

# STATE GOVERNMENT

## CHAPTER 430

### HOUSE BILL NO. 1354

(Representatives D. Anderson, C. Johnson, Mitskog, Schreiber-Beck)  
(Senator Vedaa)

AN ACT to amend and reenact section 54-06-14.3 of the North Dakota Century Code, relating to leave for state employee volunteers.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-06-14.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-06-14.3. Disaster services, emergency medical services, and firefighter volunteers - Leave.**

1. Upon issuance of an order or proclamation declaring a state of disaster or emergency pursuant to chapter 37-17.1, or a declaration of at least a level II disaster by the American red cross in this or any other state, the executive officer in charge of a state agency may grant a leave of absence to any full-time employee of that agency who is certified by the American red cross as a disaster services volunteer. The leave of absence must be for the purpose of allowing that employee, upon request by the American red cross, to participate in disaster relief services. ~~A person~~
2. The executive officer in charge of a state agency may grant a paid leave of absence to a full-time employee of that agency who is an emergency medical services personnel volunteer or volunteer firefighter. The leave of absence must be for the purpose of allowing that employee to respond to an emergency at the request of an emergency medical services operation or fire department.
3. An individual on leave under this section is not deemed to be an employee of the state for the purposes of workforce safety and insurance. The cumulative leave granted under this section may not exceed five working days during any calendar year. The leave may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 431

### HOUSE BILL NO. 1230

(Representatives Schreiber-Beck, D. Anderson, Hatlestad, Roers Jones, Zubke)  
(Senators Klein, Kreun, J. Roers)

AN ACT to amend and reenact section 54-06-37 of the North Dakota Century Code, relating to the lease of a manned aircraft in an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>214</sup> **SECTION 1. AMENDMENT.** Section 54-06-37 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-06-37. Authorization to purchase or lease aircraft - Legislative assembly or budget section approval - Exception.**

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1. As used in this section, "airworthy" means an aircraft conforms to its type design and is in a condition for safe operation.
2. Except as otherwise provided in subsections 3 and 4, a state agency or other entity of state government may not purchase or lease ~~an~~ a manned aircraft without specific authorization from the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session.
3. In an emergency circumstance, a state agency, department, or institution may lease a manned aircraft without approval from the legislative assembly or the budget section if an aircraft currently leased or owned by the state agency, department, or institution is not airworthy. The emergency lease under this subsection may extend only until the aircraft deemed not airworthy is determined to be airworthy.
4. A state agency, department, or institution may purchase a replacement aircraft without approval from the legislative assembly or the budget section if an aircraft is destroyed beyond repair and only insurance proceeds are used for the purchase of the replacement aircraft. If the purchase price of a replacement aircraft exceeds the insurance proceeds, the state agency, department, or institution must receive authorization in accordance with subsection 2.
5. This section does not apply to aircraft purchased or leased by the office of the adjutant general or the university of North Dakota school of aviation.

Approved April 24, 2019

Filed April 24, 2019

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<sup>214</sup> Section 54-06-37 was also amended by section 12 of Senate Bill No. 2055, chapter 438.

## CHAPTER 432

### HOUSE BILL NO. 1077

(Energy and Natural Resources Committee)  
(At the request of the State Auditor)

AN ACT to create and enact a new subsection to section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

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

<sup>215</sup> **SECTION 1.** A new subsection to section 54-10-01 of the North Dakota Century Code is created and enacted as follows:

Perform work on mineral royalties for the federal government in accordance with section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].

Approved March 28, 2019

Filed March 29, 2019

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<sup>215</sup> Section 54-10-01 was also amended by section 3 of Senate Bill No. 2004, chapter 29.

## CHAPTER 433

### HOUSE BILL NO. 1541

(Representatives Buffalo, Fegley, Hager)  
(Senators Hogan, Myrdal)

AN ACT to amend and reenact section 54-12-33 of the North Dakota Century Code, relating to presentations by the human trafficking commission.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>216</sup> **SECTION 1. AMENDMENT.** Section 54-12-33 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-12-33. Human trafficking commission.**

1. The attorney general may establish a human trafficking commission, comprised of designees from state, local, and tribal agencies which have contact with victims or perpetrators, nongovernmental organizations that represent or work with victims, and other organizations and individuals, including victims, whose expertise would benefit the commission. The attorney general may establish the commission by appointing an existing statewide coalition.
2. The commission shall:
  - a. Collect and evaluate data on human trafficking in this state and submit an annual report to the attorney general, governor, and legislative assembly;
  - b. Promote public awareness and provide information to education personnel and the general public about human trafficking, victim remedies and services, and trafficking prevention;
  - c. Promote training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators;
  - d. Promote training on human trafficking investigation and prosecution with the North Dakota state's attorney's association, the North Dakota peace officers standards and training board, and state and local law enforcement agencies; and
  - e. Present annually regarding human trafficking awareness and prevention at professional development conferences directed toward teachers, administrators, and support staff which are hosted by educational organizations in this state or by the department of public instruction; and
  - f. Conduct other appropriate activities.

Approved May 1, 2019

Filed May 2, 2019

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<sup>216</sup> Section 54-12-33 was also amended by section 1 of House Bill No. 1311, chapter 434.

## CHAPTER 434

### HOUSE BILL NO. 1311

(Representatives Buffalo, Beadle, Dobervich, Fegley, Hager, Jones, M. Nelson,  
Satrom)  
(Senators Clemens, Heckaman, Hogan, Kannianen)

AN ACT to amend and reenact subsection 2 of section 54-12-33 of the North Dakota Century Code, relating to law enforcement training on missing and murdered indigenous people.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>217</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 54-12-33 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission shall:
  - a. Collect and evaluate data on human trafficking in this state and submit an annual report to the attorney general, governor, and legislative assembly;
  - b. Promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;
  - c. Promote training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators;
  - d. Promote training on human trafficking investigation and prosecution and on missing and murdered indigenous people with the North Dakota state's attorney's association, the North Dakota peace officers standards and training board, and state and local law enforcement agencies; and
  - e. Conduct other appropriate activities.

Approved March 28, 2019

Filed March 29, 2019

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<sup>217</sup> Section 54-12-33 was also amended by section 1 of House Bill No. 1541, chapter 433.

## CHAPTER 435

### HOUSE BILL NO. 1507

(Representatives Buffalo, Heinert, C. Johnson, Jones, Magrum, Satrom, Schneider)  
(Senators Hogan, Kannianen, Luick, Marcellais, Myrdal)

AN ACT to create and enact section 54-12-33.1 of the North Dakota Century Code, relating to human trafficking prevention training; and to provide a continuing appropriation.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 54-12-33.1 of the North Dakota Century Code is created and enacted as follows:

#### **54-12-33.1. Human trafficking prevention training - Exemptions - Immunity - Continuing appropriation.**

1. As used in this section:
  - a. "Human trafficking" means human trafficking as defined in chapter 12.1-41.
  - b. "Human trafficking commission" means the commission established under section 54-12-33.
  - c. "Lodging establishment" means any hotel, motel, resort, building, or structure that is used to provide sleeping accommodations to transient guests.
  - d. "Proprietor" means the person in charge of a lodging establishment and includes an owner, lessee, and manager.
2. Within ninety days of the effective date of this Act, the human trafficking commission shall establish an educational training program with a focus on the accurate and prompt identification and reporting of, or response to, suspected human trafficking. To the extent possible, the human trafficking commission shall allow the use of existing training modules and materials. The training must include:
  - a. Human trafficking awareness;
  - b. How to recognize potential victims of human trafficking;
  - c. How to identify activities commonly associated with human trafficking; and
  - d. Effective responses to human trafficking situations, including how to report suspected human trafficking to law enforcement.
3. A proprietor may:
  - a. Provide each onsite employee with the training described in subsection 2.

- b. In an employee roster or in each employee's personnel file, annually certify each employee has received the training approved by the human trafficking commission.
- c. Conduct an ongoing awareness campaign for employees which addresses the information described in subsection 2.
- 4. A proprietor may post and maintain a poster approved and provided by the human trafficking commission which contains the information described in subsection 2. The poster must include the contact information for an organization that provides assistance and support services to human trafficking victims. The poster may be visibly displayed at the lodging establishment's check-in area, lobby, or transient guest services.
- 5. A proprietor or employee of a lodging establishment who acts in good faith is immune from liability in any civil action for reporting suspected human trafficking activities.
- 6. The human trafficking commission may seek, apply for, accept, and receive any donation, gift, grant, or bequest offered or tendered from public or private sources for the purpose of furthering the objectives of the human trafficking prevention training and incentivizing proprietors to participate in the human trafficking prevention training. All moneys received or accepted under this subsection are appropriated on a continuing basis to the human trafficking commission.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 436

### HOUSE BILL NO. 1313

(Representatives Buffalo, Beadle, Dobervich, Fegley, Hager, Jones, M. Nelson,  
Satrom)  
(Senators Clemens, Heckaman, Hogan, Kannianen)

AN ACT to amend and reenact section 54-12-34 of the North Dakota Century Code, relating to the collection of data on missing persons.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-12-34 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-12-34. Criminal justice data information sharing system.**

1. The attorney general shall maintain a criminal justice data information sharing system within the bureau of criminal investigation for the exchange of criminal justice data information by judicial, law enforcement, and emergency services agencies, and the department of transportation. Only an authorized individual employed by a criminal justice agency as defined in section 12-60-16.1, the department of transportation, a state court, or the department of emergency services or any other individual approved by the attorney general may access the system. To be eligible for access to the criminal justice data information sharing system, an individual shall undergo a criminal history background check, including a fingerprint check.
2. The criminal justice data information sharing system may be accessed only in accordance with rules adopted under this section. Any law enforcement record in the possession of the attorney general through the criminal justice data information sharing system is an exempt record. Criminal justice data information about an offense committed by a child if the offense has not been transferred under section 27-20-34 to another court having jurisdiction of the offense and information about a child victim or witness is confidential.
3. The attorney general shall provide staff to maintain the criminal justice data information system and provide administrative support for the advisory board.
4. A criminal justice information advisory board must be appointed, consisting of:
  - a. The chief justice of the supreme court or the chief justice's designee.
  - b. The director of the department of emergency services or the director's designee.
  - c. The director of the department of corrections and rehabilitation or the director's designee.
  - d. The superintendent of the state highway patrol or the superintendent's designee.

- e. The chief of the bureau of criminal investigation, who is the chairman of the advisory board.
  - f. The chief information officer of the state or the chief information officer's designee.
  - g. The director of the department of transportation or the director's designee.
  - h. A representative of a city police department, appointed by the attorney general from a list of two or more nominees from the North Dakota chiefs of police association.
  - i. A representative of a county sheriff's office, appointed by the attorney general from a list of two or more nominees from the North Dakota sheriffs and deputies association.
  - j. A state's attorney, appointed by the attorney general from a list of two or more nominees from the North Dakota state's attorney's association.
  - k. A city government representative, appointed by the attorney general from a list of two or more nominees from the league of cities.
  - l. A county government representative, appointed by the attorney general from a list of two or more nominees from the association of counties.
5. Advisory board members who are not permanent full-time state employees are entitled to compensation of seventy-five dollars per day and mileage and expenses as provided by law for state employees. With the exception of the chief of the bureau of criminal investigation, advisory board members appointed under this section serve staggered three-year terms.
  6. The attorney general, after consultation with the advisory board, shall adopt rules to establish eligibility for access to the criminal justice data information sharing system; to implement the collection, storage, and sharing of criminal justice information and the systems necessary to perform those functions; and to address the operation of the advisory board.
  7. The attorney general shall implement a missing person repository for authorized users to enter missing person information in accordance with rules established by the bureau of criminal investigation. Missing person information, including demographic data related to indigenous people, which is entered by an authorized user or made available to an authorized user by a federally recognized tribe in this state must be included in the repository. Records under this subsection are exempt records that may be disclosed only in accordance with bureau of criminal investigation rules.

Approved April 8, 2019

Filed April 9, 2019

**CHAPTER 437****SENATE BILL NO. 2058**

(Senator Anderson)  
(Representative Longmuir)

AN ACT to amend and reenact subsection 6 of section 54-17.8-06 of the North Dakota Century Code, relating to the North Dakota outdoor heritage advisory board.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 54-17.8-06 of the North Dakota Century Code is amended and reenacted as follows:

6. The advisory board ~~shall recommend~~may not forward a grant application to the commission unless the approval of grants application is for funding activities that fulfill the purposes of this chapter and the application receives a favorable recommendation from a majority of the advisory board members.

Approved April 15, 2019

Filed April 15, 2019

## CHAPTER 438

### SENATE BILL NO. 2055

(Senator Wardner)  
(Representative Pollert)

AN ACT to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to the establishment of the budget section; to amend and reenact sections 15-03-04, 15-10-12.1, 20.1-02-05.1, 20.1-02-16.1, 25-04-02.2, 37-17.1-27, 40-23-22.1, 47-30.1-24.1, 48-01.2-25, subsection 16 of section 50-06-05.1, subsection 18 of section 50-06-05.1, and sections 54-06-37, 54-27-22, 54-27-23, 54-44.1-13.1, 54-59-05, and 65-08.1-02 of the North Dakota Century Code, relating to agency requests for budget section approval; and to repeal section 1 of chapter 67 of the 2013 Session Laws, relating to the authority of the state board of agricultural research and education to sell certain real property.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-03-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-03-04. Legal investments.**

Subject to the provisions of section 15-03-05, the board of university and school lands shall apply the prudent investor rule in investing the permanent funds under its control. The "prudent investor rule" means that in making investments the board shall exercise the same judgment and care, under the circumstances then prevailing and limitations of North Dakota and federal law, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable investment returns. Notwithstanding any investments made before July 1, 1997, the board may not use any funds entrusted to it to purchase, as sole owner, commercial or residential real property in North Dakota without prior approval of the legislative assembly or the budget section ~~of the legislative management if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act.~~ The board may also lend securities held by the permanent funds, including the authority to pledge a security interest in the securities in the possession of a custodian agent. These securities must be collateralized as directed by the board.

<sup>218</sup> **SECTION 2. AMENDMENT.** Section 15-10-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-12.1. Acceptance of buildings and campus improvements - Legislative approval.**

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<sup>218</sup> Section 15-10-12.1 was also amended by section 8 of House Bill No. 1003, chapter 3.

