
5. A proceeding for recognition and enforcement of a foreign support agreement shall be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or foreign country.

**SECTION 10. AMENDMENT.** Section 14-12.2-47.11 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.11. (Contingent effective date - See note) (711) Modification of convention child support order ~~subject to convention~~.**

1. A tribunal of this state may not modify a convention child support order ~~subject to the convention~~ if the obligee remains a resident of the foreign country where the support order was issued unless:
  - a. The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or
  - b. The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.
2. If a tribunal of this state ~~may~~ does not modify ~~the a convention~~ child support order ~~subject to the convention~~ because the order ~~may~~ is not be recognized in this state, ~~subdivision a of subsection 23 of section 14-12.2-47.9~~ 14-12.2-47.8 applies.

**SECTION 11. AMENDMENT.** Section 14-12.2-47.13 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.13. (Contingent effective date - See note) (713) Record in original language - English translation required.**

A record filed with a tribunal of this state under sections 14-12.2-47.1 through 14-12.2-47.13 must be in the original language and, if ~~necessary~~ not in English, must be accompanied by an English translation.

**SECTION 12. AMENDMENT.** Subsection 4 of section 15.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Student with a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before ~~September~~August first of the year in which the individual turns twenty-one and who requires special education and related services because of:
  - (1) An intellectual disability;
  - (2) A hearing impairment, including deafness;
  - (3) Deaf-blindness;
  - (4) A speech or language impairment;
  - (5) A visual impairment, including blindness;
  - (6) An emotional disturbance;
  - (7) An orthopedic impairment;
  - (8) Autism;
  - (9) A traumatic brain injury;
  - (10) Other health impairment; or
  - (11) A specific learning disability.
- b. "Student with a disability" includes a student age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program."

Page 2, after line 5, insert:

**"SECTION 15. AMENDMENT.** Subsection 1 of section 43-51-11.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A board shall adopt rules regarding licensure of a military spouse ~~and/or~~ shall grant on a case-by-case basis exceptions to the board's licensing standards to allow a military spouse to practice the occupation or profession in the state if upon application to the board:
  - a. The military spouse demonstrates competency in the occupation or profession through methods or standards determined by the board which must include experience in the occupation or profession for at least two of the four years preceding the date of application under this section;
  - b. The military spouse pays any fees required by the board from which the applicant is seeking a license; and
  - c. The board determines the exception will not substantially increase the risk of harm to the public."

Page 3, after line 12, insert:

**"SECTION 17. AMENDMENT.** Section 61-24-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-24-02. Garrison Diversion Conservancy District created.**

The "Garrison Diversion Conservancy District", hereinafter referred to as the "district" consists of that part of the state that is included within the boundaries of the following counties: Barnes, Benson, Bottineau, Burleigh, Cass, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoure, McHenry, McKenzie, McLean, Nelson, Pierce, Ramsey, Ransom, Renville, Richland, Sargent, Sheridan, Steele, Stutsman, Traill, Ward, ~~and Wells, and Williams.~~

The district is a governmental agency, body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

Any county may join the district upon application of its board of county commissioners and the approval of the application by the board of directors of the district. Such county is authorized to levy taxes as may be necessary to carry out its part of the agreement for becoming a part of the district, which levy is in addition to the amount that may otherwise be legally levied for county purposes."

Renumber accordingly

**2015 HOUSE JUDICIARY**


**SB 2053**

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

SB 2053  
3/10/2015  
24587

☐ Subcommittee  
☐ Conference Committee



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

Relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references.

