

MILITARY

CHAPTER 239

HOUSE BILL NO. 1090

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact subsection 1 of section 37-19.1-04, subsection 6 of section 44-04-18.4, subsection 8 of section 54-06-25, sections 54-06-26 and 54-44.3-01.2, subsection 2 of section 54-44.3-03, and sections 54-44.3-05 and 54-44.4-02.1 of the North Dakota Century Code, relating to bids and proposals received by public entities, notification of nonapplicability of veteran's preference, electronic ballot submission, long distance tolls, salary compensation comparison records, state personnel board vacancy filling procedures, secret ballot election rules, and reports of services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 37-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not given the preference provided in section 37-19.1-02 or 37-19.1-03, the applicant, within fifteen calendar days after receipt of notification by certified mail or through the online recruiting solution system that employment has been refused, may request a hearing as provided in subsection 3. The notification from the employer must include the reasons for nonselection, inform the applicant of the right to an appeal hearing, inform the applicant of the requirement that the request for a hearing must be filed by certified mail within fifteen calendar days after the notification, inform the applicant that a request for an appeal hearing must be made to the commissioner of veterans' affairs at the included commissioner's mailing address, and inform the applicant that if the applicant requests an appeal, the applicant must mail a copy of the request for an appeal hearing to the employer or employing agency. The applicant's request for a hearing must be in writing, must include a copy of the employer's notification that employment has been refused, and must be mailed to the commissioner of veterans' affairs by certified mail. A copy of the written request must be mailed to the employer or employing agency by certified mail. The applicant is entitled to immediate employment in the position for which application was originally made, or an equivalent position, together with backpay and benefits from the date the appointment should have been made less amounts otherwise earnable through due diligence, if the hearing officer finds in favor of the applicant.

¹⁰⁸ **SECTION 2. AMENDMENT.** Subsection 6 of section 44-04-18.4 of the North Dakota Century Code is amended and reenacted as follows:

6. Unless made confidential under subsection 1 or made exempt under subsection 5, ~~bids or proposals;~~
 - a. ~~Bids received by a public entity in response to a request for proposals an invitation for bids by the public entity are exempt until all of the proposals/bids have been received and opened by the public entity or until all oral presentations regarding the proposals, if any, have been heard.~~
 - b. ~~Proposals received by the public entity in response to a request for proposals are exempt records until a notice of intent to award is issued.~~
 - c. Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open.

SECTION 3. AMENDMENT. Subsection 8 of section 54-06-25 of the North Dakota Century Code is amended and reenacted as follows:

8. The ballot must be prepared by the division and distributed to each agency and institution payroll officer. An officer of each agency and institution shall provide mailing labels for all qualified employees to the division upon the division's request. A ballot for the election must be distributed ~~with to~~ each ~~employee's payroll check~~ employee on the employee's regularly scheduled payday. The division may allow for a process by which electronic ballots are submitted by employees to elect a candidate to the commission.

SECTION 4. AMENDMENT. Section 54-06-26 of the North Dakota Century Code is amended and reenacted as follows:

54-06-26. Use of state telephones by state officials and employees.

Notwithstanding any other provision of law, an appointed or elected state official or a state employee may use a state telephone to receive or place a local call for essential personal purposes to the extent that use does not interfere with the functions of the official's or employee's agency, department, or institution. ~~When an appointed or elected state official or state employee is away from the official's or employee's residence for official state business and long distance tolls would apply for the official or employee to call the official's or employee's city of residence, the official or employee is entitled to make at least one long distance call per day at state expense.~~ Each state agency, department, or institution may establish guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

SECTION 5. AMENDMENT. Section 54-44.3-01.2 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-01.2. Compensation philosophy statement.

The compensation program for classified state employees must be designed to recruit, retain, and motivate a quality workforce for the purpose of providing efficient

¹⁰⁸ Section 44-04-18.4 was also amended by section 1 of House Bill No. 1108, chapter 309, section 1 of Senate Bill No. 2295, chapter 312, and section 54 of Senate Bill No. 2327, chapter 199.

and effective services to the citizens of North Dakota. For purposes of this section, "compensation" is defined as base salary and related fringe benefits.

The compensation program must:

1. Provide a competitive employee compensation package based on job content evaluation, internal equity, and external competitiveness balanced by the state's fiscal conditions.
2. Be based on principles of fairness and equity.
3. Include a consistent compensation policy which allows for multiple pay structures to address varying occupational specialties.
4. Set the external competitiveness target for salary range midpoints at a competitive level of relevant labor markets. For purposes of this section, "relevant labor markets" is defined as the labor markets from which the state attracts employees in similar positions and the labor markets to which the state loses employees in similar positions.
5. Include a process for providing compensation adjustments that considers a combination of factors, including achievement of performance objectives or results, competency determinations, recognition of changes in job content, and acquisition and application of advanced skills or knowledge.
6. Provide funding for compensation adjustments based on the dollar amounts determined necessary to provide competitive compensation in accordance with the state's compensation philosophy. Funding for compensation adjustments may not be provided as a statewide percentage increase attributable to all employees nor as part of a statewide pool of funds designated for addressing equity issues.
7. Consider the needs of the state as an employer and the tax effect on North Dakota citizens.