The state board of higher education may authorize campus improvements and building maintenance on land under the control of the board which are financed by donations, gifts, grants, and bequests if the cost of the improvement or building maintenance is not more than seven hundred thousand dollars. The consent of the legislative assembly is required for construction of any building or any addition to a building on land under the control of the board which is financed by donations, gifts, grants, and bequests. The consent of the legislative assembly is required for campus improvements or building maintenance financed by donations, gifts, grants, and bequests if the cost of the improvements or maintenance is more than seven hundred thousand dollars. During the time the legislative assembly is not in session, except for the six months preceding the convening of a regular session and the three months following the close of a regular session, and unless otherwise restricted by previous legislative action or other law, ~~the state board of higher education, with the approval of the budget section of the legislative management,~~ may authorize campus improvements and building maintenance financed by donations, gifts, grants, and bequests if the cost of the improvement or maintenance is more than seven hundred thousand dollars. The budget section approval must comply with section 15 of this Act and must include a specific dollar limit for each campus improvement project or maintenance project. The state board of higher education may authorize the sale of any real property or buildings which an institution of higher learning has received by gift or bequest. The board shall prescribe such conditions for the sale of the property as it determines necessary. The conditions must include requiring an appraisal and public auction or advertisement for bids, unless the gift instrument requires a different process. If the state board of higher education submits a request for campus improvements or building maintenance under this section to the budget section for approval, the legislative council shall notify each member of the legislative assembly of the date of the budget section meeting at which the request will be considered and provide a copy of the meeting agenda to each member of the legislative assembly. The chairman of the budget section shall allow any member of the legislative assembly an opportunity to present testimony to the budget section regarding any such request.

**SECTION 3. AMENDMENT.** Section 20.1-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-05.1. Land acquisitions - Statewide land acquisition plan.**

1. The director shall establish a comprehensive statewide land acquisition plan ~~that must be approved, subject to approval by the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session.~~ Every land acquisition made by the department exceeding ten acres [4.05 hectares] or ten thousand dollars must be approved by the legislative assembly or the budget section if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act.
2. Before a land acquisition, the department shall have the land in question appraised by a certified appraiser. The department may not acquire any land for an amount that exceeds the appraised value except for parcels or tracts of land less than forty acres [16.19 hectares] which may be acquired for up to two hundred percent of the appraised value.
3. Before the appraisal, the director shall give notice of the intent to purchase to every landowner within one mile [1.16 kilometers] of the boundary of the land to be appraised unless the landowner is within the boundary of a city, then the director shall send notice to the governing body of the city or unless the

landowner is within the geographical boundary of a rural subdivision where the lots are ten acres [4.04 hectares] or less, then the director shall send notice to the governing body of the township or other governing authority for the rural subdivision. The director shall send notice to the board of county commissioners in the county of the land to be appraised, the board of township supervisors if the land to be appraised is in an organized township, and the governing body of a city within twelve miles [19.32 kilometers] of the boundary of the land to be appraised. The director shall publish notice in the official newspaper of the county of the land to be appraised, once a week for two consecutive weeks. The notice must contain the amount of acreage, the legal description, and the fact that the department intends to purchase the land.

**219 SECTION 4. AMENDMENT.** Section 20.1-02-16.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-16.1. Game and fish fund - Use - Required balance - Budget section approval.**

All income of the state game and fish department deposited by the director with the state treasurer must be credited to the state game and fish fund and the fund may be used only by the department. All money derived from the investment of the fund, special accounts, or portions of the fund must be credited to the game and fish department private land habitat and access improvement fund. The department shall spend moneys in the game and fish fund within the limits of legislative appropriations, only to the extent the balance of the fund is not reduced below fifteen million dollars, unless otherwise authorized by the legislative assembly or the budget section if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act.

**SECTION 5. AMENDMENT.** Section 25-04-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-02.2. Institutional sale of services - Budget section approval.**

Subject to approval of the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session, the life skills and transition center may provide any service not otherwise authorized by law under contract with a governmental or nongovernmental person. The life skills and transition center shall determine the rates for services provided. The legislative assembly or the budget section may approve the provision of a service under this section only after determining that the service is not otherwise being provided by either the private or public sector. Any request considered by the budget section must comply with section 15 of this Act.

**SECTION 6. AMENDMENT.** Section 37-17.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-27. State disaster relief fund - Creation - Uses.**

There is created in the state treasury a state disaster relief fund. Moneys in the fund are to be used subject to legislative appropriations ~~and emergency commission and budget section approval~~ for providing the required state share of funding for expenses and administration associated with ~~presidential-declared disasters in the~~

<sup>219</sup> Section 20.1-02-16.1 was also amended by section 4 of Senate Bill No. 2017, chapter 42, and section 2 of Senate Bill No. 2293, chapter 198.

statefederal emergency management agency disaster response, recovery, and mitigation grants and for the purposes of reimbursing costs under section 37-17.1-28. Any interest or other fund earnings must be deposited in the fund. Before any expenditure is made from the fund, the agency authorized to make the expenditure shall provide information on the purpose and payee of the expenditure to the appropriation committees of the house of representatives and senate or to the budget section if the legislative assembly is not in session.

**SECTION 7. AMENDMENT.** Section 40-23-22.1 of the North Dakota Century Code is amended and reenacted as follows:

**40-23-22.1. City flood control special assessment exemption for state property - Limitations.**

1. Notwithstanding any other provision of law, property of the state in a city subject to this section is exempt from special assessments levied for flood control purposes. Upon request by the governing body of the city, the exemption under this section may be completely or partially waived by majority vote of the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act. A city is subject to the exemption under this section in recognition of state financial assistance for flood control provided to the city pursuant to section 61-02.1-01 or other appropriation or commitment of state funds.
2. The exemption under this section does not apply to any privately owned structure, fixture, or improvement located on state-owned land if the structure, fixture, or improvement is used for commercial purposes unless the structure, fixture, or improvement is primarily used for athletic or educational purposes at a state institution of higher education. An assessment allowed under this subsection must be based on the square footage or front footage of the land occupied by the structure, fixture, or improvement and made against the structure, fixture, or improvement and not against the land on which it is located.

**SECTION 8. AMENDMENT.** Section 47-30.1-24.1 of the North Dakota Century Code is amended and reenacted as follows:

**47-30.1-24.1. Claims by state agencies - Budget section approval and report.**

Within one year of receipt of state agency property, the administrator shall notify the agency by certified mail. The commissioner of university and school lands shall present a report to the budget section of the legislative management identifying every state agency that has not submitted a claim for property belonging to that agency within one year of the receipt of the date of the certified mail receipt. Upon approval of the budget section of the legislative management, the agency relinquishes its right to recover its property. Any request considered by the budget section must comply with section 15 of this Act.

**SECTION 9. AMENDMENT.** Section 48-01.2-25 of the North Dakota Century Code is amended and reenacted as follows:

**48-01.2-25. Authorization of expansion of public improvements by legislative assembly or budget section.**

Notwithstanding any other provision of law, a state agency or institution may not significantly change or expand a public improvement beyond what has been

approved by the legislative assembly unless the legislative assembly approves the change or expansion of the project or any additional expenditure for the project. During the time the legislative assembly is not in session, and unless otherwise restricted by previous legislative action or other law, the budget section of ~~the legislative management~~ may approve a change or expansion or any additional expenditure for the project. However, the budget section of ~~the legislative management~~ may not approve a change, expansion, or additional expenditure for the project during the six months preceding the convening of a regular session or during the three months following the close of a regular session except for changes in project scope and related additional expenditures resulting from an unforeseen emergency event. Any request considered by the budget section must comply with section 15 of this Act. For the purposes of this section, a significant change or expansion includes the construction of an addition to a building, including skywalks or other type of enclosed walkway, or any other substantial increase in the area of the building, but does not include the construction of building entrances and stairwells.

**220 SECTION 10. AMENDMENT.** Subsection 16 of section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

16. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise county administration of that program. ~~Provided, however, that the~~The department with the consent of the ~~legislative assembly or the budget section of the legislative management~~if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act. Any request considered by the budget section must comply with section 15 of this Act. The department may not deny assistance under the supplemental nutrition assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

**221 SECTION 11. AMENDMENT.** Subsection 18 of section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

18. To act as the official agency of the state in the administration of the home energy assistance program; to direct and supervise county administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a

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<sup>220</sup> Section 50-06-05.1 was also amended by section 4 of House Bill No. 1102, chapter 404, section 11 of Senate Bill No. 2055, chapter 438, section 81 of Senate Bill No. 2124, chapter 391, and section 1 of Senate Bill No. 2313, chapter 394.

<sup>221</sup> Section 50-06-05.1 was also amended by section 4 of House Bill No. 1102, chapter 404, section 10 of Senate Bill No. 2055, chapter 438, section 81 of Senate Bill No. 2124, chapter 391, and section 1 of Senate Bill No. 2313, chapter 394.

vendor or contractor for services or supplies delivered or to be delivered. The provisions of this subsection concerning obligation of funds apply to payments and commitments made on or after July 1, 1991. The department with the consent of the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits. Any request considered by the budget section must comply with section 15 of this Act.

<sup>222</sup> **SECTION 12. AMENDMENT.** Section 54-06-37 of the North Dakota Century Code is amended and reenacted as follows:

**54-06-37. Authorization to purchase or lease aircraft - Legislative assembly or budget section approval.**

A state agency or other entity of state government may not purchase or lease an aircraft without specific authorization from the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act. This section does not apply to aircraft purchased or leased by the office of the adjutant general or the university of North Dakota school of aviation.

**SECTION 13. AMENDMENT.** Section 54-27-22 of the North Dakota Century Code is amended and reenacted as follows:

**54-27-22. Revolving fund for prepayment of consulting and planning fees for capital improvements.**

Funds must be made available to all state agencies, institutions, and departments from a preliminary planning revolving fund in the state treasury under the control of the director of the office of management and budget for studies, planning, architectural programming, schematic designs, and cost estimates relating to proposed new capital improvements and major remodeling of existing facilities. State agencies, institutions, and departments interested in obtaining planning moneys shall submit a written request detailing the scope and purpose of such project to the director of the office of management and budget. The director shall file such request with, and shall present the director's recommendations regarding the proposed project and necessary planning moneys to the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. Funds may be advanced only in the event that if an authorization has first been received from the legislative assembly or the budget section. Any request considered by the budget section must comply with section 15 of this Act. Such funds advanced must be repaid to the preliminary planning revolving fund as moneys become available through legislative appropriation or other sources for the commencement of the project.

**SECTION 14. AMENDMENT.** Section 54-27-23 of the North Dakota Century Code is amended and reenacted as follows:

**54-27-23. Cash flow financing.**

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<sup>222</sup> Section 54-06-37 was also amended by section 1 of House Bill No. 1230, chapter 431.

In order to effectively meet the cyclical cash flow needs of state government, the office of management and budget upon approval of the emergency commission is hereby authorized to issue certificates in anticipation of revenue, notes, or bonds, to special funds on deposit in the state treasury. Any issue of such certificates, notes, or bonds must be approved by the emergency commission and are to be used for cash flow financing only, and not to offset projected deficits in state finances unless first approved by the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. The budget section may approve additional cash flow financing not to exceed eighty percent of estimated general fund revenues relating to sales or production occurring prior to June thirtieth, to be collected in July and August after the end of the biennium. Such additional cash flow financing is only effective for sixty days unless an extension or reapproval is received from the legislative assembly or the budget section if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act. If a revenue shortfall of greater than five percent occurs, the office of management and budget shall order budget allotments under section 54-44.1-12 prior to approval by the legislative assembly or the budget section of such additional cash flow financing. It is the intent of the legislative assembly that all borrowing must be repaid by the end of the biennium. The terms of any specific issue of such certificates, notes, or bonds may not exceed one hundred eighty days from the date of issuance whereupon the principal and interest on the certificates, notes, or bonds must be paid in full from the state general fund or from another issue of a similar nature. All principal and interest on such issues made during a biennial period must be repaid in full at the close of the biennial period from the state general fund. When certificates, notes, or bonds are issued for cash flow purposes to funds which otherwise would be invested, with the investment income accruing to the special fund, the certificate must bear an investment rate of return which must be agreed upon by the state investment board, and must be at a level commensurate with the yield to be reasonably expected by such fund if invested in alternate securities.

**SECTION 15.** A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

**Budget section - Appointment - Powers and duties.**

1. To provide for flexibility in the management of state funds between regular sessions of the legislative assembly and to minimize the need for and the expense of a special session, the legislative management, during each biennium, shall appoint a budget section.
2. The membership of the budget section must include:
  - a. The majority leader and the assistant majority leader of the house of representatives;
  - b. The majority leader and the assistant majority leader of the senate;
  - c. The minority leader and the assistant minority leader of the house of representatives;
  - d. The minority leader and the assistant minority leader of the senate;
  - e. The speaker of the house of representatives; and

- f. Each member of the legislative assembly appointed to serve on the appropriations committees of the house of representatives and the senate.
3. The legislative management shall designate the chairman of the budget section. The budget section shall operate according to the statutes and procedures governing the operation of other legislative management interim committees. The budget section shall meet at least quarterly upon the call of the chairman.
4. The legislative assembly, by law, may provide the authority for the budget section to approve specific actions, projects, and transfers.
5. a. When evaluating state agency requests, the budget section shall consider criteria applicable to the request, including whether:
  - (1) The request is for a specific purpose;
  - (2) The request is for a specific amount of funds and for a specific time frame, not to continue beyond the end of the current biennium;
  - (3) The request conforms with legislative intent;
  - (4) The request is consistent with related statutory provisions;
  - (5) The request supports state priorities;
  - (6) The request improves state efficiencies and promotes effective state government;
  - (7) If the request is for a new program, the program does not extend beyond the current biennium; and
  - (8) The request addresses a state emergency.
- b. The budget section shall gather documentation that addresses each of the applicable criterion included in subdivision a from the agency requesting budget section approval.

**SECTION 16. AMENDMENT.** Section 54-44.1-13.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-13.1. Apportionment of reductions in spending authority caused by an initiative or referendum action.**

If as a result of any action taken pursuant to article III of the Constitution of North Dakota the moneys available in the state general fund or in any special fund in the state treasury are or will be reduced or eliminated, the director of the budget shall reduce the moneys available to all departments, agencies, and institutions for which moneys have been appropriated or are otherwise available from the affected fund for the current biennial period. The director of the budget shall reduce affected budgets by a percentage sufficient to cover the estimated losses caused by the initiative or referendum action, subject to the approval of the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act. Notwithstanding the provisions of section 54-44.1-13, the authority to make

reductions pursuant to this section applies equally to all entities of the executive, legislative, and judicial branches.

<sup>223</sup> **SECTION 17. AMENDMENT.** Section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-05. Powers and duties of department. (Effective through July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
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 legislative assembly or the budget section of the legislative management or if the legislative assembly is not in session before executing a financing agreement. Any request considered by the budget section must comply with section 15 of this Act. If the legislative assembly or 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.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The

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<sup>223</sup> Section 54-59-05 was also amended by section 2 of Senate Bill No. 2110, chapter 468.

department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.

6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project of an executive branch agency. The department shall present the information to the information technology committee on request of the committee.
8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and five hundred thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
11. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.
12. Shall perform all other duties necessary to carry out this chapter.
13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003.
14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 13, may provide wide area network services for a period not to exceed four years to an occupant of a technology park

associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.

**Powers and duties of department. (Effective after July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
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. 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 ~~legislative assembly or the budget section of the legislative management or if the legislative assembly is not in session~~ before executing a financing agreement. Any request considered by the budget section must comply with section 15 of this Act. If the ~~legislative assembly or the budget section of the legislative assembly~~ does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. 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.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.
6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department

is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.

