

CORPORATIONS

CHAPTER 95

SENATE BILL NO. 2058
(Legislative Council)
(Interim Jobs Development Commission)

GROWING NORTH DAKOTA

AN ACT to create and enact section 4-14.1-03.1, chapters 6-09.13, 6-09.14, sections 10-30.3-10, 10-30.3-11, 10-30.3-12, and chapters 10-30.4 and 54-34.3 of the North Dakota Century Code, relating to the agricultural utilization commission, farm loan programs, business loan programs, the creation of the primary sector development fund and the regional rural development revolving loan fund, the creation of the science and technology corporation, and the establishment of a department of economic development and finance; to amend and reenact sections 4-14.1-01, 4-14.1-02, 4-14.1-03, subsection 1 of section 6-09-15, sections 6-09-15.5, 6-09.10-03, 10-24-40, subsection 6 of section 10-30-04, sections 10-30.2-02, 10-30.2-05, 10-30.3-01, 10-30.3-02, 10-30.3-03, 10-30.3-05, 10-30.3-07, 15-12-25, 21-11-02, 21-11-03, 21-11-04, 21-11-05, 21-11-06, 24-02-37.1, 24-03-21, subsection 6 of section 26.1-05-19, subsection 1 of section 28-32-01, sections 52-01-03, 54-34-06.1, 54-34-12, 54-34-15, 54-36-01, 54-40.1-01, subsection 7 of section 54-40.1-02, sections 54-40.1-04, 54-40.1-05, 54-53-02, 55-06-01, and 55-08-02.1 of the North Dakota Century Code and section 8 of House Bill No. 1046, as approved by the fifty-second legislative assembly, relating to the duties of the agricultural utilization commission, the duties of the agricultural mediation service, creation of the economic development finance corporation, the operation of the Bank of North Dakota, references to the economic development commission, the duties of regional councils, and the appropriation to the regional rural development revolving loan fund; to repeal sections 54-34-01, 54-34-02, 54-34-03, 54-34-03.1, 54-34-04, 54-34-05.1, 54-34-06, and 54-34-08 of the North Dakota Century Code, section 1 of chapter 112 of the 1989 Session Laws and sections 1, 2, and 3 of House Bill No. 1046, as approved by the fifty-second legislative assembly, relating to the economic development commission, the transfer of the Bank of North Dakota's profits into the beginning farmer revolving loan fund, and the rural development revolving loan fund; to require collocation of economic development entities; to provide for a transition; to provide for a transfer of the earnings of the Bank of North Dakota; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-01. Legislative policy and purpose. It is hereby declared to be the public policy of the state of North Dakota to protect and foster the prosperity and general welfare of its people by improving the agricultural

economy of the state. In furtherance of this policy, it is the purpose of this chapter to provide necessary assistance to the research and marketing needs of the state by developing new uses for agricultural products, byproducts, and by seeking more efficient systems for processing and marketing agricultural products and byproducts, and to promote efforts to increase productivity and provide added value to agricultural products and stimulate and foster agricultural diversification and encourage processing innovations.

* SECTION 2. AMENDMENT. Section 4-14.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-02. Agricultural fuel tax fund - Purposes - Other funds. There is hereby created in the state treasury, a fund, to be known as the agricultural fuel tax fund, which must be used to fund programs for the enhancement of agricultural research, development, processing, and marketing. The fund must be used for the following purposes:

1. Appropriation to the North Dakota agricultural products utilization commission for its necessary administrative expenses including expenses of members of the commission, employment of needed personnel, hiring of consultants, contracting with public or private entities for services, and other expenditures necessary to implement the purposes of this chapter.
2. Seventy-five percent of agricultural fuel tax funds available to the North Dakota agricultural products utilization commission after amounts necessary under subsection 1 must be made available for basic and applied research efforts regarding uses and processing for agricultural products and byproducts in consultation with the president of North Dakota state university and with the prior approval of the commission on each research proposal.
3. Twenty-five percent of agricultural fuel tax funds available to the North Dakota agricultural products utilization commission after amounts necessary under subsection 1 must be made available for utilization and marketing efforts in consultation with the commissioner of agriculture and with the prior approval of the commission on each marketing proposal.
4. ~~The North Dakota agricultural products utilization commission may apply for, accept, and expend any grants, gifts, or services made available from public or private sources consistent with the purposes of this chapter.~~
- 5- Employment of needed personnel, hiring of consultants, and contracting with public entities or private parties for services as may be necessary to implement the policy and purposes of this chapter. The allocation of funds in ~~subdivisions~~ subsections 2 and 3 may be changed by the agricultural products utilization commission, subject to emergency commission approval.