The office of management and budget shall develop and consistently administer the compensation program for classified state employees and ensure that state agencies adhere to the components of the state's compensation philosophy. The office of management and budget shall regularly conduct compensation comparisons to ensure that the state's compensation levels are competitive with relevant labor markets. Any salary information collected from private businesses for the purpose of conducting compensation comparisons is exempt from public disclosure. Records naming private businesses from which salary information is collected are open.

The legislative assembly recognizes the importance of providing annual compensation adjustments to employees based on performance and equity to maintain the market competitiveness of the compensation system.

SECTION 6. AMENDMENT. Subsection 2 of section 54-44.3-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The term of each member of the board, except the director, must be for six years. The director's term coincides with employment as director. Any permanent vacancy in office must be filled by the eligible person who received the next highest vote total in the previous election. If the eligible person is not

available for the unexpired term the permanent vacancy in office must be filled in the same manner as the selection of the person vacating the office.

SECTION 7. AMENDMENT. Section 54-44.3-05 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-05. Election committee~~Secret ballot election - Guidelines.~~

~~The governor, the secretary of state, and the attorney general shall constitute a three-member committee to develop rules and regulations~~guidelines for a secret ballot election among all employees eligible under sections 54-44.3-19 and 54-44.3-20 to carry out the election of the two members of the board elected by classified employees. All elections of members of the board are the responsibility of the director who will ensure that proper and due notification is given to all employees in sufficient time to enable potential candidates to initiate necessary petitions and conduct campaigns. Nominees for candidacy are required to submit petitions containing no less than ~~two~~one hundred names of employees in good standing classified under sections 54-44.3-19 and 54-44.3-20. All elections will be conducted through a secret ballot process.

SECTION 8. AMENDMENT. Section 54-44.4-02.1 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-02.1. Procurement of services.

All services purchased by the office of management and budget or by an agency or institution in the executive branch of state government must comply with the standards and guidelines for procurement of services established by the office of management and budget. ~~Before March first of each year, each agency or institution in the executive branch of state government which purchases services shall file with the office of management and budget a report regarding the services purchased the preceding year. The report must be provided on forms established and made available by the office of management and budget.~~

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 240

HOUSE BILL NO. 1109

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-01-03 and 37-01-43, subsection 6 of section 37-28-02, and section 37-28-03 of the North Dakota Century Code, relating to the operation of the North Dakota national guard.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-03 of the North Dakota Century Code is amended and reenacted as follows:

37-01-03. Articles of uniform code of military justice applicable in state - Regulations governing - Punishment for offenses while on duty.

The articles of uniform code of military justice governing the armed forces of the United States as codified in the Manual for Courts-Martial, United States, ~~2012~~2016 edition, are a part of this title so far as the same are applicable and not modified by any provision of this title. A person who commits an offense while on military duty, to include state active duty, may be tried by a court-martial lawfully appointed even after such duty has terminated, and if found guilty, the accused must be punished according to the articles of uniform code of military justice and the rules and regulations governing the armed forces of the United States and within the limits prescribed in this title and by federal law for the courts-martial in the national guard. In any case in which the person alleged to have committed the offense could be charged either under the code of military justice or the civil law of this state, the officer whose duty it is to approve such charge, in the officer's discretion, may order the person charged or subject to being charged to be turned over to the civil authorities for trial. Commanders may administer nonjudicial punishment for offenses while on military duty, to include state active duty, in accordance with part V, Manual for Courts-Martial, except that the service member may not demand a trial by courts-martial. Whenever reference is made to the articles of uniform code of military justice, to the military service, or to the armed forces of the United States, such reference shall be deemed to include the military service of this state. The intent of this title and of all laws of this state affecting the military forces is to conform to all acts and regulations of the United States affecting the same subjects, and all laws of this state shall be construed to effect this purpose.

SECTION 2. AMENDMENT. Section 37-01-43 of the North Dakota Century Code is amended and reenacted as follows:

37-01-43. North Dakota military civil relief act.

A person called or ordered to active service for thirty consecutive days or longer has all of the protections afforded to persons in the military service of the United States under the Servicemembers Civil Relief Act [~~50 App. U.S.C. Sections 501-596~~50 U.S.C. sections 3901-4043] in effect on December 31, ~~2014~~2016.

SECTION 3. AMENDMENT. Subsection 6 of section 37-28-02 of the North Dakota Century Code is amended and reenacted as follows:

6. "Period of service" means the period of time beginning December 5, 1992, and ending June 30, ~~2017~~2019.

SECTION 4. AMENDMENT. Section 37-28-03 of the North Dakota Century Code is amended and reenacted as follows:

37-28-03. Payment of adjusted compensation for domestic and foreign service.