## **Minutes:**

Attachment 1

**Chairman K. Koppelman:** Opened the hearing on SB 2053.

**John Wahlstad, Legislative Management:** Introduced the bill. This is my last go around with the technical corrections bill after a number of them. My initial forays in to technical corrections bills the bills were huge. Back in the day we used to have a 100 page bill of things that needed to be fixed. The bill before you was introduced with only 4 sections. I was contacted after the interim judiciary committee recommended the bill by a number of people and that's par for the course. As people are preparing for a legislative session and digging through the code they start noticing things that needs to be fixed. The first 12 sections in the bill before you relate to the uniform interstate family support act. I was contacted because when that act was implemented not long ago it was thought to comply with the requirements for the participation and the interstate act. However powers that be somewhere in a warehouse go through these things in great detail word for word. If our statutory prevision doesn't match exactly what they think it should be they let us know. There were a number of tweaks that were needed to satisfy the powers that be, whoever they are, so the department of human services asked me if I could incorporate that in the technical corrections act rather than having a separate bill for that purpose only. I agreed to do that, I won't run through these previsions I'm not sure if someone wants to look at those but they are not what I would consider to be substantive in anyway. They are what I would consider to be pedantic, neritic changes to satisfy someone who is being paid a lot of money to do this sort of thing. That takes us through the first 9 pages. Section 13 obviously just striking out beginning January 1, 1999, section 14 relates to dormant minerals act and when a mineral interest is deemed to be used. Sub division F of that provision says minerals are deemed used when taxes are paid on the mineral interest by the owner. As you know there are no taxes on mineral interests in North Dakota so the provision is pointless and eliminated. Section 15 was added, this chapter of code applies to all professional and occupational licensing boards with seven specific exceptions and this was a bill that was introduced by the Attorney General last session. It was submitted



and an error was made, the first subsection where it says a board shall adopt rules regarding licensure of a military spouse. This was for licensing in almost all occupations for military spouses whose spouses are stationed here and there. They are residing here for that reason. The first sentence there was intended to provide two options for boards and the word or was there initially to make clear it was two options. We apparently transposed it into an and which means boards literally would be required to provide both options and the Attorney General pointed that out and we agreed we would fix that since we caused the mischief. Section 16, searchable data base of expenditures, this is a weird section they started out by throwing in one of those starting date things that I hate and then throwing in that this information be provided for the biennium ending June 30, 2009. That would have probably been just fine if this was a bill with a sunset clause but it was not it was a bill of a permanent nature. If you look at the next page at subsection 5, by January 1<sup>st</sup> of each even number year the director shall add that, it is clear that this was not intended to be for just one biennium. What I have done is strike out that starting date, strike out that biennium ending June 30, 2009 and now the section is as it was intended. Permanente that information is supposed to be on the state budget data base and it is supposed to be updated biannually. Section 17, Garrison Diversion Conservancy district, this is a case of the law catching up with reality. Counties are permitted by statute to join the Garrison Diversion Conservancy District. I don't know that we really need to list what counties are in there but they have been and McKenzie and Williams counties have become members since the list was update so the district had contacted me and asked me if I could take care of that so they wouldn't have to put in a bill. It doesn't add these two counties, they are already members, it just adds these counties to the list in statute. Then there is a repeal section at the end, repealing and entire chapter in the agriculture title. It is a chapter that provided a tree bounty, not for killing trees but for planting trees. It acted in the 30's, it provided for payment to a farmer or land owner two dollars for every row of 80 rods worth of trees planted. The law was declared unconstitutional back in 1941 and has been laying there ever since. It was declared unconstitutional because the law provided for disbursement of money but did not provide any legislative appropriation for that purpose. The other section, 1111.105, is a section of code that allowed and won a levy for a job development authority that applied only for the year 1985 and whoever wrote that should have put an expiration date in it and never did.

**Rep. K. Wallman:** On page 11, Section 15 where it was an and that was changed to an or, it says that the board shall adopt rules regarding licensure of a military spouse or it shall grant on a case by case basis exceptions to the boards licensing standards. If a board doesn't have to adopt rules regarding licensure I am not really sure how they can grant on a case by case exception to this licensing standard.

**John Wahlstad:** I have some questions with this too. It was a chapter that was drafted by the Attorney General, but it was to allow spouses resident in ND for military to obtain less than full licenser. It starts off saying the board has to adopt rules regarding licensing or instead of adopting rules for that purpose grant exceptions to licensing standards on a case by case basis. Seems to me that is two different approaches.

**Rep. Lois Delmore:** Might that be they were licensed in another state, our licensing standards might be slightly different but as a board I can say you have met the main requirements. The second part of that says to me on a case by case they really are trained

but there may be a minor difference in what a licensing board here has than they do in another state.

**John Wahlstad:** Absolutely. There may be military spouses with a foreign license and in that case it is pretty hard to write a rule.

**Chairman K. Koppelman:** I think when this was written that they could draft rules to prescribe the specifics of when they would grant variances and so on or grandfather, but they could also just decide to take it up. The only advantage I can see in having the 1999 date in with respect to the labor commissioner is to remind us all that at one time it was an elected office. I understand why it doesn't need to be there anymore.

**John Wahlstad:** This licensing thing has an exception in it for seven occupational boards and they are the big ones. The medical board, the dental and so on.