SECTION 3. AMENDMENT. Section 4-14.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-03. Agricultural products utilization commission - Composition - Appointment. The agricultural fuel tax fund must be administered by the

* NOTE: Section 4-14.1-02 was also amended by section 1 of Senate Bill No. 2068, chapter 54.

agricultural products utilization commission which is hereby established. The commission consists of nine members, six of whom must be appointed by the governor for terms of two years each, arranged so that at least three terms expire every year. Four members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state. Commission members may be reappointed to the commission. Terms of commissioners shall run from the first day of July of odd-numbered years. The director of the department of economic development ~~commission~~ and finance, the president of North Dakota state university, and the commissioner of agriculture, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

SECTION 4. Section 4-14.1-03.1 of the North Dakota Century Code is created and enacted as follows:

4-14.1-03.1. Agricultural products utilization commission - Authority - Duties.

1. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources consistent with the purpose of this chapter.
2. The commission shall administer a cooperative marketing grant program designed to encourage groups of agricultural producers to develop innovative marketing strategies. The commission shall adopt rules to implement this grant program.
3. The commission shall administer a farm diversification grant program designed to stimulate and foster diversification and innovation and to encourage value-added processing. The commission shall adopt rules to implement this grant program.

* SECTION 5. AMENDMENT. Subsection 1 of section 6-09-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Make, purchase, or hold loans:
 - a. To state or federally chartered lending agencies or institutions, or any other financial institutions.
 - b. To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.
 - c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed ~~sixty five~~ seventy percent of the value of the security.
 - d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.
 - e. That are eligible to be guaranteed under chapter 15-62.1.

* NOTE: Section 6-09-15 was also amended by section 1 of Senate Bill No. 2054, chapter 640.

- f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.
- g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501 (c)(3)], the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the state parks and recreation department.
- h. Under Public Law No. 99-198 [99 Stat. 1534, 7 U.S.C. 1932 et seq.] to nonprofit corporations for the purpose of relending loan funds to rural businesses.
- i. Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts F and R; and part 1955, subparts A, B, and C, to finance businesses and community development projects in rural areas.
- j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
- k. To instrumentalities of this state.
- l. As otherwise provided by this chapter or other statutes.

SECTION 6. AMENDMENT. Section 6-09-15.5 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09-15.5. Bank loans to beginning farmers - Revolving loan fund - Requirements.

1. A revolving loan fund must be maintained in the Bank of North Dakota for the purpose of making loans to North Dakota beginning farmers for the purchase of agricultural real estate. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund are hereby appropriated for the purpose of providing loans and to supplement the interest rate on loans to beginning farmers made by the Bank of North Dakota under subdivision c of subsection 1 of section 6-09-15 and in accordance with the provisions of this section.
2. The revolving loan fund and loans made from the fund must be administered and supervised by the Bank of North Dakota. The Bank may deduct a service fee for administering the fund from interest payments received on loans. An application for a loan from the fund must be made to the Bank and, upon approval, a loan must be made from the fund in accordance with the provisions of this section.
3. A loan made from the fund may not exceed ~~sixty-five~~ seventy percent of the appraised value of the agricultural real estate to be acquired with the loan proceeds, with the actual percentage to be determined by the Bank. The Bank may do all things and acts and

may establish additional terms and conditions as deemed necessary to make a loan under this section. The Bank ~~may~~ shall take a ~~second~~ first mortgage as security for a loan from the fund ~~if a beginning farmer's real estate financing involves a loan from a source other than the state and may take additional security.~~

4. A loan made from the fund must bear interest at a maximum rate of ~~four~~ six percent per year on the first five years of the loan and ~~eight percent per year the next five years. For the remaining period of the loan, interest must be charged and may float at the Bank's base rate as in effect from time to time.~~
5. The maximum term of a loan is ~~ten~~ twenty-five years.
6. The industrial commission is responsible for contracting with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid for by the fund.
7. The Bank shall adopt policies to implement this section.