Each national guard or reserve component resident veteran mobilized stateside is entitled to fifty dollars for each month or major fraction thereof for domestic service. Each national guard, reserve, or active component resident veteran of foreign service who received the expeditionary medal or campaign badge is entitled to one hundred dollars for each month or major fraction thereof. If the veteran received a purple heart for foreign service, the veteran is entitled to a payment of two thousand five hundred dollars in lieu of monthly payments for adjusted compensation related to the mobilization during which the purple heart was earned. If the veteran is deceased, the veteran's beneficiary is entitled to any payments under this chapter to which the veteran would have been entitled. Applications for adjusted compensation may be filed with the adjutant general through June 30, ~~2017~~2019, or in the case of a soldier mobilized on June 30, ~~2017~~2019, not later than six months after the end of the mobilization period of service.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 241

HOUSE BILL NO. 1104

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-01-04 of the North Dakota Century Code, relating to the governor's authority to call out the national guard.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-04 of the North Dakota Century Code is amended and reenacted as follows:

37-01-04. Governor's authority to order out national guard - Reserve militia ordered out.

In case of insurrection, invasion, tumult, riot, breach of the peace, cyber attack, or imminent danger thereof, to provide a presence at state ceremonial events, to provide assistance to political entities in search and rescue efforts or to respond to a potential natural or environmental hazard or nuisance, or to perform training activities, the governor may order into the active service of this state any part of the national guard that the governor may deem proper. When the national guard of this state, or a part thereof, is called forth under the Constitution of the United States and the laws of the United States, the governor shall order out for service the remaining troops or such part thereof as may be necessary. If the number of available troops is insufficient, the governor shall order out such part of the reserve militia as the governor may deem necessary.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 242

SENATE BILL NO. 2107

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to create and enact section 37-01-47 of the North Dakota Century Code, relating to health insurance coverage for national guard service members; to amend and reenact sections 37-04-08 and 37-07-05 of the North Dakota Century Code, relating to pay and benefits of national guard members; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 37-01-47 of the North Dakota Century Code is created and enacted as follows:

37-01-47. Health insurance coverage while on state active duty.

During the period of active duty, the national guard may pay any primary health insurance premium on behalf of a national guard service member or an employer-sponsored health insurance premium cost share paid by the service member while called to state active duty. Coverage of qualifying premium payment is subject to rules set forth by the adjutant general's office and subject to available funds.

SECTION 2. AMENDMENT. Section 37-04-08 of the North Dakota Century Code is amended and reenacted as follows:

37-04-08. Pay received by commissioned officers of the national guard.

Every commissioned officer of the national guard ~~shall~~ is entitled to receive from this state, while engaged in any service ordered by the governor, pay and allowances at the rate allowed by law to officers of similar rank and length of service in the United States army. ~~If ordered to active duty by the governor in response to an emergency management assistance compact request and if the requesting state pays state active duty pay at a higher rate than this state, the commissioned officer is entitled to the higher rate of pay.~~ Each commissioned officer of the national guard ~~shall also~~ is entitled to receive a state active duty pay enhancement of ~~one~~ one ~~three~~ three hundred dollars for every ~~fourteen consecutive days~~ month spent on state active duty ~~or a prorated amount for each day of state active duty up to three hundred dollars per month.~~ The adjutant general and deputy assistant adjutant general when receiving salary from the state and not on active duty in a federal status ~~shall~~ are entitled to receive such compensation as may be appropriated by the legislative assembly for that purpose, provided that when the adjutant general receives compensation from the government of the United States as director of selective service, such compensation must be deducted from the compensation otherwise due the adjutant general from the state and the adjutant general may be paid from state funds only the difference, if any, between the compensation from the United States and the compensation provided in this section.

SECTION 3. AMENDMENT. Section 37-07-05 of the North Dakota Century Code is amended and reenacted as follows:

37-07-05. Pay and allowances of enlisted national guard members - Deductions allowed.

1. Each enlisted member of the national guard, when called into active service by the governor, ~~shall~~ is entitled to receive pay at the rate provided for enlisted personnel of similar grade, rating, and term of enlistment in the national guard of the United States, except that such daily pay rate for each of the grades hereafter listed must be increased by the percentage set forth after such grade as follows:
 1. a. E-3 55%
 2. b. E-4 45%
 3. c. E-5 35%
 4. d. E-6 25%
 5. e. E-7 15%
 6. f. E-8 10%
2. If ordered by the governor in response to an emergency management assistance compact request and if the requesting state pays state active duty pay at a higher rate than this state, the enlisted member may receive the higher rate of pay if the requesting state reimburses this state for the higher rate of pay. Each enlisted member ~~shall~~ also is entitled to receive transportation, shelter, and subsistence. The value of articles issued to any member of a company or battery and not returned in good order on demand, and all legal fines or forfeitures, may be deducted from the member's pay. Each enlisted member ~~shall~~ also is entitled to receive a state active duty pay enhancement of ~~one~~ three hundred dollars for every ~~fourteen consecutive days~~ month spent on state active duty or a prorated amount for each day of state active duty up to three hundred dollars per month. Pay at an annual encampment must be such as is allowed by federal law.

SECTION 4. RETROACTIVE APPLICATION. Section 1 of this Act applies retroactively to eligible expenses incurred by national guard service members called to state active duty in response to protest activities since August 19, 2016.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 243

HOUSE BILL NO. 1106

(Political Subdivisions Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.1-04 of the North Dakota Century Code, relating to definitions of disasters and emergencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-04. Definitions.

