

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2045

Introduced by

Legislative Council

(Insurance and Health Care Committee)

1 A BILL for an Act to create and enact chapter 23-35 of the North Dakota Century Code, relating
2 to public health law; to amend and reenact subsection 2 of section 23-01-05, subsection 2 of
3 section 23-07.6-01, subdivision h of subsection 1 of section 40-01.1-04, section 54-52-02, and
4 subsection 13 of section 58-06-01 of the North Dakota Century Code, relating to references to
5 public health law and the powers and duties of boards of township supervisors; to repeal
6 chapters 23-03, 23-04, 23-05, section 23-07-04, and chapter 23-14 of the North Dakota
7 Century Code, relating to public health law; and to provide a penalty.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Subsection 2 of section 23-01-05 of the 1997
10 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11 2. Hold ~~the several~~ public health unit boards of health responsible for the
12 enforcement of state ~~regulations~~ rules, serve in an advisory capacity to ~~the several~~
13 public health unit boards of health ~~in the counties, cities, and townships of this~~
14 ~~state~~, and provide for coordination of health activities.

15 **SECTION 2. AMENDMENT.** Subsection 2 of section 23-07.6-01 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 2. "Local board" means a board of health as ~~described~~ defined under section
18 ~~23-05-01 or a district board of health as described under section 23-14-04~~
19 23-35-01.

20 **SECTION 3.** Chapter 23-35 of the North Dakota Century Code is created and enacted
21 as follows:

22 **23-35-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 23 1. "Board of health" means a district, county, or city board of health.
24 2. "Department" means the state department of health.

3. "Governing body" means, as applicable, a city commission, city council, board of county commissioners, or joint board of county commissioners.

4. "Health district" means an entity formed under section 23-35-04 or 23-35-05.

5. "Joint board of county commissioners" means the boards of county commissioners of two or more counties acting together in joint session.

6. "Local health officer" means the health officer of a public health unit.

7. "Public health department" means a city or county health department formed under this chapter.

8. "Public health unit" means the local organization formed under this chapter to provide public health services in a city, county, or designated multicounty or city-county area. The term includes a city public health department, county public health department, and a health district.

23-35-02. Public health units. All land in the state must be in a public health unit before January 1, 2001. The health council may issue rules defining the core functions a public health unit shall undertake.

23-35-03. Boards of health.

1. The department shall advise boards of health.

2. A city's or county's governing body may establish a public health unit by creating and appointing a board of health, which in the case of a city, may be composed of the city's governing body. A board of health must have at least five members.

a. In the case of a board of health created by a joint board of county commissioners, each county in the health district must have at least one representative on the board; each county of over fifteen thousand population must have an additional representative for each fifteen thousand population or major fraction of that number; and in a health district of fewer than five counties, each county must have at least one representative on the district board of health, and the additional representatives selected to constitute the minimum five-member board must be equitably apportioned among the counties on a population basis.

b. In the case of a joint city-county health district composed of only one county and having at least one city over fifteen thousand population, each city having

1 a population over fifteen thousand must have a representative on the district
2 board of health for each fifteen thousand population or major fraction of that
3 number, and the remaining population of the county, exclusive of the
4 populations of cities with more than fifteen thousand each, must have a
5 representative on the district board of health for each fifteen thousand
6 population or major fraction of that number, or at least one member if the
7 remaining population is less than fifteen thousand.

8 3. The initial members of any board of health appointed by a governing body must be
9 appointed for terms as follows: at least one for one year, one for two years, one
10 for three years, one for four years, and one for five years. If a board has more
11 than five members, the members must be appointed for staggered terms. All
12 subsequent appointments are for five-year terms. Each board member shall serve
13 until a successor is appointed and qualified. If a vacancy occurs, the appointing
14 government authority shall appoint a member for the remainder of the unexpired
15 term. Each appointee shall qualify by filing the oath of office. A board of health
16 may not be all male or all female. If the members of a governing body serve on a
17 board of health or if an employee of a governing body serves on a board of health,
18 this subsection does not apply to those governing body members and that
19 employee.

20 4. A board of health shall meet at least quarterly. Special meetings may be held at
21 any time at the call of the president.