7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project of an executive branch agency. The department shall present the information to the information technology committee on request of the committee.
8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and five hundred thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
11. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.
12. Shall perform all other duties necessary to carry out this chapter.
13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003.
14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 13, may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.

**SECTION 18. AMENDMENT.** Section 65-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**65-08.1-02. Workforce safety and insurance additional coverages.**

The organization may establish a casualty insurance organization, organized as a stock or mutual company, a risk pool, a reciprocal exchange, a risk retention or

purchasing group, or a reinsurer with the limited purpose of offering extraterritorial workforce safety and insurance coverage or other states insurance. The casualty insurance organization may be established only upon the director's determination that the organization is needed to provide sufficient workforce safety and insurance coverage for the employees and employers of this state and upon the approval of the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act. If a stock insurance company is established, the company shall meet the stock requirements of section 65-08.1-03.

**SECTION 19. REPEAL.** Section 1 of chapter 67 of the 2013 Session Laws is repealed.

Disapproved April 9, 2019

Filed April 16, 2019

NOTE: The Governor's veto of Senate Bill No. 2055 was not sustained. For the text of the Governor's veto message see chapter 531.

## CHAPTER 439

### HOUSE BILL NO. 1029

(Legislative Management)  
(Higher Education Committee)

AN ACT to provide for a legislative management higher education funding formula review committee; and to provide for a report.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

#### SECTION 1. HIGHER EDUCATION FUNDING FORMULA REVIEW COMMITTEE - REPORT TO THE LEGISLATIVE MANAGEMENT.

1. During the 2019-20 interim, the higher education funding formula review committee is created and composed of eleven members as follows:
  - a. The Bismarck state college executive vice president, or a designee of the executive vice president;
  - b. The university of North Dakota vice president for finance and operations, or a designee of the vice president for finance and operations;
  - c. The North Dakota state university vice president for finance and administration, or a designee of the vice president for finance and administration;
  - d. The Minot state university vice president for administration and finance, or a designee of the vice president for administration and finance;
  - e. The commissioner of higher education, or a designee of the commissioner;
  - f. Two members of the house of representatives appointed by the majority leader of the house of representatives and one member appointed by the minority leader of the house of representatives;
  - g. Two members of the senate appointed by the majority leader of the senate and one member appointed by the minority leader of the senate.
2. The committee shall review the higher education funding formula, including only the appropriateness of certain credit-hour weighting factors and the potential or need for additional weighting factors. The legislative council shall provide staff services to the committee.
3. The committee shall report its findings and recommendations to the legislative management.

Approved March 27, 2019

Filed March 28, 2019

## CHAPTER 440

### HOUSE BILL NO. 1220

(Representative Keiser)  
(Senator Kreun)

AN ACT to provide for a legislative management study of secured party notification.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY.** During the 2019-20 interim, the legislative management in coordination with the secretary of state shall consider studying how the state's central indexing system can be used to provide notification to a secured lender when a super priority lien is filed on the collateral of a secured lender. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly. If the secretary of state determines there is a solution using the central indexing system, the secretary of state may proceed with implementing the change prior to the sixty-seventh legislative assembly convening.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 441

### HOUSE BILL NO. 1265

(Representatives Blum, Beadle, Becker, Dockter, Headland, C. Johnson, Louser,  
Marschall)  
(Senators Kreun, Patten, J. Roers)

AN ACT to provide for a legislative management study of state parks.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATE PARKS - USE, MANAGEMENT, OVERHEAD.** During the 2019-20 interim, the legislative management shall consider studying the purpose, value, and benefits of each state park. The study must include a review of each state park's usage, annual attendance figures, overhead, and the cost to operate and maintain each state park. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 21, 2019

Filed March 22, 2019

**CHAPTER 442****HOUSE BILL NO. 1298**

(Representatives M. Nelson, P. Anderson, Hager, Holman, Mitskog, J. Nelson)

AN ACT to provide for a legislative management study concerning the accessibility of the state capitol.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ACCESSIBILITY OF THE STATE CAPITOL.** During the 2019-20 interim, the legislative management shall consider studying accessibility of the state capitol grounds as related to the Americans with Disabilities Act of 1990 [104 Stat. 327; 42 U.S.C. 12101 et seq.]. The study must include the effectiveness of the quantity and location of handicapped accessible parking spaces and the accessibility of entrances to the capitol in consideration of security concerns. The study also must include interior considerations including handicapped accessible restrooms with appropriate signage and seating areas on the ground floor of the capitol for individuals to rest. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 443

### HOUSE BILL NO. 1367

(Representatives Dobervich, D. Anderson, Damschen, Fegley, Vigesaa, Westlind)  
(Senators Bakke, Heckaman, Kannianen, Robinson)

AN ACT to provide for a legislative management study of railroad crossings.

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

##### **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - RAILROAD CROSSINGS.**

During the 2019-20 interim, the legislative management shall consider studying railroad crossings to determine whether adequate safety measures exist to prevent collisions between trains and motor vehicles. The study must include:

1. Consultation with the department of transportation, highway patrol, and associations and organizations representing counties, cities, townships, and the agricultural community;
2. The design and safety of railroad crossings and the feasibility of implementing design changes to increase safety and to reduce the likelihood of obstructions at the crossings, and consideration of the adequacy of traffic and pedestrian warning signals;
3. The availability of federal funding for railroad crossing improvement projects;
4. The feasibility of equipping trains with technology to increase safety; and
5. Data on railroad crossing accidents and incidents that have occurred within the state on an annual basis over the past five years.

The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 28, 2019

Filed March 29, 2019

**CHAPTER 444****HOUSE BILL NO. 1401**

(Representatives Mitskog, Beadle, Pyle, Schobinger)  
(Senator Bekkedahl)

AN ACT to provide for a legislative management study of the use of technology to enable remote attendance at interim legislative committee meetings.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - REMOTE ATTENDANCE AT INTERIM LEGISLATIVE COMMITTEE MEETINGS.** During the 2019-20 interim, the legislative management shall consider studying the use of technology to enable remote attendance at interim legislative committee meetings as a cost-saving measure. The study must include consideration of technologies including telephone conferences, interactive video networks, and other options for video interactions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 445

### HOUSE BILL NO. 1467

(Representatives D. Johnson, Brandenburg, Hatlestad, Howe)  
(Senators Klein, Luick, Wanzek)

AN ACT to provide for a legislative management study regarding agricultural issues in the state.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL ISSUES - GRAIN BUYERS, ROVING GRAIN BUYERS, GRAIN HANDLING FACILITIES, FERTILIZER, SOIL AMENDMENTS, SEED, AND FUEL.** During the 2019-20 interim, the legislative management shall consider studying agricultural issues in the state, including studying grain buyers, roving grain buyers, grain brokers, and grain handling facilities under title 60; and issues related to prepayment for fertilizer, soil amendments, seed, and fuel in situations of insolvency. The study must include a review of the current law, industry practices, and background checks relating to grain buyers, roving grain buyers, grain brokers, and handling facilities and a review of any potential efficiencies that may exist, methods of maintaining financial security during the grain buying process including consideration of facility operating capital to ensure adequate solvency during licensing, and the process of confidential financial and physical audits. The study also must include a review of the law pertaining to grain handling facility asset lists to determine if changes are required to ensure producers are protected from facility insolvency if an end product is refined and no longer reflects the original product, the indemnity fund under title 60, and grain handling facility bonding requirements. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 23, 2019

Filed April 24, 2019

**CHAPTER 446****HOUSE BILL NO. 1474**

(Representatives Dockter, Headland, B. Koppelman, Nathe, Owens)  
(Senators D. Larson, Poolman)

AN ACT to provide for a legislative management study relating to replacing special assessment revenue with revenue from an alternative local funding source.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENT REVENUE REPLACEMENT.** During the 2019-20 interim, the legislative management shall consider studying options for replacing revenue generated by special assessments with revenue from an alternative local funding source. The study must include a review of the purposes for which special assessments are imposed, the revenue generated from the imposition of special assessments, local revenue sources that could be used as an alternative to imposing special assessments, and the manner in which fees for an alternative local revenue source would be calculated and imposed as compared to the manner in which special assessments are calculated and imposed. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 447

### HOUSE BILL NO. 1485

(Representatives Kasper, Becker, Bellew, Heinert, Lefor, Louser, D. Ruby)  
(Senators Bekkedahl, Burckhard, Kreun, J. Roers, Rust)

AN ACT to provide for a legislative management study of consumer personal data disclosures.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - CONSUMER PERSONAL DATA DISCLOSURES.** During the 2019-20 interim, the legislative management shall study protections, enforcement, and remedies regarding the disclosure of consumers' personal data. The study must include a review of privacy laws of other states and applicable federal law. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 448

### HOUSE BILL NO. 1487

(Representatives Kasper, Becker, Bellew, Headland, Lefor, Rohr, D. Ruby)  
(Senators Bekkedahl, Hogue, Kreun, Myrdal, J. Roers)

AN ACT to provide for a legislative management study of the homestead tax credit.

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

#### **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - HOMESTEAD TAX CREDIT.**

1. During the 2019-20 interim, the legislative management shall consider studying the homestead tax credit, a credit that reduces the property taxes of individuals who are sixty-five years of age or older or individuals who are permanently and totally disabled and whose income is \$42,000 or less per year.
2. The study must include consideration of whether:
  - a. The income levels and asset thresholds specified in the credit should be modified or indexed;
  - b. The credit impacts property valuations;
  - c. The qualifying age of sixty-five years of age or older is appropriate considering changing demographics; and
  - d. The current criteria for qualifying for the credit is effectively targeting those most in need.
3. The study also must include a review of the number of individuals who have claimed the credit in the past, an estimate of the number of individuals who might claim the credit in future years, and the estimated fiscal impact of making any changes to the credit.
4. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 28, 2019

Filed March 29, 2019

**CHAPTER 449****SENATE BILL NO. 2042**

(Legislative Management)  
(Taxation Committee)

AN ACT to provide for a legislative management study of developing a uniform county system of accounting.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - UNIFORM COUNTY SYSTEM OF ACCOUNTING.** During the 2019-20 interim, the legislative management shall consider studying the feasibility and desirability of developing standard procedures and classification of accounts to provide a means of accumulating financial information that is uniform for all counties, regardless of the county's size or various approaches to budgeting and accounting which may be in use, with the objective of achieving uniformity of financial information to guide preparation of financial reports required by law. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 30, 2019

Filed May 2, 2019

**CHAPTER 450****SENATE BILL NO. 2130**

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

AN ACT to provide for a legislative management study relating to state agency fees.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATE AGENCY FEES.**

During the 2019-20 interim, the legislative management shall study, in coordination with the state auditor, the provisions of the North Dakota Century Code relating to state agency fees. The study must include a review of the dates state agency fee provisions were created and modified, the revenue generated by the fee as compared to the expenditures related to the purpose or purposes for which the fee is imposed, and the fund or funds in which fee revenue is deposited and from which fee revenue is expended; consideration of whether the amounts of fees should be changed and whether the imposition of a fee is appropriate or if other government revenues should be used to fund the provision of services. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 451

### SENATE BILL NO. 2148

(Senator Mathern)

AN ACT to provide for a legislative management study regarding article XIV of the Constitution of North Dakota and related issues.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ETHICS COMMISSION AND LEGISLATIVE ASSEMBLY RESPONSIBILITIES.** During the 2019-20 interim, the legislative management shall study the implementation and requirements of article XIV of the Constitution of North Dakota concerning the transparency of funding sources, lobbyists, conflicts of interest, and related matters, the responsibilities of the legislative assembly and the ethics commission, and potential issues under the Constitution of the United States and the Constitution of North Dakota. The members of the ethics commission must be invited to participate on the study committee as nonvoting members. The study must include a review of existing laws and laws enacted to implement article XIV and consideration of whether the civil and criminal sanctions for violations of the constitutional provisions and the statutes are appropriate; whether legislative action regarding article XIV is necessary or desirable; and an effective means to educate public officials, lobbyists, and the public on the requirements of article XIV and other laws regarding government ethics. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 30, 2019

Filed May 2, 2019

## CHAPTER 452

### SENATE BILL NO. 2176

(Senator Luick)

AN ACT to provide for a road train pilot program; to provide for a legislative management study of a road train pilot program; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. DEPARTMENT OF TRANSPORTATION ROAD TRAIN PILOT PROGRAM - REPORTS TO LEGISLATIVE MANAGEMENT.** In collaboration with South Dakota and Minnesota transportation officials and agencies, and in consultation with a committee designated by the legislative management, the department of transportation shall establish a statewide road train pilot program. The department shall establish the parameters and policies regarding the use of road trains on state highways, including designation of routes, hours of operation, and length and weight restrictions. The department shall report to the legislative management as requested by the legislative management. The pilot program is contingent on the favorable recommendation of legislative management and completion of the study in section 2.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - ROAD TRAIN PILOT PROGRAM.** During the 2019-20 interim, the legislative management shall consider studying the feasibility and desirability of creating a road train pilot program. The study must include consultation with the department of transportation, highway patrol, agriculture commissioner, industrial commission, department of commerce, the upper great plains transportation institute, and the governor. The study must include an assessment of the federal regulations impacting road train operations, the economic impact of permitting road train operations in the state, and the costs associated with implementing a road train pilot program. The legislative council may contract for consulting services to assist the legislative management in conducting the study. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 3. EXPIRATION DATE.** Section 1 of this Act is effective through July 31, 2023, and after that date is ineffective.