As used in this chapter:

1. "Critical industry sectors" means any of the critical infrastructure sectors identified by the United States government whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States and the state that the sectors' incapacitation or destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof.
2. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, chemical spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, or cyber attack which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby.
- 2-3. "Disaster or emergency worker" means any person performing disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision.
- 3-4. "Emergency" means any situation that is determined by the governor to require state or state and federal response or mitigation actions to immediately protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster. Emergencies require an immediate supplement to local governments to protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster or aid to critical industry sectors that provide essential lifeline services.
- 4-5. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to prevent, mitigate, prepare for, respond to, and recover from known and unforeseen hazards or

situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.

- 5-6. "Homeland security" means a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks in the United States.
- 6-7. "Incident command system" means a standardized on-scene incident management concept designated specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.
- 7-8. "Mass care" means food, clothing, shelter, and other necessary and essential assistance provided to a large number of affected people in response to, or recovery from, a disaster or emergency.
- 8-9. "National incident management system" means a system that provides a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents regardless of cause, size, or complexity.
- 9-10. "Wide area search and rescue" means the employment, coordination, and utilization of available resources and personnel in activities occurring within large geographical areas for the purpose of locating, relieving distress, and preserving the life of an individual reported or believed to be lost, stranded, or deemed a high-risk missing individual, and removing any survivor to a place of safety.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 244

SENATE BILL NO. 2110

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.1-07.1 of the North Dakota Century Code, relating to hazardous chemical preparedness and response program fees and fines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-07.1. Hazardous chemicals preparedness and response program.

1. Program components.
 - a. The governor shall appoint members of the state emergency response commission to carry out the commission's responsibilities as outlined in Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the responsibilities of the commission members as outlined in the North Dakota emergency operations plan.
 - b. In conjunction with the state emergency response commission, the local emergency planning committees, as appointed by the boards of county commissioners, and the local emergency management organizations shall coordinate the development and maintenance of a state hazardous chemicals preparedness and response program.
 - c. The director of the division of homeland security shall serve as the chairman of the state emergency response commission. In the absence of the chairman, the designated vice chairman shall serve as chairman. The state emergency response commission by vote will select the vice chairman to fulfill a two-year term. The chairman shall recognize the assignment of representatives to the commission who are designated through a delegation of authority by a member. The chairman shall designate a commission secretary, solely for the purpose of documenting and distributing clerical proceedings, from the staff of the division of homeland security.
 - d. For the purpose of complying with the reporting requirements set forth in sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, the owner and operator of any facility, as defined in SARA title III, shall submit those reports to the North Dakota division of homeland security as required by SARA title III, which shall establish and maintain the state repository for these reports.
 - e. For purposes of monitoring, determining if emergency response may be required, and notifying local officials, owners and operators or responsible parties shall report all spills or discharges to the appropriate state agency

as required by law. The report must include the name of the reporting party, including phone number and address; date; time of release; location of release; containment status; name of the chemical, if waterways are involved; and immediate potential threat. If the release occurs or travels offsite from a facility, the owner and operator or responsible party shall notify the surface owner within a reasonable time. State agencies that receive direct reports of spills or discharges shall provide the report information to the division within a time that is consistent with potential level of response needed.

2. Establishment of funds.

- a. There is created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the legislative assembly. Moneys in the fund shall be appropriated biennially to the division of homeland security for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.
- b. The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.
- c. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of homeland security by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40-CFR-355.20 title 40, Code of Federal Regulations, part 355.20, or its successor which is required under section 312 of SARA title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40-CFR-370.20 title 40, Code of Federal Regulations, part 20. The maximum fee for a facility under this section is four hundred seventy-five dollars. The director of the homeland security division may impose fees for both late filing of reports and late payment of fees. A late fee must equal the amount of the hazardous chemicals fee owed under this subdivision. After six months the director shall process further violations under willful violations in subsection 4. The division of homeland security shall transfer to the county hazardous chemicals preparedness and response account one-half of the ~~funds~~ regular fees collected from the state's hazardous chemicals fee system.
- d. The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.

- e. The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response programs to include training, exercising, equipment, response, and salaries, and local emergency planning committee member stipends not to exceed thirty percent of state per diem per meeting attended. In lieu of stipends the committee chairman may provide a meal or refreshments other than alcoholic beverages.
 - f. "Hazardous chemical" means as defined in ~~40 CFR 355.20~~title 40, Code of Federal Regulations, part 355.20 and ~~29 CFR 1910.1200~~title 29, Code of Federal Regulations, part 1910.1200.
 - g. The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.
3. a. A person who causes a release, as defined in ~~40 CFR 355.20~~title 40, Code of Federal Regulations, part 355.20, of a hazardous chemical in excess of the reportable quantity of that chemical, as defined in ~~40 CFR 355.20~~title 40, Code of Federal Regulations, part 355.20, is liable for the response costs incurred by state or local hazardous chemical response personnel. The state agency, local agency, volunteer organization, or hazardous chemical response personnel, as identified in the state or local emergency operations plan, which undertakes a response action may recover those response costs in an action brought before a court of competent jurisdiction. If more than one jurisdiction, organization, or agency incurs response costs for the same hazardous chemical release or incident, those hazardous chemical response jurisdictions, agencies, organizations, or personnel may file a joint action and may designate one entity to represent the others in the action.
 - b. In the action to recover reasonable and necessary response costs, state agencies, local agencies, or volunteer organizations may include operational, administrative, personnel, and legal costs incurred from its initial response action up to the time that it recovers its cost. Reasonable and necessary costs are those additional costs incurred that are a result of the responsible party's failure or inability to implement or initiate the necessary actions to protect life, property, and the environment.
4. a. A person who willfully violates any of the reporting, planning, or notification requirements outlined in the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 [title III of Public Law 99-499, 42 U.S.C. 11001 et seq.], ~~or fails to pay a state hazardous chemicals fee~~ is subject to a civil fine of not more than fifteen thousand dollars for each separate offense. For purposes of this subdivision, each day of continued violation constitutes a separate offense. All civil fines collected under this subdivision must be deposited in the state general fund. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the civil fines established in this subdivision.
 - b. Any person who knowingly falsifies information or who intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of state or local government or state or local hazardous