22 5. Except if the governing body serves as the board of health, at the first meeting
23 after appointment, and annually, the members of a board of health shall organize
24 by electing a president, a vice president, and other officers the board considers
25 necessary. If there is a treasurer and the treasurer is not a public employee, the
26 treasurer must be bonded in an amount fixed by the board. If the health officer is
27 not appointed to the board, the health officer does not have a vote in matters of the
28 board. The office of secretary and treasurer may be combined.

29 6. Any board member who is not a public employee may be compensated at a rate
30 not exceeding sixty-two dollars and fifty cents per day, but for no more than

1 twenty-five days per year, and may be reimbursed for expenses incurred in the
2 manner and in an amount not exceeding the amount provided for a state officer.

3 **23-35-04. Health districts - Formation - Contracting for services.**

4 1. Upon the adoption of a resolution, the governing body may form a multicounty or a
5 city-county health district.

6 2. Notwithstanding this chapter, in a county without a countywide public health unit,
7 the board of county commissioners, upon adoption of a resolution, may contract
8 with a city that has a public health department to provide health services to the
9 county and in the cities throughout the county which do not have a public health
10 unit. The contract must comply with chapter 54-40.3. When a contract is
11 executed, any provision of this chapter relating to organizing district boards of
12 health does not apply, and the city public health department shall exercise all the
13 necessary powers and duties of a public health unit under this chapter. The
14 department shall treat a county with a contract under this subsection as a public
15 health unit.

16 **23-35-05. Health districts - Expansion - Merger.**

17 1. Upon adoption of a resolution, a county that is not included in any public health
18 unit may request inclusion as a part of an existing health district. Upon receipt of a
19 request to become part of an existing health district, the district board of health
20 shall consider the request and, if the board approves the request by a majority
21 vote, shall submit the matter to each county in the health district. If a majority of
22 the counties approve the request by a majority vote, the requesting county
23 becomes a part of the health district.

24 2. Upon expansion of a health district under this section, the number of board of
25 health members must be adjusted to allow the added county the same proportion
26 of members allowed to member cities and counties of the existing health district as
27 determined under this chapter.

28 3. Any two or more health districts may merge into a single health district upon a
29 majority vote of the respective boards of health and a majority vote of the
30 governing body of each county. The assets of each merging health district
31 become the property of the newly created health district. Board of health

membership of a new health district must be determined under section 23-35-03, unless otherwise decided by the board. The new health district maintains the same authority and powers of the previous health districts. The mill levy of the newly created health district is not limited by the old mill levy but may not exceed the amount allowed under section 23-35-07.

4. Upon adoption of a health district plan by two or more counties, the joint board of county commissioners shall appoint a district board of health.

23-35-06. Health districts - Dissolution - Withdrawal.

1. If a health district has been in operation for two years, the district may be dissolved as provided for under this section. If a petition is filed with the county auditor of each county of a health district which is signed by qualified electors of that county equal to ten percent or more of the votes cast in that county at the last general election, an election on the question of dissolution must be presented to the qualified electors in each county in the district at the next election held in each county in the district. If a majority of the votes cast on the question in a majority of the counties favor dissolution, the health district is dissolved on the second January first following the election. If a majority of the votes cast on the question in a majority of the counties are against dissolution, no other election on this issue may be held for two years.

2. If a health district has been in operation for two years, any county may withdraw from the district as provided under this section. If a petition is filed with the withdrawing county's auditor which is signed by qualified electors of the county equal to ten percent or more of the votes cast in that county at the last general election, an election on the question of withdrawal must be presented to the qualified electors in the county at the next election in the county. If a majority of the votes cast on the question favor withdrawing from the district, the county is withdrawn from the district on the second January first following the election. If a majority of the votes cast on the question are against withdrawal, no other election on this issue may be held for two years.

23-35-07. Health district funds.