Approved April 11, 2019

Filed April 12, 2019

**CHAPTER 453****SENATE BILL NO. 2217**

(Senator Schaible)  
(Representative Owens)

AN ACT to provide for a legislative management study of a teacher incentive for leadership program.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - TEACHER INCENTIVE FOR LEADERSHIP PROGRAM.** During the 2019-20 interim, the legislative management shall consider studying the feasibility and desirability of creating a teacher incentive for leadership program. The study must include an evaluation of whether a program would improve student learning through improved instruction; reward effective teachers by providing increased leadership opportunities; attract new teachers to the state by offering competitive starting salaries and professional development; promote collaboration and new career pathways for teachers through mentoring, coaching, and project-based learning; and retain effective teachers through new career opportunities and advancement. The study also must include a review of the types of data to be tracked to determine the success of the program; the correlation and effectiveness of the program in relation to other teacher development programs; and how the program operates in relation to the statewide education strategic vision. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 454

### SENATE BILL NO. 2241

(Senators Klein, Luick, Robinson)  
(Representatives Magrum, J. Nelson, Trottier)

AN ACT to provide a legislative management study relating to regulating the installation, maintenance, testing, and repair of sewage treatment systems.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SEWAGE TREATMENT SYSTEM REGULATION.** During the 2019-20 interim, the legislative management shall consider studying the regulation of sewage treatment system installation, maintenance, testing, and repair. The study must include consideration of a uniform set of rules; uniform occupational licensing requirements; testing and education requirements for occupations that install, maintain, test, and repair sewage treatment systems; the regulatory agency best able to regulate sewage treatment systems; options for maintaining local government control over sewage treatment system regulation; and issues relevant to these considerations. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 455

### SENATE BILL NO. 2355

(Senators Bekkedahl, Kannianen, Oehlke)  
(Representatives Keiser, J. Nelson, Sanford)

AN ACT to provide for a legislative management study of the taxation of liquid nicotine and electronic smoking devices.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - TAXATION OF LIQUID NICOTINE AND ELECTRONIC SMOKING DEVICES.** During the 2019-20 interim, the legislative management shall consider studying the feasibility and desirability of applying an alternative or additional tax on liquid nicotine and electronic smoking devices. The study must include consideration of the current method of taxation applied to these products, the methods of taxation applied in other states, and the fiscal impact of applying an alternative or additional method of taxation. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 26, 2019

Filed March 27, 2019

**CHAPTER 456****SENATE BILL NO. 2359**

(Senators Kannianen, Burckhard, J. Roers)  
(Representatives Kempenich, Schmidt, Vigesaa)

A BILL to provide for a legislative management study of the scope of practice and regulation of electricians.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - REGULATION OF AND SCOPE OF PRACTICE OF ELECTRICIANS.** During the 2019-20 interim, the legislative management shall consider studying the regulation of and scope of practice of electricians. The study must include consideration of scope of practice and regulation as they relate to power limited systems and must include receipt of information from stakeholders, including trade groups. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 457

### HOUSE BILL NO. 1141

(Representatives Keiser, Howe, Longmuir, Zubke)  
(Senators Bekkedahl, Klein, Unruh)

AN ACT to amend and reenact section 54-44.3-20 of the North Dakota Century Code, relating to exceptions to classified service.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-44.3-20 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-44.3-20. Categories of positions in the state service.**

All positions in the state service are included in the classified service, except:

1. Each official elected by popular vote and each person appointed to fill vacancies in an elective office, one principal assistant, and one private secretary.
2. Members of boards and commissions required by law.
3. Administrative heads of departments required by law, other than the superintendent of North Dakota vision services - school for the blind, the superintendent of the school for the deaf, and the state librarian.
4. Officers and employees of the legislative branch of government.
5. Members of the judicial branch of government of the state of North Dakota and their employees and jurors.
6. Persons temporarily employed in a professional or scientific capacity as consultants or to conduct a temporary and special inquiry, investigation, or examination for the legislative branch of government or a department of the state government.
7. Positions deemed to be inappropriate to the classified service due to the special nature of the position as determined by the division and approved by the board.
8. Employees of the institutions of higher education under the control of the state board of higher education.
9. Members and employees of occupational and professional boards.
10. Officers and employees of the North Dakota mill and elevator association.
11. Positions referred to under law as serving at the pleasure of or at the will of the appointing authority.

12. Licensed teachers engaged in teaching at the North Dakota youth correctional center, North Dakota vision services - school for the blind, and the school for the deaf.
13. Officers of workforce safety and insurance.
14. Officers and employees of the department of commerce.
15. Attorneys employed by the insurance commissioner.
16. Engineers, engineering technicians, and geologists employed by the director of mineral resources.
17. Officers and employees of the Bank of North Dakota.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 458

### SENATE BILL NO. 2078

(Political Subdivisions Committee)  
(At the request of the Information Technology Department)

AN ACT to amend and reenact sections 54-44.6-08 and 54-46-12 of the North Dakota Century Code, relating to records management and forms management.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-44.6-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-44.6-08. Rules.**

The manager may adopt any rules in accordance with chapter 28-32 necessary to effectuate the purposes of this chapter.

**SECTION 2. AMENDMENT.** Section 54-46-12 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-46-12. County, city, and park district records - Uniform system program established by administrator.**

The administrator shall ~~adopt rules in accordance with chapter 28-32 consistent with specific requirements of state law to~~establish a uniform ~~system~~program of cataloging, reproduction, retention, and final disposition ~~standards, procedures, and techniques for the effective management~~ of county, city, and park district records. ~~Upon adoption of the rules all~~All county, city, and park district offices, departments, and agencies may ~~establish, utilize, and maintain the uniform system~~program prescribed by the administrator.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 459

### SENATE BILL NO. 2046

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

AN ACT to amend and reenact sections 54-52-02.9, 54-52-06, and 54-52.1-03.2, subsection 1 of section 54-52.1-03.3, and section 54-52.6-09 of the North Dakota Century Code, relating to employer contributions to the public employees defined benefit plan, defined contribution plan, and retiree health plan and participation in the retiree health plan.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-52-02.9. Participation by temporary employees.**

~~A temporary employee may elect, within~~

1. Within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system and receive credit for service after enrollment. ~~The~~Monthly, the temporary employee shall pay ~~monthly~~ to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. ~~The~~
2. If the temporary employee shall also first enrolled:
  - a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
  - b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen-hundredths percent times the temporary employee's present monthly salary.
3. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

**SECTION 2. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06. Employer's contribution to retirement plan - Report to the legislative assembly.**

1. Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, ~~and~~; with an additional increase of one percent, beginning with the reporting period of January 2013; ~~and~~ with an additional increase of one percent, beginning with the monthly reporting period of January 2014. For a participating member who first enrolls after December 31, 2019, the governmental unit shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.
2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from ~~its~~the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date ~~they~~the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.
3. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05.
4. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

**SECTION 3. AMENDMENT.** Section 54-52.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-03.2. Retiree health benefits fund - Appropriation.**

1. a. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding and providing hospital

benefits coverage and, medical benefits coverage, and prescription drug coverage under any health insurance program and dental, vision, and long-term care benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this chapter.

- b. The state shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen hundredths percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and one and fourteen-hundredths percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52.
- c. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 or the retirement plan under chapter 54-52.6 shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen-hundredths percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52 or chapter 54-52.6, except for nonteaching:
  - (1) Members first enrolled after December 31, 2019, for which a governmental unit contributes to the public employees retirement system fund under section 54-52-06 or the retirement plan under chapter 54-52.6; and
  - (2) Nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13 and employees of the state board for career and technical education who elect to participate in the public employees retirement system pursuant to section 54-52-02.14.
- d. For nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13, the superintendent of public instruction shall contribute monthly to the retiree health benefits fund an amount equal to three and twenty-four hundredths percent of the monthly salaries or wages of those nonteaching employee members, beginning on the first of the month following the transfer under section 54-52-02.13 and continuing thereafter for a period of eight years, after which time the superintendent of public instruction shall contribute one and fourteen-hundredths percent of the monthly salary or wages of those nonteaching employee members.
- e. For employees of the state board for career and technical education who elect to participate in the public employees retirement system pursuant to section 54-52-02.14, the state board for career and technical education shall contribute monthly to the retiree health benefits fund an amount equal to two and ninety-nine hundredths percent of the monthly salary or wages of those employee members, beginning on the first of the month following the transfer under section 54-52-02.14 and continuing thereafter for a period of eight years, after which time the state board for career and technical education shall contribute one and fourteen-hundredths percent of the monthly salary or wages of those employee members.

- f. The employer of a national guard security officer or firefighter shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen-hundredths percent of the monthly salaries or wages of all national guard security officers or firefighters participating in the public employees retirement system under chapter 54-52.
- g. Job service North Dakota shall reimburse monthly the retiree health benefits fund for credit received under section 54-52.1-03.3 by members of the retirement program established by job service North Dakota under section 52-11-01.
- h. The board, as trustee of the fund and in exclusive control of its administration, shall:
  - a. (1) Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended.
  - b. (2) Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.
- 2. All moneys deposited in the fund established under subsection 1, not otherwise appropriated, are hereby appropriated to the board for the purpose of making investments for the fund and to make contributions toward hospital and medical benefits coverage and prescription drug coverage under any health insurance program and dental, vision, and long-term care benefits coverage under the uniform group insurance program for eligible retired employees or surviving spouses of eligible retired employees and their dependents as elected.
- 3. If a member terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason ~~prior to~~before retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. If a member's account balance is withdrawn, the member relinquishes all rights to benefits under the retiree health benefits fund.

<sup>224</sup> **SECTION 4. AMENDMENT.** Subsection 1 of section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

- 1. The following individuals are entitled to receive credit for hospital and medical benefits coverage and prescription drug coverage under any health insurance program and dental, vision, and long-term care benefits coverage under the uniform group insurance program under subsection 2:
  - a. A member or surviving spouse ~~of receiving retirement benefits under the highway patrolmen's retirement system~~ is eligible for the credit beginning on the date retirement benefits are effective.
  - b. ~~If the member first enrolled before January 1, 2020, a member or surviving spouse of receiving retirement benefits under the public~~

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<sup>224</sup> Section 54-52.1-03.3 was also amended by section 2 of Senate Bill No. 2045, chapter 463.

- employees retirement system is eligible for the credit beginning on the date retirement benefits are effective.
- c. A member or surviving spouse ~~of receiving retirement benefits under the~~ retirement program established by job service North Dakota under section 52-11-01 receiving retirement benefits is eligible for the credit beginning on the date retirement benefits are effective.
  - d. A retired judge or surviving spouse receiving retirement benefits under the retirement program established under chapter 27-17 is eligible for the credit beginning on the date retirement benefits are effective.
  - e. ~~All the former participating member first enrolled before January 1, 2020, a~~ former participating member of the defined contribution retirement plan receiving retirement benefits, or the surviving spouse of a former participating member of that retirement plan who was eligible to receive or was receiving benefits, under section 54-52.6-13, is eligible as determined by the board pursuant to ~~its~~the board's rules.

**SECTION 5. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-09. Contributions - Penalty.**

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and this assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, ~~and~~; with an additional increase of one percent, beginning with the reporting period of January 2013; ~~and~~ with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, ~~and~~; with an additional increase of one percent, beginning with the monthly reporting period of January 2013; ~~and~~ with an additional increase of one percent, beginning with the monthly reporting period of January 2014. For members first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof ~~after the~~ a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within

ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 460

### SENATE BILL NO. 2049

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

AN ACT to amend and reenact subsection 2 of section 39-03.1-11 and subsection 2 of section 54-52-17 of the North Dakota Century Code, relating to the computation of final average salary for employees who terminate employment after December 31, 2019.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 2 of section 39-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Retirement benefits are based on the contributor's final average salary. Final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred twenty months of employment. For contributors who terminate employment on or after August 1, 2010, final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred eighty months of employment. For contributors who terminate employment between July 31, 2005, and August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the period for which the board has appropriate and accurate salary records on its electronic database, but that period may not be more than the last one hundred eighty months of employment. For members who terminate employment after December 31, 2019, final average salary is the higher of the final average salary calculated on December 31, 2019, or the average salary earned in the three highest periods of twelve consecutive months employed during the last one hundred eighty months of employment. ~~Months not employed or months in which employment was not as a permanent employee without earnings are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the contributor has worked for less than thirty-six months at the postponed retirement date, the final average salary is the average salary for all months of employment.~~

<sup>225</sup> **SECTION 2. AMENDMENT.** Subsection 2 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. For members who terminate employment on or after August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred eighty months of employment. For members who terminate employment between July 31, 2005, and August 1, 2010, final average salary

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<sup>225</sup> Section 54-52-17 was also amended by section 1 of Senate Bill No. 2047, chapter 461.

is the average of the highest salary received by the member for any thirty-six months employed during the period for which the board has appropriate and accurate salary records on its ~~the~~ board's electronic database, but that period may not be more than the last one hundred eighty months of employment. For members who terminate employment after December 31, 2019, final average salary is the higher of the final average salary calculated on December 31, 2019, or the average salary earned in the three highest periods of twelve consecutive months employed during the last one hundred eighty months of employment. ~~Months not employed without earnings are excluded in arriving at the thirty-six months to be used for the purpose of computing an average.~~ If the participating member has worked for less than thirty-six months at the normal retirement date, the final average salary is the average salary for the total months of employment.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 461

### SENATE BILL NO. 2047

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

AN ACT to amend and reenact subdivision a of subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to the computation of retirement benefits.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>226</sup> **SECTION 1. AMENDMENT.** Subdivision a of subsection 4 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

- a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:

(1) ServiceFor members first enrolled:

- (a) Before January 1, 2020, service benefit equals two percent of final average salary multiplied by the number of years of service employment.
- (b) After December 31, 2019, service benefit equals one and seventy-five hundredths percent of final average salary multiplied by the number of years of service employment.

- (2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.

Approved April 11, 2019

Filed April 12, 2019

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<sup>226</sup> Section 54-52-17 was also amended by section 2 of Senate Bill No. 2049, chapter 460.

## CHAPTER 462

### HOUSE BILL NO. 1028

(Legislative Management)  
(Health Care Reform Review Committee)

AN ACT to create and enact chapter 26.1-36.6 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to public employees retirement system self-insurance plans for health benefits coverage; to amend and reenact sections 26.1-07.1-01, 54-52.1-01, 54-52.1-04, 54-52.1-04.2, 54-52.1-04.3, 54-52.1-05, and 54-52.1-11 of the North Dakota Century Code, relating to public employee uniform group health benefits coverage; to repeal sections 54-52.1-04.4, 54-52.1-04.5, 54-52.1-04.6, 54-52.1-04.10, 54-52.1-04.11, 54-52.1-04.12, 54-52.1-04.13, and 54-52.1-04.14 of the North Dakota Century Code, relating to public employees retirement system self-insurance plans for health benefits coverage mandated health benefits; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 26.1-36.6 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-36.6-01. Definitions.**

As used in this chapter, "self-insurance health plan" has the same meaning as provided under section 54-52.1-01.

##### **26.1-36.6-02. Self-insurance health plans - Regulation.**

The commissioner shall regulate the financial condition, integrity, and equitable administration of a self-insurance health plan established under chapter 54-52.1. All powers granted to the commissioner to regulate insurance companies and insurers under title 26.1 apply to the commissioner to regulate a self-insurance health plan.

##### **26.1-36.6-03. Self-insurance health plans - Requirements.**

1. The following policy provisions apply to a self-insurance health plan or to the administrative services only or third-party administrator, and are subject to the jurisdiction of the commissioner: 26.1-36-03, 26.1-36-03.1, 26.1-36-05, 26.1-36-10, 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14, 26.1-36-17, 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38, 26.1-36-39, 26.1-36-41, 26.1-36-44, and 26.1-36-46.
2. The following health benefit provisions applicable to a group accident and health insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are subject to the jurisdiction of the commissioner: 26.1-36-06, 26.1-36-06.1, 26.1-36-07, 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2, 26.1-36-09.3, 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9, 26.1-36-09.10, 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14, 26.1-36-09.15, 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22, 26.1-36-23.1, and 26.1-36-43.

**26.1-36.6-04. Rules.**

The commissioner shall adopt rules to administer this chapter. The rules must establish reserve requirements. The rules may provide certain self-insurance health plans are exempt from all or portions of this chapter.