chemicals response personnel attempting to perform duties and functions in state or local emergency operations plans or complying with Public Law 99-499, SARA title III, is guilty of a class B misdemeanor. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the penalty established in this subdivision.

5. If the director of the division of homeland security determines that a violation of this chapter has occurred, the director shall make all evidence available to the attorney general for use in any remedial action the attorney general's office determines appropriate, including injunctive relief. Nothing in this section may be construed to deny use of the remedies authorized under chapter 32-40.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 245

SENATE BILL NO. 2050

(Government and Veterans Affairs Committee)
(At the request of the Information Technology Department)

AN ACT to amend and reenact subsection 1 of section 37-17.3-02.2 of the North Dakota Century Code, relating to the statewide interoperability executive committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁹ **SECTION 1. AMENDMENT.** Subsection 1 of section 37-17.3-02.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The statewide interoperability executive committee consists of:
 - a. The director of state radio or a designee;
 - b. The director of the division of homeland security or a designee;
 - c. The superintendent of the highway patrol or a designee;
 - d. The adjutant general or a designee;
 - e. The director of the department of transportation or a designee;
 - f. A representative of the North Dakota sheriff's and deputies association;
 - g. A representative of the North Dakota emergency managers association;
 - h. A representative of the North Dakota fire chiefs association;
 - i. A representative of the North Dakota emergency medical services association;
 - j. A representative of the North Dakota police chiefs association;
 - k. A representative of the North Dakota peace officers association;
 - l. A representative of the North Dakota 911 association; ~~and~~
 - m. The North Dakota chief information officer or a designee; and
 - n. The North Dakota Indian affairs commission executive director or a designee.

Approved March 13, 2017

Filed March 13, 2017

¹⁰⁹ Section 37-17.3-02.2 was also amended by section 2 of House Bill No. 1178, chapter 247, and section 7 of Senate Bill No. 2021, chapter 46.

CHAPTER 246

SENATE BILL NO. 2106

(Political Subdivisions Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.3-08 of the North Dakota Century Code, relating to the state radio fee system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.3-08 of the North Dakota Century Code is amended and reenacted as follows:

37-17.3-08. State radio system and service fees.

1. The director shall establish the appropriate fees for access to the state radio system and the service provided to local government users of the mobile data terminal system and North Dakota law enforcement telecommunications systems and other such systems that may be employed that enhance public safety. Changes to fees charged by the division, including schedule of charges for counties and cities, will take effect on July first. The director shall announce any fee increases a minimum of one year before the effective date. When the director considers an adjustment, as a part of the process the director shall consult with representatives of state and local units of government before setting fees. The director may consider economic conditions and the general economy when setting fees. The director shall deposit all revenue obtained under this chapter with the state treasurer for deposit in the state radio broadcasting system operating account. The state radio broadcasting system operating account must be expended pursuant to legislative appropriation for the operation and maintenance of the system.
2. ~~The division shall establish and charge fees to provide mobile data terminal service to interested local law enforcement agencies except for local law enforcement agencies using private commercial access to the state message switch. The fees must be based on actual costs incurred by the division for providing the service and will be levied on a per system user basis. State general fund agencies that access the system will not incur any fees for the service.~~
3. Each county and city law enforcement department that accesses the North Dakota teletype system shall pay a fee based upon fifty percent of the actual costs incurred by the division for providing the service. Fees will be levied on a per terminal basis. Other law enforcement affiliated organizations and federal agencies will pay one hundred percent of the actual costs incurred by the division for providing the service. Fees will be levied on a per terminal basis. State general fund agencies that access the system will not incur any fees for the service. City and county law enforcement fees will be based on the following schedule of charges per terminal:
 - a. County population of less than five thousand shall pay forty dollars per month.