**Rep. L. Klemin:** Where it says the board shall adopt rules does it apply to all boards?

**John Wahlstad:** It applies basically to any occupation and professional licensing board, most of them are in title 43, this is chapter 51 of that title. So there are chapters in there for different occupations. Seven of them are exempted by the language of this chapter but the rest would be covered. The provision here that says boards have to adopt rules about licensing of a military spouse, I am not remembering and influx in rules on that topic. Either they are not paying attention to this or they are doing a case by case basis and that might be the most appropriate in most circumstances. Where the person came from, where their license came from and what their educational background is against what the standards are for licensing in this state.

**Kimberly Cook Communications Director at the Garrison Diversion Conservancy:**  
**District:** (Testimony 1)

Opposition

**Rep. Lois Delmore:** I move a Do Pass

**Rep. Karls:** Second

Motion for a Do Pass.

Motion made by Representative Delmore.

Seconded by Representative Karls.

Total Yes 12. No 0. Absent 1.

Motion carries.

Floor assignment Representative Karls.

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL NO. SB 2053**

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Lois Delmore Seconded By Rep. Karls

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman	X	
Rep. Hawken	--				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	X				
Rep. Paur	X				

Total (Yes) 12 No 0

Absent 1

Floor Assignment: Vice Chairman Karls

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

**REPORT OF STANDING COMMITTEE**

**SB 2053, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)**  
recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed SB 2053 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**SB 2053**

PROPOSED AMENDMENTS TO SENATE BILL NO. 2053

Page 1, line 1, after "reenact" insert "sections 14-12.2-47.1, 14-12.2-47.2, 14-12.2-47.4, 14-12.2-47.5, 14-12.2-47.6, 14-12.2-47.7, 14-12.2-47.8, 14-12.2-47.9, 14-12.2-47.10, 14-12.2-47.11, and 14-12.2-47.13, subsection 4 of section 15.1-32-01,"

Page 1, line 2, replace "section" with "sections"

Page 1, line 2, after "54-44.1-18" insert "and 61-24-02"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 14-12.2-47.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.1. (Contingent effective date - See note) (701) Definitions.**

In sections 14-12.2-47.1 through 14-12.2-47.13:

1. "Application" means a request under the convention by an obligee, obligor, or on behalf of a child, made through a central authority for assistance from another central authority.
2. "Central authority" means the entity designated by the United States or a foreign country described in subdivision d of subsection 5 of section 14-12.2-01 to perform the functions specified in the convention.
3. "Convention support order" means ana support order of a tribunal of a foreign country in which the convention is in force with respect to the United States described in subdivision d of subsection 5 of section 14-12.2-01.
4. "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.
5. "Foreign central authority" means the entity designated by a foreign country in which the convention is in force with respect to the United States described in subdivision d of subsection 5 of section 14-12.2-01 to perform the functions specified in the convention.
6. "Foreign support agreement" means an agreement for support in a record, also known as a maintenance arrangement in the convention, that:
  - a. Means an agreement for support in a record that:
    - (1) Is enforceable as a support order in the country of origin;
    - (2) Has been:
      - (a) Formally drawn up or registered or has been authenticated by, or concluded, registered, or filed with a foreign tribunal;
      - or

(b) Authenticated by, or concluded, registered, or filed with a foreign tribunal; and

(3) May be reviewed and modified by a foreign tribunal; and

b. ~~Has been formally drawn up or registered or has been authenticated by, or concluded, registered, or filed with a foreign tribunal; and~~ includes a maintenance arrangement or authentic instrument under the convention.

e. ~~May be reviewed and modified by a foreign tribunal.~~

7. "United States central authority" means the secretary of the United States department of health and human services.

**SECTION 2. AMENDMENT.** Section 14-12.2-47.2 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.2. (Contingent effective date - See note) (702) Applicability.**

Sections 14-12.2-47.1 through 14-12.2-47.13 apply only to a support proceeding involving a foreign country in which under the convention is in force with respect to the United States. In such a proceeding, if a provision of sections 14-12.2-47.1 through 14-12.2-47.13 is inconsistent with a provision of sections 14-12.2-01 through 14-12.2-46.4, sections 14-12.2-47.1 through 14-12.2-47.13 control.