* SECTION 7. AMENDMENT. Section 6-09.10-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees. The board shall meet at the call of the chairman, as is necessary to fulfill its duties under this chapter. The department of agriculture shall administer the agricultural mediation service. The commissioner of agriculture shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate between a farmer and the farmer's creditors, either of whom may request assistance. The board may charge the farmer and each of the farmer's creditors a reasonable fee for any assistance provided, such funds to be used to continue the service until June 30, ~~1991~~ 1993. Fees charged to the farmer's creditors are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive sixty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

SECTION 8. Chapter 6-09.13 of the North Dakota Century Code is created and enacted as follows:

6-09.13-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Agriculture partnership in assisting community expansion fund" means a fund established to buydown the interest rate on loans to on-farm businesses under this chapter.

* NOTE: Section 6-09.10-03 was also amended by section 2 of Senate Bill No. 2215, chapter 93.

2. "Family farm" means agricultural real estate operated and owned or leased by a farmer, or other organization authorized to own or lease land used for farming or ranching under chapter 10-06.
3. "Farm business" means any business conducted by the farmer or farmer's family, which is integrated into the farm operation and is intended to supplement farm income to allow the farmer to continue farming. It may include nontraditional agricultural, manufacturing, processing, value-added processing, targeted service industries, or other activities calculated to produce income.
4. "Farmer" means a resident of North Dakota whose principal occupation is the production of an agricultural commodity or livestock on a family farm.

6-09.13-02. Loans - Participation by the Bank of North Dakota.

1. The Bank of North Dakota may make available an appropriate amount of funds to purchase participation interests in loans made by financial institutions for the purposes as set forth in section 6-09.13-03. Interest charged by the lenders must be set by the financial institution and matched by the Bank of North Dakota. The rate may be fixed or variable.
2. The amount of a participation interest purchased by the Bank under this section must be not less than fifty percent nor more than eighty percent of the loan amount.

6-09.13-03. Loans to farmers - Purposes - Eligible uses. The loan moneys received by a farmer under this chapter must be used for a farm business. Eligible uses are:

1. Purchase of real property and equipment.
2. Expansions.
3. Working capital.
4. Purchase of inventory.

The moneys cannot be used to refinance any existing debt.

6-09.13-04. Agriculture partnership in assisting community expansion fund established - Continuing appropriation. The agriculture partnership in assisting community expansion fund is hereby established and is a revolving fund, and all moneys transferred into the fund, interest upon fund moneys, and payments to the fund are hereby appropriated for the purposes of section 6-09.13-05. After December 31, 1992, moneys may be transferred between this fund and the partnership in assisting community expansion fund established in section 6-09.14-02. This fund is not subject to section 54-44.1-11.

6-09.13-05. Interest rate buydown. The Bank of North Dakota may use moneys in the agriculture partnership in assisting community expansion fund to reduce the interest rate on loans made under this chapter.

SECTION 9. Chapter 6-09.14 of the North Dakota Century Code is created and enacted as follows:

6-09.14-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Business" means a corporation, partnership, individual, or association involved in manufacturing, processing, value-added processing, and targeted service industries as defined by the Bank of North Dakota.
2. "Community" means the city or county in which an eligible business is located, or a local development corporation, community organization, or any other group whose interest is in the economic growth of the area.
3. "Partnership in assisting community expansion fund" or "fund" means a fund established to buydown the interest rate on loans to businesses under this chapter.

6-09.14-02. Fund - Continuing appropriation - Administration. A partnership in assisting community expansion fund is hereby established from a transfer of earnings from the Bank of North Dakota. This is a revolving fund, and all moneys transferred into the fund, interest on fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11. The Bank of North Dakota shall administer the fund.

6-09.14-03. Fund - Purpose - Interest rate buydown. Moneys in the partnership in assisting community expansion fund must be used for the purpose of buying down the interest rate on loans made by a lead financial institution in participation with the Bank of North Dakota. The Bank of North Dakota's participation may not exceed eighty percent nor be less than fifty percent of the total loans. If the loan is approved by the lenders and there is evidence of the community's commitment and ability to fund its portion of the buydown, the fund's participation in the buydown must automatically be approved.