- 1 1. A district board of health shall prepare a budget for the next fiscal year at the time
2 at which and in the manner in which a county budget is adopted and shall submit
3 this budget to the joint board of county commissioners for approval. The amount
4 budgeted and approved must be prorated in health districts composed of more
5 than one county among the various counties in the health district according to the
6 assessed valuation of the respective counties in the health district. For the
7 purpose of this section, "prorated" means that each member county's contribution
8 must be based on an equalized mill levy throughout the district. Within ten days
9 after approval by the joint board of county commissioners, the district board of
10 health shall certify the budget to the respective county auditors and the budget
11 must be included in the levies of the counties. The budget may not exceed the
12 amount that can be raised by a levy of five mills on the taxable valuation, subject to
13 public hearing in each county in the health district at least fifteen days before an
14 action taken by the joint board of county commissioners. Action taken by the joint
15 board of county commissioners must be based on the record, including comments
16 received at the public hearing. A levy under this section is not subject to the
17 limitation on the county tax levy for general and special county purposes. The
18 amount derived by a levy under this section must be placed in the health district
19 fund. The health district fund must be deposited with and disbursed by the
20 treasurer of the district board of health. Each county in a health district quarterly
21 shall remit and make settlements with the treasurer. Any funds remaining in the
22 fund at the end of any fiscal year may be carried over to the next fiscal year.
23 2. The district board of health, or the president and secretary of the board when
24 authorized or delegated by the board, shall audit all claims against the health
25 district fund. The treasurer shall pay all claims from the health district fund. The
26 district board of health shall approve or ratify all claims at the board's quarterly
27 meetings.

28 **23-35-08. Boards of health - Powers and duties.** Except when in conflict with a local
29 ordinance or a civil service rule within a board of health's jurisdiction, each board of health:

- 30 1. Shall keep records and make reports required by the department.
- 31 2. Shall prepare and submit a public health unit budget.

- 1 3. Shall audit, allow, and certify for payment expenses incurred by a board of health
- 2 in carrying into effect this chapter.
- 3 4. May accept and receive any contribution offered to aid in the work of the board of
- 4 health or public health unit.
- 5 5. May make rules regarding any nuisance, source of filth, and any cause of sickness
- 6 which are necessary for public health and safety.
- 7 6. May establish by rule a schedule of reasonable fees that may be charged for
- 8 services rendered. Services may not be withheld due to an inability to pay any
- 9 fees established under this subsection.
- 10 7. May make rules in a health district or county public health department, as the case
- 11 may be, and in the case of a city public health department may recommend to the
- 12 city's governing body ordinances for the protection of public health and safety.
- 13 8. May adopt quarantine and sanitary measures in compliance with chapter 23-07.6
- 14 which are necessary when an infectious or contagious disease exists.
- 15 9. May make and enforce an order in a local matter if an emergency exists.
- 16 10. May inquire into any nuisance, source of filth, or cause of sickness.
- 17 11. Except in the case of an emergency, may conduct a search or seize material
- 18 located on private property to ascertain the condition of the property as the
- 19 condition relates to public health and safety as authorized by an administrative
- 20 search warrant issued under chapter 29-29.1.
- 21 12. May abate or remove any nuisance, source of filth, or cause of sickness when
- 22 necessary to protect the public health and safety.
- 23 13. May supervise any matter relating to preservation of life and health of individuals,
- 24 including the supervision of any water supply and sewage system.
- 25 14. May isolate, kill, or remove any animal affected with a contagious or infectious
- 26 disease if the animal poses a material risk to human health and safety.
- 27 15. Shall appoint a local health officer.
- 28 16. May employ any person necessary to effectuate board rules and this chapter.
- 29 17. If a public health unit is served by a part-time local health officer, the board of
- 30 health may appoint an executive director. An executive director is subject to
- 31 removal for cause by the board of health. The board of health may assign to the

executive director the duties of the local health officer, and the executive director shall perform these duties under the direction of the local health officer.

18. May contract with any person to provide the services necessary to carry out the purposes of the board of health.

19. Shall designate the location of a local health officer's office and shall furnish the office with necessary equipment.

20. May provide for personnel the board of health considers necessary.

21. Shall set the salary of the local health officer, the executive director, and any assistant local health officer and shall set the compensation of any other public health unit personnel.

22. Shall pay for necessary travel of the local health officer, the local health officer's assistants, and other personnel in the manner and to the extent determined by the board.

23-35-09. Abatement and removal of nuisance, source of filth, and cause of sickness.