**SECTION 2. AMENDMENT.** Section 26.1-07.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-07.1-01. Jurisdiction over providers of health care benefits.**

Notwithstanding any other provision of law, and except as provided ~~herein~~under this section, any person ~~or other entity~~, other than an insurance company duly licensed in this or another state which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, ~~must be~~ presumed to be subject to the jurisdiction of the commissioner unless the person ~~or other entity~~ shows that while providing such services ~~the person~~ is subject to the jurisdiction of another agency of this state, any subdivisions thereof, or the federal government. A self-insurance health plan formed under chapter 54-52.1 is not subject to this section but is subject to the jurisdiction of the commissioner under chapter 26.1-36.6.

**SECTION 3. AMENDMENT.** Section 54-52.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Board" means the public employees retirement board.
2. "Carrier" means:
  - a. For the hospital benefits coverage, an insurance company authorized to do business in the state, or a nonprofit hospital service association, or a prepaid group practice hospital care plan authorized to do business in the state, or the state if a self-insurance health plan is used for providing hospital benefits coverage.
  - b. For the medical benefits coverage, an insurance company authorized to do business in the state, or a nonprofit medical service association, or a prepaid group practice medical care plan authorized to do business in the state, or the state if a self-insurance health plan is used for providing medical benefits coverage.
  - c. For the life insurance benefits coverage, an insurance company authorized to do business in the state.
3. "Department, board, or agency" means the departments, boards, agencies, or associations of this state, ~~and~~. The term includes the state's charitable, penal, and higher educational institutions; the Bank of North Dakota; the state mill and elevator association; and counties, cities, district health units, and school districts.
4. "Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. "Eligible

employee" includes members of the legislative assembly, judges of the supreme court, paid members of state or political subdivision boards, commissions, or associations, full-time employees of political subdivisions, elective state officers as defined by ~~subsection 2 of~~ section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota workforce safety and insurance fund. As used in this subsection, "permanent employee" means one whose services are not limited in duration, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least seventeen and one-half hours per week and at least five months each year or for those first employed after August 1, 2003, is employed at least twenty hours per week and at least twenty weeks each year of employment. For purposes of sections 54-52.1-04.1, 54-52.1-04.7, 54-52.1-04.8, and 54-52.1-11, "eligible employee" includes retired and terminated employees who remain eligible to participate in the uniform group insurance program pursuant to applicable state or federal law.

5. "Health insurance benefits coverage" means hospital benefits coverage or medical benefits coverage, or both.
6. "Health maintenance organization" means an organization certified to establish and operate a health maintenance organization in compliance with chapter 26.1-18.1.
- ~~6-7.~~ "Hospital benefits coverage" means a plan ~~which that~~ either provides coverage for, or pays, or reimburses expenses for hospital services incurred in accordance with the uniform contract.
- ~~7-8.~~ "Life insurance benefits coverage" means a plan ~~which that~~ provides both term life insurance and accidental death and dismemberment insurance in amounts determined by the board, with a minimum of one thousand dollars provided for the term life insurance portion of the coverage.
- ~~8-9.~~ "Medical benefits coverage" means a plan ~~which that~~ either provides coverage for, or pays, or reimburses expenses for medical services in accordance with the uniform contract.
- ~~9-10.~~ "Member contribution" means the payment by the member into the retiree health benefits fund pursuant to sections 54-52-02.9 and 54-52-17.4.
- ~~10-11.~~ "Member's account balance" means the member's contributions plus interest at the rate set by the board.
12. "Self-insurance health plan" means a plan of self-insurance providing health insurance benefits coverage under section 54-52.1-04.2.
- ~~11-13.~~ "Temporary employee" means a governmental unit employee who is not filling an approved and regularly funded position in an eligible governmental unit and whose services may or may not be limited in duration.

**SECTION 4. AMENDMENT.** Section 54-52.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04. Board to contract for insurance.**

1. The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, life insurance benefits coverage for a specified

term, and employee assistance program services; may receive bids separately for all or part of the prescription drug benefits coverage component of medical benefits coverage; and shall accept one or more bids of and contract with the carriers ~~that in the judgment of the board~~ determines best ~~servesserve~~ the interests of the state and ~~its~~ the state's eligible employees. Solicitations must be made not later than ninety days before the expiration of an existing uniform group insurance contract. Bids must be solicited by advertisement in a manner selected by the board ~~that~~ which will provide reasonable notice to prospective bidders. In preparing bid proposals and evaluating bids, the board may utilize the services of consultants on a contract basis in order that the bids received may be uniformly compared and properly evaluated. In determining which bid, if any, will best serve the interests of eligible employees and the state, the board shall give adequate consideration to the following factors:

1. a. The economy to be effected.
  2. b. The ease of administration.
  3. c. The adequacy of the coverages.
  4. d. The financial position of the carrier, with special emphasis ~~as to its~~ on the solvency of the carrier.
  5. e. The reputation of the carrier and any other information ~~that is~~ available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.
2. The board may reject any or all bids and, in the event it does so, received under this section. If the board rejects all bids received, the board shall again solicit bids as provided in this section. The
  3. Under sections 54-52.1-04.1 and 54-52.1-04.2 the board may contract for health benefits coverage through a health maintenance organization or establish a plan of self-insurance for providing health insurance benefits coverage only under an administrative services only (ASO) contract or a third-party administrator (TPA) contract health plan.

<sup>227</sup> **SECTION 5. AMENDMENT.** Section 54-52.1-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04.2. Self-insurance health plan for hospital and medical benefits coverage.**

1. ~~The board may establish~~ This section applies to a self-insurance health plan for providing:
  - a. Health insurance and prescription drug benefits coverage;
  - b. Health insurance benefits coverage, excluding all or part of prescription drug benefits coverage; or
  - c. All or part of prescription drug benefits coverage.

<sup>227</sup> Section 54-52.1-04.2 was also amended by section 3 of Senate Bill No. 2045, chapter 463.

2. ~~Any~~ A self-insurance health plan established by the board under this section must be provided under an administrative services only (ASO) contract or a third-party administrator (TPA) contract under the uniform group insurance program, ~~and. The board may be established only if it is determined by not establish a self-insurance health plan unless~~ the board that an administrative services only or third-party administrator plan is less costly than the lowest bid submitted by a carrier for underwriting the plan with equivalent contract benefits. Upon establishing a self-insurance plan, the board shall solicit bids for an administrative services only or third-party administrator contract only every other biennium, and the board is authorized to renegotiate an existing administrative services only or third-party administrator contract during the interim ~~determines the self-insurance health plan best serves the interests of the state and the state's eligible employees. In addition, if the board determines it is in the best interest of the plan,~~ individual stop-loss coverage insured by a carrier authorized to do business in this state ~~must~~ may be made part of any self-insured a self-insurance health plan. All bids under this section are due no later than January first, and must be awarded no later than March first, preceding the end of each biennium. All bids under this section must be opened at a public meeting of the board.

**SECTION 6. AMENDMENT.** Section 54-52.1-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04.3. Contingency reserve Self-insurance health plan - Reserve fund - Continuing appropriation - Benefits - Insurance commissioner.**

1. ~~The~~ Pursuant to chapter 26.1-36.6, the board shall establish and maintain under a self-insurance health plan a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the uniform group insurance program. ~~The board shall determine the amount necessary to provide a balance in the contingency reserve fund between one and one-half months and three months of claims paid based on the average monthly claims paid during the twelve-month period immediately preceding March first of each year. The board also shall determine the amount necessary to provide an additional balance in the contingency reserve fund between one month and one and one-half months for claims incurred but not yet reported. The board may arrange for the services of an actuarial consultant to assist the board in making these determinations. Upon the initial changeover from a contract for insurance pursuant to section 54-52.1-04 or a health maintenance organization pursuant to section 54-52.1-04.1 to a self-insurance health plan pursuant to section 54-52.1-04.2, the board must have a plan in place which is reasonably calculated to meet within sixty months of the changeover the funding requirements of this chapter within sixty months~~ 26.1-36.6. All moneys in the contingency reserve fund, not otherwise appropriated, are appropriated to the board for the payment of claims and other costs of the uniform group insurance program during periods of adverse claims or cost fluctuations.
2. A self-insurance health plan must comply with section 26.1-36.6-03 and must provide the same benefits required of a fully insured plan.
3. The insurance commissioner shall ensure compliance with and enforce the provisions of this section pursuant to chapter 26.1-36.6.

**SECTION 7.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

**Self-insurance health plan - Bank of North Dakota line of credit - Continuing appropriation.**

The Bank of North Dakota shall extend to the board a line of credit not to exceed fifty million dollars. The board shall repay the line of credit from health insurance premium revenue or repay the line of credit from other funds appropriated by the legislative assembly. The board may access the line of credit to the extent necessary to provide adequate claims payment funds, to purchase stop-loss coverage, and to defray other expenditures of administration of the self-insurance health plan. All loan funds received by the board from the Bank under this section, not otherwise appropriated, are appropriated to the board for the repayment of claims and other costs of the uniform group insurance program.

**SECTION 8. AMENDMENT.** Section 54-52.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-05. Provisions of contract - Term of contract.**

1. Each uniform group insurance contract entered by the board must be consistent with the provisions of this chapter, must be signed for the state of North Dakota by the chairman of the board, and must include the following:
  - a. As many optional coverages as deemed feasible and advantageous by the board.
  - b. A detailed statement of benefits offered, including maximum limitations and exclusions, and such other provisions as the board may deem necessary or desirable.
2. The initial term or the renewal term of a fully insured uniform group insurance contract through a contract for insurance, health maintenance organization, or self-insurance health plan for hospital benefits coverage, medical benefits coverage, or prescription drug benefits coverage may not exceed two years.
  - a. The board may renew a contract subject to this subsection without soliciting a bid under section 54-52.1-04 if the board determines the carrier's performance under the existing contract meets the board's expectations and the proposed premium renewal amount does not exceed the board's expectations, and renewal best serves the interests of the state and the state's eligible employees.
  - b. In making a determination under this subsection, the board shall:
    - (1) Use the services of a consultant to concurrently and independently prepare a renewal estimate the board shall consider in determining the reasonableness of the proposed premium renewal amount.
    - (2) Review the carrier's performance measures, including payment accuracy, claim processing time, member service center metrics, wellness or other special program participation levels, and any other measures the board determines relevant to making the determination and shall consider these measures in determining the board's satisfaction with the carrier's performance.
    - (3) Consider any additional information the board determines relevant to making the determination.

- c. ~~If the~~The board determines~~may determine~~ the carrier's performance under the existing contract does not meet the board's expectations or, the proposed premium renewal amount exceeds the board's expectations, or renewal does not best serve the interests of the state or the state's eligible employees and the board ~~determines~~therefore may decide to solicit a bid under section 54-52.1-04, ~~the board shall specify its reasons for the determination to solicit a bid.~~

**SECTION 9. AMENDMENT.** Section 54-52.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-11. Confidentiality of employee records.**

~~Information~~In addition to the confidentiality requirements in section 26.1-36-12.4, ~~information~~ pertaining to an eligible employee's group medical records for claims, employee premium payments made, salary reduction amounts taken, history of any available insurance coverage purchased, and amounts and types of insurance applied for under the supplemental life insurance coverage under this chapter is confidential and is not a public record. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to ~~whom~~which the eligible employee has given written authorization to have the information disclosed.
2. A person legally representing the eligible employee, upon proper proof of representation, and unless the eligible employee specifically withholds authorization.
3. A person authorized by a court order.
4. A person ~~or entity~~ to which the board is required to disclose information pursuant to federal or state statutes or regulations.
5. Any person ~~or entity~~ if the purpose of the disclosure is for treatment, payment, or health care operations.

**SECTION 10. REPEAL.** Sections 54-52.1-04.4, 54-52.1-04.5, 54-52.1-04.6, 54-52.1-04.10, 54-52.1-04.11, 54-52.1-04.12, 54-52.1-04.13, and 54-52.1-04.14 of the North Dakota Century Code are repealed.

**SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 463

### SENATE BILL NO. 2045

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

AN ACT to create and enact a new section to chapter 54-52.2 of the North Dakota Century Code, relating to contributions to the deferred compensation plan; and to amend and reenact subsection 7 of section 39-03.1-08.2 and sections 54-52.1-03.3 and 54-52.1-04.2 of the North Dakota Century Code, relating to the highway patrolmen's retirement system, the retiree health credit, and prescription coverage under a self-insured plan.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 7 of section 39-03.1-08.2 of the North Dakota Century Code is amended and reenacted as follows:

7. In addition to service credit identified in this section, a vested contributor may purchase up to five years of service credit.

<sup>228</sup> **SECTION 2. AMENDMENT.** Section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-52.1-03.3. Eligibility for retiree health benefits - Fixed contribution and reduction factors.**

1. The following individuals are entitled to receive credit for hospital ~~and benefits coverage~~, medical benefits coverage, and prescription drug coverage under any health insurance program and for any dental, vision, and long-term care benefits coverage under the uniform group any insurance program under ~~subsection 2:~~
  - a. A member or surviving spouse ~~of receiving retirement benefits under the highway patrolmen's retirement system~~ is eligible for the credit beginning on the date retirement benefits are effective.
  - b. A member or surviving spouse ~~of receiving retirement benefits under the public employees retirement system~~ is eligible for the credit beginning on the date retirement benefits are effective.
  - c. A member or surviving spouse ~~of receiving retirement benefits under the retirement program established by job service North Dakota under section 52-11-01 receiving retirement benefits~~ is eligible for the credit beginning on the date retirement benefits are effective.
  - d. A retired judge or surviving spouse receiving retirement benefits under the retirement program established under chapter 27-17 is eligible for the credit beginning on the date retirement benefits are effective.

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<sup>228</sup> Section 54-52.1-03.3 was also amended by section 4 of Senate Bill No. 2046, chapter 459.

- e. A former participating member of the defined contribution retirement plan receiving retirement benefits, or the surviving spouse of a former participating member of that retirement plan who was eligible to receive or was receiving benefits, under section 54-52.6-13, is eligible as determined by the board pursuant to its rules.
2. The board shall calculate the allowable monthly credit toward hospital ~~and benefits coverage~~, medical benefits coverage, and prescription drug coverage under any health insurance program and toward dental, vision, and long-term care benefits coverage under the ~~uniform group~~ any insurance program ~~for a person eligible~~ under subsection 1 in an amount equal to five dollars multiplied by the member's or deceased member's number of years of credited service under the highway patrolmen's retirement system, the public employees retirement system, the retirement program established by job service North Dakota under section 52-11-01, or the judges' retirement program established under chapter 27-17. For a member of the public employees retirement system receiving an early retirement benefit or the surviving spouse of that member, or a former participating member of the defined contribution retirement plan who is receiving a periodic distribution and would not meet the normal retirement provisions of the public employees retirement system, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year ~~prior to before~~ attaining the age of sixty-five and an additional reduction factor of six percent ~~shall apply~~ applies for each year the member terminates employment ~~prior to before~~ attaining the age of sixty-four. For a member of the highway patrolmen's retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year ~~prior to before~~ attaining the age of fifty-five and an additional reduction factor of six percent ~~shall apply~~ applies for each year the member terminates employment ~~prior to before~~ attaining the age of fifty-four. For a member of the retirement program established by job service North Dakota under section 52-11-01 receiving an early retirement benefit or a discontinued service annuity under the plan provisions of that retirement program or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year ~~prior to before~~ attaining the age of sixty-five and an additional reduction factor of six percent applies for each year the member terminates employment ~~prior to before~~ attaining the age of sixty-four.
  3. The board shall apply the credit allowable under subsection 2 as elected by the eligible participant to the payment of monthly premiums required of each ~~person~~ individual eligible under subsection 1 for hospital benefits coverage ~~and~~, medical benefits coverage, and prescription drug coverage under any health insurance program and for dental, vision, and long-term care benefits coverage under the ~~uniform group~~ any insurance program. The board shall allow spouses who each have credit under subsection 2 to combine ~~their~~ the spouses' credits and shall apply the combined credit to the required monthly premiums as elected pursuant to this subsection. However, if the allowable credit under any circumstance exceeds the monthly premium in effect for selected coverage, that amount of the credit which exceeds the premium is forfeited and may not be used for any other purpose.
  4. ~~The board may, as~~ As an alternative to the calculation of the allowable monthly credit under subsection 2, the board may provide actuarially reduced benefit

options for the member and the member's surviving spouse, including a one hundred percent joint and survivor option or a fifty percent joint and survivor option.