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- b. County population of five thousand or more but less than ten thousand shall pay eighty dollars per month.
 - c. County population of ten thousand or more but less than fifteen thousand shall pay one hundred twenty dollars per month.
 - d. County population of fifteen thousand or more but less than twenty-five thousand shall pay one hundred sixty dollars per month.
 - e. County population of twenty-five thousand or more shall pay two hundred dollars per month.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 247

HOUSE BILL NO. 1178

(Representatives Porter, Heinert, Nathe, Owens)
(Senators D. Larson, G. Lee, Wardner)

AN ACT to create and enact a new section to chapter 37-17.3 of the North Dakota Century Code, relating to the creation of a statewide interoperable radio network fund; to amend and reenact subsection 1 of section 37-17.3-02.2, subsection 4 of section 54-59-05, section 57-40.6-02, and subsection 1 of section 57-40.6-14 of the North Dakota Century Code, relating to the statewide interoperability executive committee, the powers and duties of the information technology department, the assessed communications service fee, and the prepaid wireless emergency 911 fee; to authorize borrowing authority; to provide an appropriation; to provide statements of legislative intent; to provide for a budget section report; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-17.3 of the North Dakota Century Code is created and enacted as follows:

Statewide interoperable radio network fund.

1. A fund known as the statewide interoperable radio network fund must be maintained in the state treasury. Subject to legislative approval and statewide interoperability executive committee approval, moneys in the fund must be used for providing the required state share of funding for expenses associated with the purchase, installation, operation, and maintenance of a statewide interoperable radio network. The fund consists of all moneys transferred into the fund, interest earned on moneys in the fund, payments to the fund, and other fund earnings.
2. The chief information officer of the information technology department may apply for and accept funds, grants, gifts, or services made available for the statewide interoperable radio network by an agency or department of the federal government or any other person. Any funds, grants, or gifts, or moneys received from services received under this section must be deposited in the statewide interoperable radio network fund.
3. Revenue received by a political subdivision in accordance with subsection 2 of section 57-40.6-02 must be remitted to the state treasurer for deposit in the statewide interoperable radio network fund.

¹¹⁰ **SECTION 2. AMENDMENT.** Subsection 1 of section 37-17.3-02.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The statewide interoperability executive committee consists of:

¹¹⁰ Section 37-17.3-02.2 was also amended by section 7 of Senate Bill No. 2021, chapter 46, and section 1 of Senate Bill No. 2050, chapter 245.

- a. The director of state radio or a designee;
- b. The director of the division of homeland security or a designee;
- c. The superintendent of the highway patrol or a designee;
- d. The adjutant general or a designee;
- e. The director of the department of transportation or a designee;
- f. A representative of the North Dakota sheriff's and deputies association;
- g. A representative of the North Dakota emergency managers association;
- h. A representative of the North Dakota fire chiefs association;
- i. A representative of the North Dakota emergency medical services association;
- j. A representative of the North Dakota police chiefs association;
- k. A representative of the North Dakota peace officers association;
- l. A representative of the North Dakota 911 association; and
- m. The North Dakota chief information officer or a designee;
- n. The North Dakota Indian affairs commission executive director or a designee; and
- o. One member of the North Dakota house of representatives and one member of the North Dakota senate appointed by the legislative management.

SECTION 3. AMENDMENT. Subsection 4 of section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

- 4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. With the exception of agreements entered related to the statewide interoperable radio network, an agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the budget section of the legislative management or the legislative assembly before executing a financing agreement. If the budget section or the legislative assembly does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. With the exception of financing for the statewide interoperable radio network, the department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.

SECTION 4. AMENDMENT. Section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-02. Authority of counties or cities to impose fee on assessed communications service - Procedure.

The governing body of a county or city may impose a fee on all assessed communications services in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar and fifty cents per month per communication connection and must be applied equally upon all assessed communications services. Prepaid wireless service is not subject to the fee imposed under this section.
2. A political subdivision shall add a fee of fifty cents to the fee imposed on assessed communications services established under subsection 1. The additional fifty cents per communication connection must be remitted to the state treasurer for deposit in the statewide interoperable radio network fund in accordance with section 1 of this Act for implementing a statewide interoperable radio network. The funds collected under this subsection must be expended in a manner consistent with the recommendations of the statewide interoperability executive committee.
3. The question of the adoption of the fee must be submitted on a petition on which the petition title of the proposition includes the maximum monthly rate of the proposed fee authorized under subsection 1. The question of the adoption of the fee may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the fee. The fee is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the fee.
- ~~3-4.~~ Once established by this section, the maximum fee may be increased, decreased, or eliminated by a majority vote of the electors. The question may be placed on the ballot of any general, primary, or special election by a resolution of the governing body, or by a petition signed by ten percent or more of the total number of qualified electors of the political subdivision voting for governor at the most recent gubernatorial election and submitted to the governing body. By action of the governing body, the fee amount collected may be adjusted, subject to the maximum approved by the voters, to meet the costs allowed by this chapter.
- ~~4-5.~~ In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.
- ~~5-6.~~ In the interest of public safety, where the subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the fee do not coincide, and where all of the political subdivisions within the subscriber's telephone exchange access service boundary have not

complied with subsection 1, and where a majority of the subscribers within the subscriber's telephone exchange access service boundary have voted for the fee, a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive 911 services by signing a contract agreement with the political subdivision providing the emergency services communication system. The telephone exchange access service provider may collect an additional fee, equal in amount to the basic fee on those subscribers within the exchange boundary. The additional fee amounts collected must be remitted as provided in this chapter.

- ~~6-7.~~ A fee imposed under this section before August 1, 2007, on telephone exchange access service is extended to all assessed communications services and will remain in effect until changed pursuant to subsection ~~34~~.