**SECTION 3. AMENDMENT.** Section 14-12.2-47.4 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.4. (Contingent effective date - See note) (704) Initiation by department of human services of support proceeding subject to ~~under~~ convention.**

1. In a support proceeding subject to ~~under~~ the convention, the department of human services of this state shall:
  - a. Transmit and receive applications; and
  - b. Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.
2. The following support proceedings are available to an obligee under the convention:
  - a. Recognition or recognition and enforcement of a foreign support order;
  - b. Enforcement of a support order issued or recognized in this state;
  - c. Establishment of a support order if there is no existing order, including, where necessary, determination of parentage of a child;
  - d. Establishment of a support order if recognition of a foreign support order is refused under subdivision b, d, or i of subsection 2, 4, or 9 of section 14-12.2-47.8;
  - e. Modification of a support order of a tribunal of this state; and

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- f. Modification of a support order of a tribunal of another state or foreign country.
3. The following support proceedings are available under the convention to an obligor against whom there is an existing support order:
  - a. Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;
  - b. Modification of a support order of a tribunal of this state; and
  - c. Modification of a support order of a tribunal of another state or foreign country.

**SECTION 4. AMENDMENT.** Section 14-12.2-47.5 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.5. (Contingent effective date - See note) (705) Direct request.**

1. A petitioner may file a direct request ~~in a tribunal of this state~~ seeking the establishment or modification of a support order or determination of parentage of a child. In such a proceeding, the law of this state applies.
2. A petitioner may file a direct request ~~in a tribunal of this state~~ seeking the recognition and enforcement of a support order or support agreement. In such a proceeding, the provisions of sections 14-12.2-47.6 through 14-12.2-47.13 apply.
3. In a direct request for recognition and enforcement of a convention support order or foreign support agreement:
  - a. ~~No~~A security, bond, or deposit ~~shall be~~ is not required to guarantee the payment of costs and expenses ~~related to the proceedings~~; and
  - b. The obligee or obligor, who in the issuing country has benefited from free legal assistance, shall be entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.
4. An individual filing ~~directly with a tribunal will not receive~~ a direct request is not entitled to assistance from the department of human services.
5. Nothing in sections 14-12.2-47.1 through 14-12.2-47.13 prevents the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or support agreement.

**SECTION 5. AMENDMENT.** Section 14-12.2-47.6 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.6. (Contingent effective date - See note) (706) Registration of convention support order.**

1. Except as otherwise provided in sections 14-12.2-47.1 through 14-12.2-47.13, a party who is an individual or a support enforcement

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agency seeking recognition of a convention support order shall register the order in this state as provided in sections 14-12.2-35 through 14-12.2-46.4.

2. Notwithstanding section 14-12.2-23 and subsection 1 of section 14-12.2-36, a request for registration of a convention support order must be accompanied by:
  - a. A complete text of the support order, or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague conference on private international law;
  - b. A record stating that the support order is enforceable in the issuing country;
  - c. If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;
  - d. A record showing the amount of arrears, if any, and the date the amount was calculated;
  - e. A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and
  - f. If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.
3. A request for registration of a convention support order may seek recognition and partial enforcement of the order.
4. A tribunal of this state may vacate the registration of a convention support order ~~on its own motion~~, without the filing of a contest under section 14-12.2-47.7 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.
5. The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order.

**SECTION 6. AMENDMENT.** Section 14-12.2-47.7 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.7. (Contingent effective date - See note) (707) Contest of registered convention support order.**

1. Except as otherwise provided in sections 14-12.2-47.1 through 14-12.2-47.13, sections 14-12.2-39 through 14-12.2-42 apply to a contest of a registered convention support order.
2. A party contesting a registered convention support order must file a contest within not later than thirty days after notice of the registration ~~unless~~ but if

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the contesting party does not reside in the United States, ~~in which case the contest must be filed within~~not later than sixty days after notice of the registration.

3. If the nonregistering party fails to contest the registered convention support order ~~in a timely manner~~by the time specified in subsection 2, the order is enforceable ~~by operation of law~~.
4. A contest of a registered convention support order may be based only on grounds set forth in section 14-12.2-47.8, and the contesting party bears the burden of proof.
5. In a contest of a registered convention support order, a tribunal of this state:
  - a. Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and
  - b. May not review the merits of the support order.
6. A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.
7. ~~An~~A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

**SECTION 7. AMENDMENT.** Section 14-12.2-47.8 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.8. (Contingent effective date - See note) (708) Refusal of recognition**Recognition and enforcement of registered convention support order.