<sup>229</sup> **SECTION 3. AMENDMENT.** Section 54-52.1-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04.2. Self-insurance plan for hospital and medical benefits coverage.**

1. The board may establish a self-insurance plan for providing:
  - a. Health insurance benefits coverage;
  - b. Health insurance benefits coverage excluding all or part of prescription drug coverage; or
  - c. All or part of prescription drug coverage.
2. ~~Any~~Except for prescription drug coverage under subdivision c of subsection 1, a self-insurance plan under this section must be provided under an administrative services only (ASO) contract or a third-party administrator (TPA) contract under the uniform group insurance program, and may be established only if it ~~is determined by the board that~~determines an administrative services only or third-party administrator plan is less costly than the lowest bid submitted by a carrier for underwriting the plan with equivalent contract benefits. Upon establishing a self-insurance plan, the board shall solicit bids for an administrative services only or third-party administrator contract only every other biennium, and the board ~~is authorized to~~may renegotiate an existing administrative services only or third-party administrator contract during the interim. ~~In addition~~Except for prescription drug coverage under subdivision c of subsection 1, individual stop-loss coverage insured by a carrier authorized to do business in this state must be made part of any self-insured plan. All bids under this section are due no later than January first, and must be awarded no later than March first, preceding the end of each biennium. All bids under this section must be opened at a public meeting of the board.

**SECTION 4.** A new section to chapter 54-52.2 of the North Dakota Century Code is created and enacted as follows:

**Employer contribution.**

Employer contributions to the deferred compensation program established under this chapter are authorized as permitted under the Internal Revenue Code.

Approved March 8, 2019

Filed March 8, 2019

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<sup>229</sup> Section 54-52.1-04.2 was also amended by section 5 of House Bill No. 1028, chapter 462.

## CHAPTER 464

### HOUSE BILL NO. 1374

(Representatives M. Nelson, Holman)

AN ACT to create and enact a new section to chapter 50-24.1 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to the medical assistance pharmacy management program and public employees retirement system prescription drug coverage benefits; to provide for a legislative management study; to provide for application; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

##### **Pharmacy management program.**

The department shall establish a pharmacy management program to be used by the medical assistance program for Medicaid expansion for prescription drug coverage. The department shall process claims through the department's existing pharmacy claims system and Medicaid management information system and provide the contracted managed care plan with a daily pharmacy claims file for Medicaid expansion recipients.

**SECTION 2.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

##### **Prescription drug coverage - Performance audits.**

1. Except for Medicare part D, prescription drug coverage, the board may not enter or renew a contract for prescription drug coverage unless the contract authorizes the board during the term of the contract to conduct a performance audit of the prescription drug coverage and any related pharmacy benefits management services. The contract must provide:
  - a. The board must have full access to data regarding:
    - (1) The total dollars paid to the pharmacy benefits manager by the carrier and the board;
    - (2) The total amount of dollars paid to the pharmacy benefits manager by the carrier which were not subsequently paid to a licensed pharmacy in the state; and
    - (3) Payments made to all pharmacy providers.
  - b. The board must have full access to data regarding the average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefits manager to licensed pharmacies with which the pharmacy benefits manager shares common ownership or control or is affiliated.

- c. The board must have full access to data regarding the average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefits manager to pharmacies licensed in the state.
  - d. The board must have full access to data regarding any direct and indirect fees, charges, or recoupment, or any kind of assessments imposed by the pharmacy benefits manager on pharmacies licensed with which the pharmacy benefits manager shares common ownership or control or is affiliated.
  - e. The board must have full access to data regarding any direct and indirect fees, charges, or recoupment, or any kind of assessments imposed by the pharmacy benefits manager, on pharmacies licensed in the state.
  - f. The contract must provide that all drug rebates, financial incentives, fees, and discounts must be disclosed to the board.
2. The board shall use an independent auditor who has no conflict of interest with the carrier, pharmacy benefits manager, or board. The board's auditor, the insurance department, and the employee benefits programs committee may access any information the board may access under this section. All information accessed by the board, board's auditor, insurance department, or employee benefits programs committee which is trade secret is a confidential record. This subsection does not limit the information required to be disclosed to the board under subsection 1.
  3. If the board contracts directly with a pharmacy benefits manager or provides prescription drug coverage through a self-insurance plan, the contract must provide the pharmacy benefits manager shall disclose to the board and the board's auditor all rebates and any other fees that provide the pharmacy benefits manager with sources of income under the contract, including under related contracts the pharmacy benefits manager has with third parties, such as drug manufacturers.
  4. Anything the board has access to under this section, the insurance department and employee benefits committee has access to.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM PRESCRIPTION DRUG COVERAGE.** During the 2019-20 interim, the legislative management shall study the feasibility and desirability of the public employees retirement system entering a separate contract for prescription drug coverage under the uniform group insurance program. The legislative management may contract with a private third party to assist in conducting the study and identifying pros and cons relating to a carve out for prescription drug coverage under the uniform group insurance program. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 4. APPLICATION.** Section 2 of this Act applies to contracts entered by the public employees retirement system board on and after the effective date of this Act.

**SECTION 5. EFFECTIVE DATE.** Section 1 of this Act becomes effective on January 1, 2020.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 465

### HOUSE BILL NO. 1470

(Representatives Mock, P. Anderson, Hatlestad, Keiser, D. Ruby, Strinden)  
(Senators Bekkedahl, Davison, Kreun, Oban, Vedaa)

AN ACT to amend and reenact sections 54-52.4-02, 54-52.4-03, and 54-52.4-04 of the North Dakota Century Code, relating to family leave for state employees; and to provide for a legislative management study of state employee leave policies.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-52.4-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-52.4-02. Family leave.**

1. An employer shall grant an employee's request for a family leave of absence for any of the following reasons:
  - a. To care for the employee's child by birth, if the leave concludes within twelve months of the child's birth.
  - b. To care for a child placed with the employee, by a child-placing agency licensed under chapter 50-12, for adoption or as a precondition to adoption under section 14-15-12, but not both, or for foster care, if the leave concludes within twelve months of the child's placement.
  - c. To care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition.
  - d. Because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's job.
  - e. Because of the death of the employee's child, if the leave concludes within six months of the child's death.
2. ~~For~~Except as otherwise provided under this section, for any combination of reasons specified in subsection 1, an employee may take family leave in any twelve-month period for not more than twelve workweeks. The twelve weeks of family leave may be taken intermittently for leave under ~~subdivisions~~subdivision a or b of subsection 1 if approved by the employer. The twelve weeks of family leave may be taken intermittently for leave under ~~subdivisions~~subdivision c or d of subsection 1 if the leave is medically necessary. The twelve weeks of family leave taken under subdivision e of subsection 1 may be taken intermittently if approved by the employer. If an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled must be determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule.

3. In any case in which a husband and wife entitled to family leave under this chapter are employed by the same employer, the aggregate period of family leave to which both are entitled may be limited by the employer to twelve workweeks during any twelve-month period.
4. An employee ~~shall~~ reasonably shall consider the needs of the employer in scheduling family leave under this section or in using leave under section 54-52.4-03.
5. The family leave required by this chapter is not required to be granted with pay unless otherwise specified by agreement between the employer and employee, by collective bargaining agreement, or by employer policy.
6. The family leave required by this chapter supplements any leave otherwise available to an employee.

**SECTION 2. AMENDMENT.** Section 54-52.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.4-03. Use of other available leave for bereavement of child or care of parent, spouse, or child.**

An employer that provides leave for its employees for illnesses or other medical or health reasons shall grant an employee's request to use that leave ~~to care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition for the purposes authorized under subsection 1 of section 54-52.4-02.~~ Except as otherwise provided under this section, an employee may take no more than four hundred eighty hours of leave under this section in any twelve-month period. Any leave for bereavement is limited to one hundred sixty hours and must be taken within six months following the death of the child. The employer shall compensate the employee for leave used by the employee under this section on the same basis as the employee would be compensated if the leave had been taken due to the employee's own illness or other medical or health reason.

**SECTION 3. AMENDMENT.** Section 54-52.4-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.4-04. Notice to employer.**

1. If an employee intends to ~~request~~take family leave for the reasons specified in subdivision a or b of subsection 1 of section 54-52.4-02, the employee, in a reasonable and practicable manner, shall give the employer advance notice of the expected birth or placement.
2. If an employee intends to take family leave for the reasons specified in subdivision c or d of subsection 1 of section 54-52.4-02, the employee shall:
  - a. Make a reasonable effort to schedule the planned care or treatment so ~~that it~~the leave does not unduly disrupt the employer's operations, subject to the approval of the health care provider to the child, spouse, parent, or employee; and
  - b. Give the employer advance notice of the planned care or treatment in a reasonable and practicable manner.

3. If an employee intends to take family leave for the reason specified in subdivision e of subsection 1 of section 54-52.4-02, the employee shall make a reasonable effort to schedule the leave so the leave does not unduly disrupt the employer's operations and, as appropriate, give the employer advance notice of the leave in a reasonable and practicable manner.

**SECTION 4. LEGISLATIVE MANAGEMENT STUDY - STATE EMPLOYEE LEAVE POLICIES.** During the 2019-20 interim, the legislative management shall consider studying the leave policies for state employees. The study shall include the efficacy and desirability of transitioning annual leave and sick leave into a combined paid time off system. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 466

### HOUSE BILL NO. 1064

(Representative Keiser)  
(Senator Klein)

AN ACT to create and enact a new section to chapter 54-57 of the North Dakota Century Code, relating to office of administrative hearings case processing, tracking, and reporting; and to provide for a report.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 54-57 of the North Dakota Century Code is created and enacted as follows:

##### **Case processing tracking and reporting.**

1. The office of administrative hearings shall track the time elapsed between the date the office receives a file from workforce safety and insurance and the date of the administrative law judge's decision, and monthly calculate a rolling six-month average of time elapsed.
2. The office of administrative hearings shall adopt case processing standards and policies, including provisions intended to meet a goal of an average of two hundred fifteen days or less per case. Administrative law judges have an average of two hundred fifteen days to issue a decision for any injured worker case from the date the office of administrative hearings receives a file from workforce safety and insurance. The date of the last assigned file is the date of assignment for all consolidated files.
3. The office of administrative hearings and workforce safety and insurance shall report statistical information regarding results under the case processing standards and policies to the legislative management and the state advisory council each quarter. The reports must include the information required under subsection 1.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 467

### SENATE BILL NO. 2318

(Senators Holmberg, Kreun, J. Lee)  
(Representatives Becker, Lefor, Mock)

AN ACT to provide a statement of legislative intent regarding campus internal local area network services; and to provide for a report to the legislative management.

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

**SECTION 1. LEGISLATIVE INTENT - CAMPUS HOUSING INTERNAL LOCAL AREA NETWORK SERVICES - REPORT TO LEGISLATIVE MANAGEMENT.** It is the intent of the sixty-sixth legislative assembly that the information technology department enter a contract to provide a solution to improve wired or wireless internal local area network service infrastructure within student housing facilities at institutions under the control of the state board of higher education which choose to receive the service. The information technology department shall collaborate with the institutions and entities under the control of the state board of higher education and include participating institutions when developing the requirements and selecting the internal local area network service solution. During the 2019-20 interim, the information technology department shall report to the legislative management regarding internal local area network services provided under this section, and submit a copy of any related contract to the legislative council.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 468

### SENATE BILL NO. 2110

(Political Subdivisions Committee)  
(At the request of the Information Technology Department)

AN ACT to amend and reenact sections 54-59-01 and 54-59-05 of the North Dakota Century Code, relating to cybersecurity.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-59-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-59-01. Definitions.**

As used in this chapter:

1. "Agency" or "entity" does not include any agricultural commodity promotion group or any occupational or professional board.
2. "Cybersecurity" means processes or capabilities, wherein, systems, communications, and information are protected and defended against damage, unauthorized use or modification, and exploitation.
3. "Cybersecurity strategy" means a vision, plan of action, or guiding principles. Unless otherwise defined in this chapter, the term does not mean an associated operational plan.
4. "Department" means the information technology department.
- ~~3-5.~~ "Information technology" means the use of hardware, software, services, and supporting infrastructure to manage and deliver information using voice, data, and video.
- ~~4-6.~~ "Network services" means the equipment, software, and services necessary to transmit voice, data, or video.

<sup>230</sup> **SECTION 2. AMENDMENT.** Section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-59-05. Powers and duties of department. (Effective through July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.

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<sup>230</sup> Section 54-59-05 was also amended by section 17 of Senate Bill No. 2055, chapter 438.

2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
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.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.
6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project of an executive branch agency. The department shall

- present the information to the information technology committee on request of the committee.
8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and five hundred thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
  9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
  10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
  11. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.
  12. Shall perform all other duties necessary to carry out this chapter.
  13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003.
  14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
  15. Notwithstanding subsection 13, may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.
  16. Shall advise and oversee cybersecurity strategy for all executive branch state agencies, including institutions under the control of the state board of higher education, counties, cities, school districts, or other political subdivisions. For purposes of this subsection, the department shall consult with the attorney general on cybersecurity strategy.
  17. Shall advise and consult with the legislative and judicial branches regarding cybersecurity strategy.

**Powers and duties of department. (Effective after July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.

2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
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. 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. 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.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.
6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project of an executive branch agency. The department shall present the information to the information technology committee on request of the committee.

8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and five hundred thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
11. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.
12. Shall perform all other duties necessary to carry out this chapter.
13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003.
14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 13, may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.
16. Shall advise and oversee cybersecurity strategy for all executive branch state agencies, including institutions under the control of the state board of higher education, counties, cities, school districts, or other political subdivisions. For purposes of this subsection, the department shall consult with the attorney general on cybersecurity strategy.
17. Shall advise and consult with the legislative and judicial branches regarding cybersecurity strategy.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 469

### HOUSE BILL NO. 1048

(Representative Toman)

AN ACT to create and enact a new section to chapter 54-59 of the North Dakota Century Code, relating to the use of distributed ledger technologies and a pilot program.