1. If necessary for the protection of public health to abate or remove any nuisance, source of filth, or cause of sickness, the board of health shall serve notice on the owner or occupant of the property requiring the owner or occupant, at the owner's or occupant's expense, to remove or abate the nuisance, source of filth, or cause of sickness within a time specified by the board, not exceeding thirty days. If the owner or occupant fails to comply with the notice to remove or abate or if the nuisance, source of filth, or cause of sickness exists on property of nonresident owners or on property the owners of which cannot be found, the board of health may remove or destroy the nuisance, source of filth, or cause of sickness at the expense of the appropriate city or county, which shall charge the expense against the lot, piece, or parcel of land on which the work is done.

2. The governing body of the city or county may levy and assess against the property the cost of the removal or destruction of a nuisance, source of filth, or cause of sickness, and the member of the governing body who is responsible for streets shall return and file the assessment in the office of the auditor of the city or county. The auditor shall publish, in the same manner as provided under section 40-22-06,

1 the amount of the assessment together with a notice of the time and location the
2 governing body will meet to consider the approval of the assessment. Each
3 assessment must be recorded, collected, and paid as other taxes are recorded,
4 collected, and paid.

5 3. If a board of health determines it necessary for the preservation of public health to
6 enter any building within the board's jurisdiction to examine, destroy, remove, or
7 prevent any nuisance, source of filth, or cause of sickness and is refused entrance
8 into the building, the local health officer, or a designated agent of the local health
9 officer, may make a complaint under oath to a district judge within the jurisdiction
10 of the board of health stating the facts in the case which the local health officer, or
11 a designated agent of the local health officer, has knowledge. If a warrant is
12 issued and if requested by a board of health, a county sheriff or city police
13 department shall provide assistance to that public health unit in any action to
14 search or seize material in or on any private property to destroy, remove, or
15 prevent the nuisance, source of filth, or cause of sickness, if there is probable
16 cause to believe a public health hazard or public health nuisance exists on or in
17 that property, and shall carry out any other preventive measures the public health
18 unit requests. For purposes of this subsection, a request from a public health unit
19 means a request for assistance which is specific to a public health nuisance and is
20 not a continuous request for assistance.

21 **23-35-10. District boards of health - Acquiring and disposing of property.**

22 1. A district board of health may acquire by lease, purchase, construction, or gift for
23 district health office use and control property for all purposes authorized by law or
24 necessary to the exercise of the powers granted in this chapter. The district board
25 of health may finance the purchase, construction, or equipping of a building on
26 owned or leased property for the use and purpose for which the health district is
27 formed and carry out the functions of the health district in either of the following
28 ways:
29 a. The district board of health may issue and sell bonds in an aggregate amount
30 not exceeding two times the authorized tax revenues of the district for the
31 year in which the bonds are to be issued and sold; or

b. The district board of health may mortgage or otherwise encumber the building constructed in an amount not exceeding two times the authorized tax revenue of the district for the year in which the construction is to be commenced.

2. Bonds issued under this section and income under this section are exempt from any taxes except inheritance, estate, and transfer taxes. The indebtedness for which the bonds are issued, or for which a mortgage may be given as under this section, is neither an obligation or an indebtedness of this state nor of the counties or cities comprising the district board of health. Any indebtedness under this section may be foreclosed in any manner provided by law. The district board of health may convey or transfer property acquired as provided under this section. If, upon dissolution of a health district, any balance remains in the health district fund after all obligations have been paid, the balance must be transferred to the general fund of the counties comprising the health district in proportion to the assessed valuation most recently used in preparing the health district budget under this chapter. If any county in the district withdraws from a health district, any assets and inventory of supplies and equipment located in the county for use in health district programs and services remain the property of the district for use elsewhere in the district.

23-35-11. Budget. A city, county, or health district, as the case may be, shall prepare a county public health unit budget for the next fiscal year at the time and in the manner a county budget is adopted and submit the budget to the board of county commissioners for approval, shall prepare a city public health unit budget for the next fiscal year and submit the budget to the governing body of the city for approval, or shall prepare a district budget as provided under this chapter. In the case of a city board of health, the board shall certify the expenses to the governing body for payment out of the general fund of the city. The governing body or auditor shall audit any expenses incurred in quarantining or disinfecting any property outside an incorporated city and shall pay for any expenses out of the general fund of the county.

23-35-12. Local health officers.