~~A tribunal of this state may refuse recognition and enforcement of a registered convention support order only on the following grounds:~~

1. Except as otherwise provided in subsection 2, a tribunal of this state shall recognize and enforce a registered convention support order.
2. The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:
  - a. Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;
  - b. The issuing tribunal lacked personal jurisdiction consistent with section 14-12.2-04;
  - c. The order is not enforceable in the issuing country;
  - d. The order was obtained by fraud in connection with a matter of procedure;
  - e. A record transmitted in accordance with section 14-12.2-47.6 lacks authenticity or integrity;

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- 6- f. A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;
- 7- g. The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement in this state;
- 8- h. Payment, to the extent alleged arrears have been paid in whole or in part;
- 9- i. In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country when the law of that country:
  - a- (1) Provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
  - b- (2) Does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or
- 10- j. The order was made in violation of section 14-12.2-47.11.
- 3. If a tribunal of this state does not recognize a convention support order under subdivision b, d, or i of subsection 2:
  - a. The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order; and
  - b. The department of human services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 14-12.2-47.40.

**SECTION 8. AMENDMENT.** Section 14-12.2-47.9 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.9. (Contingent effective date - See note) (709) Partial enforcement –New support order.**

- 4- If a tribunal of this state ~~may~~does not recognize and enforce the whole of a convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order.
- 2- ~~If a tribunal of this state may not recognize a convention support order under subsection 2, 4, or 9 of section 14-12.2-47.8:~~
  - a- ~~The tribunal may not dismiss proceeding without allowing a reasonable time for a party to request the establishment of a new support order.~~

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- b. ~~The department of human services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 14-12.2-47.4.~~

**SECTION 9. AMENDMENT.** Section 14-12.2-47.10 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.10. (Contingent effective date - See note) (710) Foreign support agreement.**

1. Except as provided in subsections 3 and 4, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.
2. An application or direct request for recognition and enforcement of a foreign support agreement shall be accompanied by:
  - a. A complete text of the foreign support agreement; and
  - b. A record stating that the foreign support agreement is enforceable as a decisionan order of support in the issuing country.
3. A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.
4. In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:
  - a. Recognition and enforcement of the agreement is manifestly incompatible with public policy;
  - b. The agreement was obtained by fraud or falsification;
  - c. The agreement is incompatible with a support order involving the same parties and having the same purpose, ~~either~~ in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this chapter in this state; or
  - d. The record submitted under subsection 2 lacks authenticity or integrity.
5. A proceeding for recognition and enforcement of a foreign support agreement shall be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or foreign country.

**SECTION 10. AMENDMENT.** Section 14-12.2-47.11 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.11. (Contingent effective date - See note) (711) Modification of convention child support order ~~subject to convention~~.**

1. A tribunal of this state may not modify a convention child support order ~~subject to the convention~~ if the obligee remains a resident of the foreign country where the support order was issued unless:

- a. The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or
  - b. The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.
2. If a tribunal of this state ~~may~~does not modify ~~thea~~a convention child support order ~~subject to the convention~~ because the order ~~may~~is not be recognized in this state, ~~subdivision a of subsection 23 of section 14-12.2-47.9~~14-12.2-47.8 applies.

**SECTION 11. AMENDMENT.** Section 14-12.2-47.13 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-47.13. (Contingent effective date - See note) (713) Record in original language - English translation required.**

A record filed with a tribunal of this state under sections 14-12.2-47.1 through 14-12.2-47.13 must be in the original language and, if ~~necessary~~not in English, must be accompanied by an English translation.

**SECTION 12. AMENDMENT.** Subsection 4 of section 15.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Student with a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before ~~September~~August first of the year in which the individual turns twenty-one and who requires special education and related services because of:
  - (1) An intellectual disability;
  - (2) A hearing impairment, including deafness;
  - (3) Deaf-blindness;
  - (4) A speech or language impairment;
  - (5) A visual impairment, including blindness;
  - (6) An emotional disturbance;
  - (7) An orthopedic impairment;
  - (8) Autism;
  - (9) A traumatic brain injury;
  - (10) Other health impairment; or
  - (11) A specific learning disability.
- b. "Student with a disability" includes a student age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program."