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

**SECTION 1.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

#### **Distributed ledger technologies - Authorization - Pilot program - Report.**

The department shall research and develop the use of distributed ledger-enabled platform technologies, such as blockchains, for computer-controlled programs, data transfer and storage, and program regulation to protect against falsification, improve internal data security, and identify external hacking threats. Research must include efforts to protect the privacy of personal identifying information maintained within distributed ledger programs. The department shall select a state agency, upon the request of the state agency, to serve as a pilot program for the implementation and use of distributed ledger-enabled platform technologies. Before June first of each even-numbered year, the chief information officer shall report to the legislative management regarding the implementation of distributed ledger technologies.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 470

### HOUSE BILL NO. 1080

(Judiciary Committee)

(At the request of the Information Technology Department)

AN ACT to amend and reenact section 54-59-20 of the North Dakota Century Code, relating to criminal history background checks for contract employees of the information technology department.

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

**SECTION 1. AMENDMENT.** Section 54-59-20 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-59-20. Security background information.**

The chief information officer ~~shall~~may require as a condition of employment or as a condition of contracting with the department that individuals, including any individuals employed by the contractor or a subcontractor to perform work under the contract, who have unescorted physical access to the facilities or other security-sensitive areas of the department designated by the chief information officer submit to a criminal history record check in accordance with section 12-60-24. The chief information officer may require as a condition of contracting with the department or other state agency or department with respect to an information technology project that any individual employed by the contractor or a subcontractor to perform the work under the contract submit to a criminal history record check in accordance with section 12-60-24.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 471

### HOUSE BILL NO. 1069

(Judiciary Committee)

(At the request of the Commission on Legal Counsel for Indigents)

AN ACT to amend and reenact section 54-61-04 of the North Dakota Century Code, relating to confidentiality provisions applicable to the commission on legal counsel for indigents.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-61-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-61-04. Records, files, and information - Accessibility - Confidentiality.**

Any Except as otherwise provided in this section, any file, record, or information regarding representation of a party under sections 54-61-01 through 54-61-03 which are is attorney work-product or otherwise subject to any attorney-client privilege are is confidential and may not be disclosed except in accordance with a court order or in response to applicable discovery rules. Any file, record, or information regarding representation of a party under this chapter which is attorney work product or otherwise subject to any attorney-client privilege may be disclosed to the party to whom representation was provided, the attorney who provided the representation, and newly assigned counsel with consent of the represented party. All other case-related records are exempt from disclosure except as otherwise provided in rules adopted by the commission. Information or records obtained by the commission relating to allegations of misconduct by an attorney in the employ of, or providing indigent services for, the commission are exempt from disclosure except as otherwise provided in rules adopted by the commission unless and until the matter is referred for formal disposition under rules adopted by the supreme court.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 472

### HOUSE BILL NO. 1521

(Representative Pollert)  
(Senator Wardner)

AN ACT to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of the North Dakota Century Code, relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; to amend and reenact sections 16.1-08.1-01, 16.1-08.1-03.7, 16.1-08.1-04.1, 16.1-08.1-06.2, 28-32-01, 28-32-03, 28-32-06, 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, 28-32-15, 28-32-16, and 28-32-18.1, subsections 2 and 4 of section 28-32-19, and sections 28-32-47, 28-32-48, and 28-32-49 of the North Dakota Century Code, relating to rulemaking procedures, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a legislative management study; to provide for a penalty; to provide an appropriation; to provide an effective date; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **16.1-08.1-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.
2. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
3. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:

- a. An individual holding public office;
  - b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
  - c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
  - d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
  - e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.
4. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a transactional intermediary, including a credit card company or a money transfer service that pays or transfers money to a candidate on behalf of another person.
5. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source including a conduit. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:
- a. A loan of money from a bank or other lending institution made in the regular course of business.
  - b. Time spent by volunteer campaign or political party workers.
  - c. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.
  - d. Money or anything of value received for anything other than a political purpose.
  - e. Products or services for which the actual cost or fair market value are reimbursed by a payment of money.

- f. An independent expenditure.
  - g. The value of advertising paid by a political party, multicandidate political committee, or caucus which is in support of a candidate.
  - h. In-kind contributions from a candidate to the candidate's campaign.
6. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations. However, if a political committee, the only purpose of which is accepting contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.
7. "Expenditure" means:
- a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for a political purpose or for the purpose of influencing the passage or defeat of a measure.
  - b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.
  - c. The transfer of funds by a political committee to another political committee.
  - d. An independent expenditure.
8. "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:
- a. Advertising;
  - b. Campaign loan repayment;
  - c. Operations;
  - d. Travel; and
  - e. Miscellaneous.
9. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate, committee, or political party.
10. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
11. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

12. "Personal benefit" means a benefit to the candidate or another person which is not for a political purpose or related to a candidate's responsibilities as a public officeholder, and any other benefit that would convert a contribution to personal income.
13. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes:
  - a. A political action committee not connected to another organization and free to solicit funds from the general public, or derived from a corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or an association that solicits or receives contributions from its employees or members or makes expenditures for political purposes on behalf of its employees or members;
  - b. A candidate committee established to support an individual candidate seeking public office which solicits or receives contributions for political purposes;
  - c. A political organization registered with the federal election commission, which solicits or receives contributions or makes expenditures for political purposes;
  - d. A multicandidate political committee, including a caucus, established to support multiple groups or slates of candidates seeking public office, which solicits or receives contributions for political purposes; and
  - e. A measure committee, including an initiative or referendum sponsoring committee at any stage of its organization, which solicits or receives contributions or makes expenditures for the purpose of aiding or opposing a measure sought to be voted upon by the voters of the state, including any activities undertaken for the purpose of drafting an initiative or referendum petition, seeking approval of the secretary of state for the circulation of a petition, or seeking approval of the submitted petitions.
14. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.
15. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a public office or any position taken in any bona fide news story, commentary, or editorial.

16. "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.
17. "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.
18. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars solely to influence a statewide election or an election for the legislative assembly.

**SECTION 2. AMENDMENT.** Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.**

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report and supplementary information must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
  - a. The name and address of the contributor;
  - b. The total amount of the contribution; and
  - c. The date the last contribution was received.

**SECTION 3. AMENDMENT.** Section 16.1-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-04.1. Personal use of contributions prohibited.**

1. A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:
  4. a. Give a personal benefit to the candidate or another person;
  2. b. Make a loan to another person;

- 3- c. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
- 4- d. Pay a criminal fine or civil penalty.
2. The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.
  - a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
  - b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides.

**SECTION 4. AMENDMENT.** Section 16.1-08.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for inflation, and conduct training.**

The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter. The secretary also shall determine adjustments for inflation of the reporting thresholds in this chapter and instruct persons submitting reports under this chapter of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten dollars.

**SECTION 5.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

**Ultimate and true source of funds - Required identification.**

1. In any statement under this chapter which requires the identification of a contributor or subcontributor, the ultimate and true source of funds must be identified.
2. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section.

<sup>231</sup> **SECTION 6. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-01. Definitions.**

In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-22 or another specific statute or rule, unless the matter has been specifically converted to another type of proceeding under section 28-32-22. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.
2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
  - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
  - b. The adjutant general with respect to the department of emergency services.
  - c. The council on the arts.
  - d. The state auditor.
  - e. The department of commerce with respect to the division of economic development and finance.

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<sup>231</sup> Section 28-32-01 was also amended by section 2 of Senate Bill No. 2215, chapter 144, and section 1 of Senate Bill No. 2264, chapter 265.

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- f. The dairy promotion commission.
  - g. The education factfinding commission.
  - h. The educational technology council.
  - i. The board of equalization.
  - j. The board of higher education.
  - k. The Indian affairs commission.
  - l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
  - m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
  - n. The pardon advisory board.
  - o. The parks and recreation department.
  - p. The parole board.
  - q. The state fair association.
  - r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
  - s. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
  - t. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
  - u. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
  - v. The commission on legal counsel for indigents.
  - w. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
  - x. The industrial commission with respect to approving or setting water rates under chapter 61-40.
3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.

4. "Commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.
5. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-21 and any administrative agency that, when authorized by law, files such a complaint before such agency or any other agency.
- 5-6. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.
- 6-7. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.
- 7-8. "Order" means any agency action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons. The term does not include an executive order issued by the governor.
- 8-9. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.
- 9-10. "Person" includes an individual, association, partnership, corporation, limited liability company, the commission, a state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
- 10-11. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.
- 11-12. "Rule" means the whole or a part of an agency or commission statement of general applicability which implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency or commission. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:
  - a. A rule concerning only the internal management of an agency or the commission which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
  - b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or the commission in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statementrule would:

- (1) Enable law violators to avoid detection;
  - (2) Facilitate disregard of requirements imposed by law; or
  - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
- c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
  - d. A rule concerning only the physical servicing, maintenance, or care of agency-owned ~~or~~ agency-operated, commission-owned, or commission-operated facilities or property.
  - e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
  - f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
  - g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
  - h. An agency or commission budget.
  - i. An opinion of the attorney general.
  - j. A rule adopted by an agency selection committee under section 54-44.7-03.
  - k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, which is explanatory and not intended to have the force and effect of law.

**SECTION 7. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-03. Emergency rules.**

1. If the agency, with the approval of the governor, or the commission finds that emergency rulemaking is necessary, the commission or agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
  - a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;

- b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the commission or agency;
  - c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
  - d. Emergency effectiveness is necessary to meet a mandate of federal law.
3. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule.
  4. The commission's or agency's finding, and a brief statement of the commission's or agency's reasons for the finding, must be filed with the legislative council with the final adopted emergency rule.
  5. The commission or agency shall attempt to make interim final rules known to persons who the commission or agency can reasonably be expected to believe may have a substantial interest in them. As used in this subsection, "substantial interest" means an interest in the effect of the rules which surpasses the common interest of all citizens. ~~An~~The commission or an agency adopting emergency rules shall comply with the notice requirements of section 28-32-10 which relate to emergency rules and shall provide notice to the chairman of the administrative rules committee of the emergency status, declared effective date, and grounds for emergency status of the rules under subsection 2. When notice of emergency rule adoption is received, the legislative council shall publish the notice and emergency rules on its website.
  6. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

**SECTION 8. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-06. Force and effect of rules.**

Upon becoming effective, rules have the force and effect of law until amended or repealed by the agency or commission, declared invalid by a final court decision, suspended or found to be void by the administrative rules committee, or determined repealed by the legislative council because the authority for adoption of the rules is repealed or transferred to another agency.

**SECTION 9. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-07. Deadline for rules to implement statutory change.**

Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the legislative council within nine months of the effective date of the statutory change. If an agency or the commission needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency or commission must adopt the rule change if the request by the agency or commission is supported by evidence that the agency or commission needs more time through no deliberate fault of its own.

**SECTION 10. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-08. Regulatory analysis.**

1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
  - a. Within twenty days after the last published notice date of a proposed rule hearing, a written request for the analysis is filed by the governor or a member of the legislative assembly; or
  - b. The proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis under this subdivision must be available on or before the first date of public notice as provided for in section 28-32-10.
2. The regulatory analysis must contain:
  - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
  - b. A description of the probable impact, including economic impact, of the proposed rule;
  - c. The probable costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
  - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency or commission and the reasons why the methods were rejected in favor of the proposed rule.
3. Each regulatory analysis must include quantification of the data to the extent practicable.
4. The agency or commission shall mail or deliver a copy of the regulatory analysis to any person who requests a copy of the regulatory analysis. The agency or commission may charge a fee for a copy of the regulatory analysis as allowed under section 44-04-18.
5. If required under subsection 1, the preparation and issuance of a regulatory analysis is a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory analysis, including erroneous determinations concerning the impact of the proposed rule on the regulated community, are not a ground upon which the invalidity of a rule may be asserted or declared.

**SECTION 11. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements - Judicial review.**

1. As used in this section:

- a. "Small business" means a business entity, including its affiliates, which:
    - (1) Is independently owned and operated; and
    - (2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;
  - b. "Small entity" includes small business, small organization, and small political subdivision;
  - c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and
  - d. "Small political subdivision" means a political subdivision with a population of less than five thousand.
2. Before adoption of any proposed rule, the adopting agency shall prepare a regulatory analysis in which, consistent with public health, safety, and welfare, the agency considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
- a. Establishment of less stringent compliance or reporting requirements for small entities;
  - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
  - c. Consolidation or simplification of compliance or reporting requirements for small entities;
  - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
  - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.
3. Before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency shall prepare an economic impact statement that includes consideration of:
- a. The small entities subject to the proposed rule;
  - b. The administrative and other costs required for compliance with the proposed rule;
  - c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
  - d. The probable effect of the proposed rule on state revenues; and
  - e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

4. For any rule subject to this section, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this section. A small entity seeking judicial review under this section must file a petition for judicial review within one year from the date of final agency action.
5. This section does not apply to the ethics commission, any agency that is an occupational or professional licensing authority, ~~nor does this section apply to~~ and the following agencies or divisions of agencies:
  - a. Council on the arts.
  - b. Beef commission.
  - c. Dairy promotion commission.
  - d. Dry bean council.
  - e. Highway patrolmen's retirement board.
  - f. Indian affairs commission.
  - g. Board for Indian scholarships.
  - h. State personnel board.
  - i. Potato council.
  - j. Board of public school education.
  - k. Real estate trust account committee.
  - l. Seed commission.
  - m. Soil conservation committee.
  - n. Oilseed council.
  - o. Wheat commission.
  - p. State seed arbitration board.
  - q. North Dakota lottery.
6. This section does not apply to rules mandated by federal law.
7. The adopting agency shall provide the administrative rules committee copies of any regulatory analysis or economic impact statement, or both, prepared under this section when the committee is considering the associated rules.

**SECTION 12. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-08.2. Fiscal notes for administrative rules.**

When an agency or the commission presents rules for administrative rules committee consideration, the agency or commission shall provide a fiscal note or a statement in its testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules changes on state revenues and expenditures, including any effect on funds controlled by the agency or commission.

**SECTION 13. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-09. Takings assessment.**

1. An agency or the commission shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The agency's assessment must:
  - a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
  - b. Clearly and specifically identify the purpose of the proposed rule.
  - c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's or commission's goals while reducing the impact on private property owners.
  - d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
  - e. Identify the source of payment within the agency's or commission's budget for any compensation that may be ordered.
  - f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.
2. Any private landowner who is or may be affected by a rule that limits the use of the landowner's private real property may request in writing that the agency or commission reconsider the application or need for the rule. Within thirty days of receiving the request, the agency or commission shall consider the request and shall in writing inform the landowner whether the agency or commission intends to keep the rule in place, modify application of the rule, or repeal the rule.
3. In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially advances legitimate state interests, does not deny an owner economically viable use of the owner's land, or is in accordance with applicable state or federal law.