SECTION 5. AMENDMENT. Subsection 1 of section 57-40.6-14 of the North Dakota Century Code is amended and reenacted as follows:

1. There is imposed a prepaid wireless emergency 911 fee of two and one-half percent on the gross receipts of sellers from all sales at retail of prepaid wireless services in this state.
 - a. A retail transaction that is made, in person, by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state under the provisions of chapter 57-39.4 as those provisions apply to a prepaid wireless calling service.
 - b. Prepaid wireless emergency 911 fees collected by sellers shall be remitted to the commissioner.
 - c. An entity required to collect and remit the prepaid wireless emergency 911 fee shall register with the commissioner. The registration shall be made in the form prescribed by the commissioner, in which the registrant shall identify the name under which the registrant transacts or intends to transact business, the location of the business, the federal identification number, and other information as the commissioner may require.
 - d. Gross receipts from sales at retail of prepaid wireless services are exempt from the prepaid wireless emergency 911 fee imposed by this section when the sale is made to a person entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04.

SECTION 6. STATEWIDE INTEROPERABLE RADIO NETWORK IMPLEMENTATION - FUTURE EXPENDITURES. During the 2017-18 interim, the information technology department shall begin implementation of a statewide interoperable radio network based on findings in the North Dakota statewide interoperable network feasibility study and its recommendations as adopted by the statewide interoperability executive committee. Current and future appropriations and local government contributions for improvement or expansion of state or local public safety land mobile radio systems must be expended in a manner consistent with the recommendations of the statewide interoperability executive committee and only for solutions that are determined by the committee to be interoperable and functional with the statewide system.

SECTION 7. LOAN AUTHORIZATION - APPROPRIATION - STATEWIDE INTEROPERABLE RADIO NETWORK - BUDGET SECTION REPORTS. The information technology department may obtain a loan, subject to budget section approval, from the Bank of North Dakota in an amount not to exceed \$15,000,000, the sum of which is appropriated to the information technology department, for the purpose of defraying the expenses of the statewide interoperable radio network for the biennium beginning July 1, 2017, and ending June 30, 2019. The term of the loan may not exceed six years. The loan authorized in this section must be repaid from funds available in the statewide interoperable radio network fund. During the 2017-18 interim, the information technology department shall provide status reports to the budget section regarding the implementation and progress of the statewide interoperable radio network.

SECTION 8. LEGISLATIVE INTENT - RADIO FREQUENCIES. By September 30, 2018, all North Dakota entities operating a public-safety answering point shall relinquish legal rights to any radio frequency required for the statewide interoperable radio network trunk system, allowing these frequencies to be utilized by the state of North Dakota for the use of this network.

SECTION 9. LEGISLATIVE INTENT - STATEWIDE INTEROPERABLE RADIO NETWORK CONSOLIDATION. It is the intent of the sixty-fifth legislative assembly that during the 2017-18 interim, the information technology department and statewide interoperability executive committee make efforts to consolidate certain functions within the statewide interoperable radio network.

SECTION 10. EXPIRATION DATE. This Act is effective through July 31, 2023, and after that date is ineffective.

Approved April 25, 2017

Filed April 25, 2017

CHAPTER 248

SENATE BILL NO. 2199

(Senators Cook, Bekkedahl, Laffen)
(Representatives Dockter, Headland, Louser)

AN ACT to create and enact chapter 37-17.5 of the North Dakota Century Code, relating to facilitating entry of an out-of-state business to perform disaster or emergency remediation work in this state on critical natural gas, electrical, and telecommunication transmission infrastructure and to provide a limited exemption for that purpose from state and local taxes and fees, licensing, and other requirements during the time in this state employed in disaster or emergency remediation work.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 37-17.5 of the North Dakota Century Code is created and enacted as follows:

37-17.5-01. Definitions.

As used in this chapter:

1. "Critical infrastructure" means real and personal natural gas, electrical, and telecommunication transmission property so vital to the state that the incapacity or destruction of that natural gas, electrical transmission or distribution system, or telecommunications transmission system would have a debilitating impact on public health or safety and the economic and physical security of the state or region.
2. "Declared state disaster or emergency" means a disaster or emergency event for which a:
 - a. Disaster or emergency has been declared by the governor; or
 - b. Presidential declaration of a federal major disaster or emergency has been issued.
3. "Disaster or emergency remediation work" means repair or replacement of critical infrastructure that has been, or is under threat of being damaged, impaired, or destroyed by the declared state disaster or emergency.
4. "Disaster response period" means a period that begins ten days before, and ends sixty calendar days after, the declared state disaster or emergency and includes any extension of that time provided by executive order of the governor.
5. "Out-of-state business" means a business entity, including an out-of-state business affiliated solely through common ownership with a business registered in this state, which did not have a business presence in this state before the disaster remediation period and which is in this state to perform disaster or emergency remediation work at the request of a requesting entity.

6. "Out-of-state employee" means an employee who is not a North Dakota resident employed by an out-of-state business.
7. "Registered business" means a business entity registered to do business in this state before the declared state disaster or emergency.
8. "Requesting entity" means an officer or agency of this state, a political subdivision, or a business registered in this state.
9. "State agency" means job service North Dakota, the secretary of state, the tax commissioner, or workforce safety and insurance.