2053  
1-8  
4/2/15



Page 3, after line 12, insert:

**"SECTION 16. AMENDMENT.** Section 61-24-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-24-02. Garrison Diversion Conservancy District created.**

The "Garrison Diversion Conservancy District", hereinafter referred to as the "district" consists of that part of the state that is included within the boundaries of the following counties: Barnes, Benson, Bottineau, Burleigh, Cass, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoure, McHenry, McKenzie, McLean, Nelson, Pierce, Ramsey, Ransom, Renville, Richland, Sargent, Sheridan, Steele, Stutsman, Traill, Ward, ~~and~~ Wells, and Williams.

The district is a governmental agency, body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

Any county may join the district upon application of its board of county commissioners and the approval of the application by the board of directors of the district. Such county is authorized to levy taxes as may be necessary to carry out its part of the agreement for becoming a part of the district, which levy is in addition to the amount that may otherwise be legally levied for county purposes."

Renumber accordingly

2053  
1-9  
4/9/15



January 6, 2015

# 2-1  
1/2/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2053

Page 1, line 1, after the second comma insert "subsection 1 of section 43-51-11.1,"

Page 2, after line 5, insert:

**"SECTION 3. AMENDMENT.** Subsection 1 of section 43-51-11.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A board shall adopt rules regarding licensure of a military spouse ~~and~~or shall grant on a case-by-case basis exceptions to the board's licensing standards to allow a military spouse to practice the occupation or profession in the state if upon application to the board:
  - a. The military spouse demonstrates competency in the occupation or profession through methods or standards determined by the board which must include experience in the occupation or profession for at least two of the four years preceding the date of application under this section;
  - b. The military spouse pays any fees required by the board from which the applicant is seeking a license; and
  - c. The board determines the exception will not substantially increase the risk of harm to the public."

Renumber accordingly

Testimony by Merri Mooridian, Administrative Officer  
**Garrison Diversion Conservancy District**

To the

**Judiciary Committee**

Bismarck, North Dakota  
January 7, 2015

Senator Hogue, members of the committee; my name is Merri Mooridian, and I am the Administrative Officer at the Garrison Diversion Conservancy District. I am here to provide background information relating to a technical correction to Chapter 61-24 of the North Dakota Century Code which contains information regarding the Garrison Diversion Conservancy District. Section 61-24-02 lists 26 member counties of the district and states "any county may join the district upon application of its board of county commissioners and approval of the application by the board of directors of the district".

In February of 2003, the McKenzie County Commission and the Williams County Commission petitioned for membership in the Garrison Diversion Conservancy District. Consequently, in April 2003, the Garrison Diversion board of directors approved the petitions of McKenzie and Williams Counties to join the Garrison Diversion Conservancy District. Both of these counties have an elected member on the board of directors.

Garrison Diversion Conservancy District supports updating Chapter 61-24 of the North Dakota Century Code to include the addition of McKenzie and Williams Counties, bringing the number of member counties listed to 28. Thank you for allowing my testimony to be heard today.

#1  
SB 2053  
3-10-15

Testimony by Kimberly Cook, Communications Director  
**Garrison Diversion Conservancy District**

To the

**Judiciary Committee**

Bismarck, North Dakota  
March 10, 2015

Representative Koppelman, members of the committee; my name is Kimberly Cook, and I am the Communications Director at the Garrison Diversion Conservancy District. I am here to provide background information relating to a technical correction to Chapter 61-24 of the North Dakota Century Code which contains information regarding the Garrison Diversion Conservancy District. Section 61-24-02 lists 26 member counties of the district and states "any county may join the district upon application of its board of county commissioners and approval of the application by the board of directors of the district".

In February of 2003, the McKenzie County Commission and the Williams County Commission petitioned for membership in the Garrison Diversion Conservancy District. Consequently, in April 2003, the Garrison Diversion board of directors approved the petitions of McKenzie and Williams Counties to join the Garrison Diversion Conservancy District. Both of these counties have an elected member on the board of directors.

The Garrison Diversion Conservancy District was established in 1955 and works to fulfill their mission to provide a reliable, high quality and affordable water supply to benefit the people of North Dakota. There are 28 member counties in the district, each

supports the operations of Garrison Diversion by issuing a one-mill levy and electing a citizen at the general election to serve a four-year term as a member of the Garrison Diversion board of directors.

Garrison Diversion Conservancy District supports updating Chapter 61-24 of the North Dakota Century Code to include the addition of McKenzie and Williams Counties, bringing the number of member counties listed to 28.

Thank you for allowing my testimony to be heard today.