1. A local health officer shall serve a term of five years, subject to removal for cause by the governing body or the district board of health. The health officer must be a

1 physician licensed to practice medicine in this state and need not be a resident of
2 the public health unit. The appointee shall qualify by filing the constitutional oath of
3 office in the manner provided for the members of the board of health. If the state
4 health officer finds a local health officer is failing to perform the duties of the
5 position, the state health officer may report the case to the governing body of the
6 appropriate city, county, or district board of health. At the next meeting of the city's
7 or county's governing body or district board of health, the governing body or district
8 board of health shall declare the office vacant and may appoint another physician
9 to fill the unexpired term, or shall report the matter to the board of health, and the
10 board shall declare the office vacant and promptly shall appoint another physician
11 to fill the unexpired term.

12 2. Within the jurisdiction of the board of health, a local health officer:

- 13 a. Shall keep a record of the official acts of the local health officer.
14 b. Shall enforce every law and rule relating to preservation of life and health of
15 individuals.
16 c. May exercise the powers and duties of the board of health under the
17 supervision of the board of health.
18 d. May make sanitary inspections of any place within the jurisdiction in which the
19 local health officer finds a probability a health-threatening condition exists.
20 e. May investigate public water and ice supplies suspected of contamination and
21 initiate necessary condemnation proceedings.
22 f. May enforce school cleanliness; inspect any school that may be overcrowded,
23 poorly ventilated, or unsanitary; and, when necessary, report cases of any
24 unsanitary or unsafe school building to the board of health for investigation.
25 g. May take any action necessary for the protection of public health and safety.
26 h. May determine when quarantine and disinfection is necessary for the safety
27 of the public. The local health officer may establish quarantines consistent
28 with procedures provided under chapter 23-07.6 and perform any acts
29 required for disinfection when necessary.
30 i. Shall maintain an office within the jurisdiction of the public health unit
31 consistent with any terms of appointment.

j. May select and discharge any assistant health officer in the public health unit, consistent with any terms of appointment.

3. A local health officer may request the assistance of a county sheriff or city health department in the same manner as provided under subsection 3 of section 23-35-09.

23-35-13. Penalty. A person who violates any order, ordinance, or rule prescribed by any board of health or health officer or any rule adopted under this chapter is guilty of a class B misdemeanor.

SECTION 4. AMENDMENT. Subdivision h of subsection 1 of section 40-01.1-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

h. Use of other statutory tools relating to social and economic development, land use, transportation and roads, health, law enforcement, administrative and fiscal services, recording and registration services, educational services, environmental quality, water, sewer, solid waste, flood relief, parks and open spaces, hospitals, public buildings, or other county functions or services, including creation of cooperative county job development authorities pursuant to section 11-11.1-03, multicounty health units pursuant to ~~sections 23-14-01.1 through 23-14-01.6~~ chapter 23-35, regional planning and zoning commissions pursuant to section 11-35-01, boards of joint county park districts pursuant to chapter 11-28 or a combination of boards of park commissioners with a city pursuant to chapter 40-49.1, or multicounty social service districts pursuant to chapter 50-01.1.

SECTION 5. AMENDMENT. Section 54-52-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-02. Formulation of plan - Exclusion of employees covered by plans in existence. All departments, boards, institutions, commissions, or agencies of the state of North Dakota, the Garrison diversion conservancy district, district health units, the supreme court, and the district courts, hereinafter referred to as agency, shall participate in a retirement system which will provide for the payment of benefits to state and political subdivision employees or to their beneficiaries thereby enabling the employees to care for themselves and their dependents and which by its provisions will improve state and political subdivision

1 employment, reduce excessive personnel turnover, and offer career employment to high-grade
2 men and women. However, a city health department providing health services in a ~~county and~~
3 ~~city~~ city-county health district formed under ~~section 23-14-01.1~~ chapter 23-35 is not required to
4 participate in the public employees retirement system but may participate in the public
5 employees retirement system under section 54-52-02.1. Employees presently covered by a
6 pension plan or retirement plan to which the state is contributing, except social security, are not
7 eligible for duplicate coverage.

8 **SECTION 6. AMENDMENT.** Subsection 13 of section 58-06-01 of the North Dakota
9 Century Code is amended as follows:

10 13. To ~~be and act as a~~ request assistance from a county or district board of health or
11 the state department of health.

12 **SECTION 7. REPEAL.** Chapters 23-03, 23-04, 23-05, section 23-07-04, and chapter
13 23-14 of the North Dakota Century Code are repealed.