**SECTION 14. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-10. Notice of rulemaking - Hearing date.**

1. An agency or the commission shall prepare a full notice and an abbreviated notice of rulemaking.
  - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, identify the emergency status and declared effective date of any emergency rules, include a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number and post-office or electronic mail address at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. ~~The~~An agency's full notice must include a statement of the bill number and general subject matter of any legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule. The commission's full notice must include a statement of the provision of the Constitution of North Dakota or the bill number and general subject matter of any legislation that is being implemented by the proposed rule. The agency's full notice must be filed with the legislative council, accompanied by a copy of the proposed rules.
  - b. The agency or commission shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a minimum depth of approximately three inches [7.62 centimeters] and with a headline describing the general topic of the proposed rules. The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, identification of the emergency status and declared effective date of any emergency rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.
2. The agency or commission shall mail or deliver by electronic mail a copy of the agency's full notice and proposed rule to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule and to each person who has made a timely request to the agency or commission for a copy of the notice and proposed rule. The agency or commission may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency or commission may charge persons who are not members of the legislative assembly fees for copies of the proposed rule as allowed under section 44-04-18.
3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with

statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least twenty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.

4. The legislative council shall establish standard procedures for the commission and all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies and the commission pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least twenty days must elapse between the date of the publication of the notice and the date of the hearing. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council to any person who has paid the annual fee established under subsection 4.

**SECTION 15. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-11. Conduct of hearings - Notice of administrative rules committee consideration - Consideration and written record of comments.**

The agency or commission shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. The agency or commission shall adopt a procedure to allow interested parties to request and receive notice from the agency or commission of the date and place the rule will be reviewed by the administrative rules committee. In case of substantive rules, the agency or commission shall conduct an oral hearing. The agency or commission shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency or commission shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

**SECTION 16. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-12. Comment period.**

The agency or commission shall allow, after the conclusion of any rulemaking hearing, a comment period of at least ten days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency or commission and made a part of the rulemaking record to be considered by the agency or commission.

**SECTION 17. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-15. Filing of rules for publication - Effective date of rules.**

1. A copy of each rule adopted by an administrative agency or the commission, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule, if any, must be filed by the adopting agency or commission with the legislative council for publication of the rule in the North Dakota Administrative Code.
2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency or the commission, and filed with the legislative council, and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:
  - (1) Rules filed with the legislative council from August second through November first become effective on the immediately succeeding January first.
  - (2) Rules filed with the legislative council from November second through February first become effective on the immediately succeeding April first.
  - (3) Rules filed with the legislative council from February second through May first become effective on the immediately succeeding July first.
  - (4) Rules filed with the legislative council from May second through August first become effective on the immediately succeeding October first.
- b. If publication is delayed for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective when publication would have occurred but for the delay.
- c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

**SECTION 18. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-16. Petition for reconsideration of rule - Hearing by agency.**

Any person substantially interested in the effect of a rule adopted by an administrative agency or the commission may petition ~~such~~the agency or commission for a reconsideration of ~~any such~~the rule or for an amendment or repeal thereof. ~~Such of the rule. The~~ petition must state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for~~ the proposed repeal or amendment of ~~such~~the rule. The agency or commission may grant the petitioner a public hearing ~~upon such~~on the terms and conditions as the agency may ~~prescribe~~prescribes.

**SECTION 19. AMENDMENT.** Section 28-32-18.1 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-18.1. Administrative rules committee review of existing administrative rules.**

1. Upon request by the administrative rules committee, an administrative agency or the commission shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory or constitutional authority has changed or been repealed since the rules were adopted or amended.
2. An agency or the commission may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
  - a. The agency or commission initiates the request to the administrative rules committee for consideration of the amendment or repeal;
  - b. The agency or commission provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the rule, of the time and place the administrative rules committee will consider the request for amendment or repeal of the rule; and
  - c. The agency or commission and the administrative rules committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal.

**SECTION 20. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

2. The legislative council may prescribe ~~at the~~ the format, style, and arrangement for rules ~~which are~~ to be published in the code and may refuse to accept the filing of any rule that is not in substantial compliance ~~therewith~~ with the format, style, and arrangement. In arranging rules for publication, the legislative council may make ~~such~~ corrections in spelling, grammatical construction, format, and punctuation of the rules as ~~determined~~ the legislative council determines are proper. The legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.

**SECTION 21. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

4. The legislative council, with the consent of the adopting agency or commission, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency or commission, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and ~~stating~~ how a copy may be obtained.

**SECTION 22. AMENDMENT.** Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-47. Scope of and procedure on appeal from agency rulemaking.**

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:
  1. a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
  2. b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
  3. c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
  4. d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.
2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~the rulemaking action~~ must be remanded to the agency or commission for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency or commission must be declared invalid for reasons stated by the court.

**SECTION 23. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-48. Appeal - Stay of proceedings.**

An appeal from an order or the rulemaking action of an administrative agency or the commission does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the operation of an automatic stay upon the enforcement of an administrative order or commission order as may be required by another statute.

**SECTION 24. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-49. Review in supreme court.**

The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency or the commission may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency or commission, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency or the commission, the agency or commission may not be required to pay a docket fee or file a bond for costs or equivalent security.

**SECTION 25.** Chapter 54-66 of the North Dakota Century Code is created and enacted as follows:

**54-66-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Accused individual" means a lobbyist, public official, candidate for public office, political committee, or contributor who is alleged to have violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.
2. "Complainant" means an individual who, in writing or verbally, submits a complaint to the commission.
3. "Complaint" means a verbal or written allegation to the commission that a lobbyist, public official, candidate for public office, political committee, or contributor has violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.
4. "Ethics commission" or "commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.
5. "Gift" means any item, service, or thing of value not given in exchange for fair market consideration including travel and recreation, except:
  - a. Purely informational material;
  - b. A campaign contribution; and
  - c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state.
6. "Influence state government action" means promoting or opposing the adoption of a rule by an administrative agency or the commission under chapter 28-32.
7. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
8. "Lobbyist" means an individual required to register under section 54-05.1-03.
9. "Public official" means an elected or appointed official of the state's executive or legislative branch, members of the commission, members of the governor's cabinet, and employees of the legislative branch.
10. "Receives the complaint" means one or more members of the commission learn of the complaint.
11. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars solely to lobby or influence state government action.

**54-66-02. Disclosure of ultimate and true source of funds.**

1. A lobbyist who expends an amount greater than two hundred dollars to lobby shall file with the secretary of state a report that includes the known ultimate and true source of funds for the expenditure. The report must be filed with the lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
2. A person that expends an amount greater than two hundred dollars, not including the individual's own travel expenses and membership dues, to influence state government action shall file with the secretary of state a report including the known ultimate and true source of funds for the expenditure. A report under this subsection must be filed on or before the August first following the date of the expenditure. The secretary of state shall provide a form for reports under this subsection and make the form electronically accessible to the public. The secretary of state also shall charge and collect fees for late filing of the reports as follows:
  - a. Twenty-five dollars for a report filed within sixty days after the deadline; or
  - b. Fifty dollars for a report filed more than sixty days after the deadline.
3. The secretary of state shall compile the reports required under this section and make the reports electronically accessible to the public.
4. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section.
5. The secretary of state shall determine adjustments for inflation of the reporting thresholds in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this section, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary of state shall deem the reporting threshold adjusted by ten dollars.

#### **54-66-03. Lobbyist gifts - Penalty.**

1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public official, and a public official may not accept a gift from a lobbyist knowingly.
2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits, initiates, or facilitates, or a public official accepts a gift to or from a family member.
3. The secretary of state shall assess a civil penalty upon any individual who violates this section.
  - a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.
  - b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars.

**54-66-04. Ethics commission member terms - Meetings - Code of ethics - Compensation - Office.**

1. The terms of the initial members of the ethics commission must be staggered to ensure no more than two members' terms expire in one year. The terms of the initial members may be less than four years to accommodate the required staggering of terms.
2. Unless the complaint at issue has resulted in the imposition of a penalty or referral for enforcement under section 54-66-09, any portion of a meeting during which commission members discuss complaints, informal resolutions, attempts to informally resolve complaints, investigations, or referrals under this chapter, the identity of an accused individual or complainant, or any other matter arising from a complaint are closed meetings.
3. The commission shall abide by a code of ethics adopted in a public meeting. The code of ethics must specify when a commission member is disqualified from participating in matters before the commission.
4. Ethics commission members are entitled to:
  - a. Compensation for each day necessarily spent conducting commission business in the amount provided for members of the legislative management under section 54-35-10; and
  - b. Payment for mileage and travel expenses necessarily incurred in the conduct of commission business as provided under sections 44-08-04 and 54-06-09.
5. The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission.

**54-66-05. Making a complaint.**

A complaint may be made to the commission orally or in writing. If a complainant does not provide the complainant's name, address, and telephone number with the complaint, the ethics commission may not investigate, refer, or take other action regarding the complaint. The commission shall summarize each oral complaint in writing unless the complaint must be disregarded under this section.

**54-66-06. Informing the accused individual - Written response permitted.**

The commission shall inform an accused individual by registered mail of the identity of the complainant who made the allegation against the accused individual and include the written complaint or written summary of the oral complaint as soon as reasonably possible but no later than twenty calendar days after the commission receives the complaint. The accused individual may respond to the complaint in

writing within twenty calendar days of receipt of the complaint or summary of the complaint.

**54-66-07. Informal resolution.**

The commission shall attempt to negotiate or mediate an informal resolution between the accused individual and the complainant unless the commission disregards the complaint pursuant to section 54-66-05 or for any other reason. The accused individual may be accompanied by legal counsel in a negotiation or mediation.

**54-66-08. Investigations - Referrals.**

1. If an informal resolution is not reached under section 54-66-07, the ethics commission may:
  - a. Disregard the complaint;
  - b. Require ethics commission staff to investigate the allegations in the complaint; or
  - c. Engage an outside investigator to investigate allegations in the complaint.
2. If the commission believes a complaint contains allegations of criminal conduct, the ethics commission shall refer the allegations of criminal conduct to the bureau of criminal investigations or other law enforcement agency and may not take further action on the referred allegations. The commission shall inform the accused individual by registered mail of a referral under this section and the nature of the referred allegations as soon as reasonably possible.

**54-66-09. Investigation findings - Ethics commission determinations.**

1. An investigator, other than a law enforcement agency, of a complaint shall provide written findings of the investigation to the ethics commission within a reasonable amount of time. The ethics commission shall provide copies of the written findings to the accused individual, who may respond to the commission in person or in writing within a reasonable time. If the accused individual responds in person, no fewer than three members of the commission shall meet in a closed meeting with the accused individual. An accused individual may be accompanied by legal counsel when responding to the commission in person.
2. After providing a reasonable time for an accused individual to respond to the investigation findings and considering any response to the findings, the ethics commission shall determine whether a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying occurred, and inform the accused individual of the determination. If the commission determined a violation occurred, the commission may impose a penalty authorized by law for the violation or refer the matter to the agency with enforcement authority over the violation.
3. The commission may not terminate the employment of a public official or otherwise remove a public official from the public official's public office.

4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling, recommended finding of fact, recommended conclusion of law, finding of fact, conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the hearing officer failed to grant a request for disqualification under section 28-32-27 or failed to comply with subsection 5 of section 2 of article XIV of the Constitution of North Dakota.

#### **54-66-10. Appeals.**

An accused individual may appeal a finding of the ethics commission to the district court of the county where the accused individual resides.

#### **54-66-11. Rulemaking.**

When adopting rules, the ethics commission shall follow the provisions in chapter 28-32 which are specifically applicable to the commission.

#### **54-66-12. Confidential information.**

1. The following information is a confidential record as defined in section 44-04-17.1, unless the commission has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying, and a court affirmed the determination if appealed, except the information may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint:
  - a. Information revealing the contents of a complaint;
  - b. Information that reasonably may be used to identify an accused individual; and
  - c. Information relating to or created as part of an investigation of a complaint.
2. If a complaint is informally resolved under section 54-66-07, the following information is a confidential record as defined in section 44-04-17.1:
  - a. Information revealing the contents of the complaint;
  - b. Information that reasonably may be used to identify the accused individual;
  - c. Information relating to or created as part of the process leading to the informal resolution; and
  - d. Information revealing the informal resolution.
3. Information that reasonably may be used to identify the complainant is confidential unless the complainant waives confidentiality, authorizes its disclosure, or divulges information that reasonably would identify the complainant. However, the ethics commission shall notify an accused individual of the identity of the complainant who made an allegation against the accused individual, and the information deemed confidential under this subsection may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint.

4. The information deemed confidential in subsections 1 and 2 may be disclosed by the ethics commission if the accused individual agrees to the disclosure.

**54-66-13. Restriction on lobbying by public officials - Penalty.**

A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection.

**54-66-14. Attorney general to provide legal services.**

The attorney general shall serve as legal counsel for the commission unless the commission objects to representation by the attorney general in a specific matter. When a conflict of interest prevents the attorney general from providing legal services to the commission, the attorney general may appoint a special assistant attorney general to serve as legal counsel for the commission.

**54-66-15. Prohibition on delivering campaign contributions - Penalty.**

A lobbyist may not deliver knowingly a campaign contribution made by another person in violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any individual who knowingly violates this section. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor, and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration. For purposes of this section, "deliver" means to transport, transfer, or otherwise transmit, either physically or electronically. This prohibition does not apply to an individual who delivers a campaign contribution to the individual's own campaign or to the campaign of the individual's immediate family member. This prohibition may not be interpreted to prohibit any person from making a campaign contribution, encouraging others to make a campaign contribution, or otherwise supporting or opposing a candidate.

**54-66-16. Removal of ethics commission members.**

1. An ethics commission member may be removed from office for:
  - a. Substantial neglect of duty;
  - b. Gross misconduct in office;
  - c. Violation of the commission's code of ethics; or
  - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires agreement by a majority of:
  - a. The governor;
  - b. The majority leader of the senate; and
  - c. The minority leader of the senate.

**54-66-17. Participation in quasi-judicial proceedings.**

For purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota, an individual is not disqualified from participating in any capacity in a quasi-judicial proceeding, including an adjudicative proceeding under chapter 28-32, due to an investment in a mutual fund, an ownership interest in one of the parties to the proceeding which is shared by the general public, and an investment or ownership interest in a retirement account of one of the parties to the proceeding.

**SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$517,155, or so much of the sum as may be necessary, to the ethics commission for the purpose of the operations of the commission, for the biennium beginning July 1, 2019, and ending June 30, 2021. The ethics commission is authorized two full-time equivalent positions for this purpose.

**SECTION 27. EFFECTIVE DATE.** Sections 1, 3, 4, and 5 of this Act, and sections 54-66-02 and 54-66-03 of the North Dakota Century Code, as created by section 25 of this Act, become effective January 5, 2021.

**SECTION 28. EMERGENCY.** Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 of this Act are declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019