37-17.5-02. Business and employee status during and after disaster response period.

1. An out-of-state business that conducts operations within this state for purposes of performing disaster or emergency remediation work or services during the disaster response period may not be considered to have established a business presence that would require that business or its out-of-state employees to be subject to any state and local taxes or fees including unemployment insurance, workers' compensation, or taxes administered by the tax commissioner. The out-of-state business or out-of-state employee shall have a valid license to perform that business or occupation from the principal state of business or employment.
2. During the disaster response period, the out-of-state business or out-of-state employee may not be required to file or pay any state or local tax administered by a state agency. The out-of-state business or out-of-state employee may not be required to pay any sales and use tax on equipment used or brought into this state temporarily for use during the disaster response period if the equipment is removed from this state within a reasonable period of time after the disaster response period.
3. For purposes of any state or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity of the out-of-state business conducted in this state under this chapter must be disregarded with respect to any filing requirements for a tax, including the income tax return required for a unitary or combined group of which the out-of-state business may be a part. For the purpose of apportioning income, the apportionment factors attributable to the performance by an out-of-state business of any work under this chapter may not be sourced to this state by the out-of-state business or any member of its affiliated group.
4. An out-of-state employee may not be considered to have established a presence in this state which would require that individual or that individual's employer to file or pay income taxes, be subject to income tax withholding, or file and pay any other state or local tax or fee during the disaster response period. This includes any tax or fee imposed by a state agency but does not include any transaction taxes or fees described in subsection 5.
5. Out-of-state businesses and out-of-state employees are subject to fuel taxes and state or local sales or use taxes on materials or services purchased, consumed, or used in this state which are subject to sales or use taxes, hotel taxes, or car rental taxes or fees which the out-of-state affiliated business or out-of-state employee purchases for use or consumption in this state during the disaster response period.

6. Any out-of-state business or out-of-state employee that remains in this state after the disaster response period is subject to any business or employee registration and tax requirements that apply.
7. An employee's sole remedy for a workplace injury under this section is the employee's out-of-state employer's workers compensation policy.

37-17.5-03. Notification by out-of-state business during and after disaster response period.

1. An out-of-state business that enters this state for disaster or emergency remediation work shall provide to the state agencies a statement that the business is in this state for the sole purpose of responding to the disaster or emergency. The statement must include the business name, out-of-state business name if applicable, state of domicile, principal business address, federal tax identification number, date of entry into this state, and contact information, including the out-of-state business's tax matters person. An out-of-state business shall provide proof that its workers have workers' compensation insurance to workforce safety and insurance.
2. A registered business in this state shall provide the information required in subsection 1 for any out-of-state affiliate that enters this state.
3. Each state agency may develop procedures and issue forms or online processes to carry out these administrative procedures and maintain and make available a record of any designations made by an out-of-state business or out-of-state employee pursuant to this chapter.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 249

SENATE BILL NO. 2183

(Senators Sorvaag, Campbell, Dever)
(Representatives M. Johnson, Kading, Kasper)

AN ACT to create and enact a new section to chapter 37-18 of the North Dakota Century Code, relating to the conferment of a veterans commemorative memorial coin; to provide a statement of legislative intent; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-18 of the North Dakota Century Code is created and enacted as follows:

Commemorative memorial coin - Eligibility.

1. The department of veterans' affairs shall create and confer a commemorative memorial coin upon a family member of a deceased North Dakota veteran during military funeral honors for that veteran if the deceased veteran:
 - a. Served on active duty, in the national guard, or in the selected reserve and departed the armed forces or national guard under conditions other than dishonorable;
 - b. Completed at least one term of enlistment or period of initial obligated service in the selected reserve and departed under conditions other than dishonorable or was discharged from the selected reserve due to a disability incurred or aggravated in the line of duty;
 - c. Died while serving on active duty, in the national guard, or in the selected reserve; or
 - d. Was a member of the commissioned officer corps of the public health service, the national oceanic and atmospheric administration, or a civilian or contractual group of individuals given active duty service determinations and considered a veteran under Public Law No. 95-202.
2. A family member of a deceased North Dakota veteran may purchase a commemorative memorial coin from the department of veterans' affairs at a cost determined by the department.
3. As used in this section:
 - a. "Family member" means a spouse, parent, child, or other individual related by blood.
 - b. "North Dakota veteran" means an individual who meets the requirements of subsection 1 and who was a resident of North Dakota during any period of the individual's life.

4. Under section 37-18-12, the department may expend any gifts, grants, or donations received for the creation and conferment of commemorative memorial coins.

SECTION 2. LEGISLATIVE INTENT - COMMEMORATIVE MEMORIAL COINS.

It is the intent of the sixty-fifth legislative assembly that the administrative committee on veterans' affairs consider providing funding from the veterans' postwar trust fund to the department of veterans' affairs for the purpose of funding at least four thousand commemorative memorial coins for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 3. RETROACTIVE APPLICATION. Subsection 2 of Section 1 of this Act applies to all family members of a deceased North Dakota veteran, regardless of the date of death of the veteran.

Approved April 19, 2017

Filed April 20, 2017