6-09.14-04. Fund moneys - Eligible uses.

1. The fund moneys may be used to participate in an interest rate buydown on a loan to a new or expanding business for the following eligible uses:
 - a. Purchase of real property and equipment.
 - b. Expansion of facilities.
 - c. Working capital.
 - d. Inventory.

The loan funds cannot be used to refinance any existing debt or for the relocation of the business within North Dakota.

2. The community shall determine the amount of the interest rate buydown and apply to the Bank of North Dakota for participation from the partnership in assisting community expansion fund. The funds for the community's portion of the buydown may come from a

local development corporation, contributions, community funds, future dedicated tax programs, or any other community source.

3. The fund participation portion in the buydown must be determined by the Bank of North Dakota based on economic conditions in the city or county in which the business is located.
4. The maximum amount from the fund in the interest rate buydown may not exceed three hundred thousand dollars per loan. The fund participation must be limited to the amount required to buydown the interest to five hundred basis points below the national prime interest rate.
5. The Bank of North Dakota shall adopt rules to implement this chapter.

SECTION 10. AMENDMENT. Section 10-24-40 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-40. Certification of nonprofit development corporations. The secretary of state, after consultation with the director of the department of economic development commission and finance, shall adopt rules establishing minimum requirements for certification of nonprofit development corporations. The rules must contain a requirement that at least a majority of funds of the corporation must be used for investment in primary sector business. A nonprofit development corporation may obtain certification from the secretary of state upon compliance with this section, the rules adopted by the secretary of state, and payment of a fee of ten dollars.

SECTION 11. AMENDMENT. Subsection 6 of section 10-30-04 of the North Dakota Century Code is amended and reenacted as follows:

6. Cooperate with and avail itself of the facilities of the department of economic development commission and finance and any other similar governmental agencies; to cooperate with and assist, and otherwise encourage, local organizations in the various communities of the state the purpose of which ~~shall be~~ are the promotion, assistance, and development of the business prosperity and economic welfare of such communities and of this state.

SECTION 12. AMENDMENT. Section 10-30.2-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-02. Public corporation established - Corporate purpose. A committee comprised of three representatives of the business sector appointed by the industrial commission and three members of the economic development commission shall establish under the Business Corporation Act a public corporation known as the "Myron G. Nelson Fund, Incorporated" and file articles of incorporation for the corporation with the secretary of state. The committee shall also adopt the initial bylaws of the corporation is established. The purpose of the corporation is to organize and manage an investment fund capitalized through the sale of shares of the corporation to the Bank of North Dakota and other public and private investors to provide a source of investment capital for the establishment, expansion, and rehabilitation of North Dakota businesses.

SECTION 13. AMENDMENT. Section 10-30.2-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-05. Board of directors. A board of directors, elected by the shareholders pursuant to initial bylaws adopted by the incorporators pursuant to section 10-30.2-02, shall direct the business and affairs of the corporation. There must be representation on the board of directors from ~~the economic development commission~~, investors, and the business sectors of the North Dakota economy. The business sector and investors must constitute a majority of the board.

SECTION 14. AMENDMENT. Section 10-30.3-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-01. Definitions. As used in this chapter unless the context otherwise requires, the term:

1. "Board of directors" means the board of directors of the corporation.
2. "Corporation" means the North Dakota economic development finance corporation established under this chapter.
3. "North Dakota American Indian" means an enrolled member of a federally recognized North Dakota tribe with at least one-fourth degree blood quantum.
4. "North Dakota American Indian business" means a business owned and controlled by a North Dakota American Indian or an Indian tribe doing business within the boundaries of a North Dakota Indian reservation, doing business within a community in North Dakota situated on or adjacent to a North Dakota Indian reservation, doing business in a community with a majority of North Dakota American Indian citizens, or doing business within the state.
5. "North Dakota business" means a business owned by a North Dakota resident, a partnership, association, or corporation domiciled in North Dakota or a corporation, including a wholly owned subsidiary of a foreign corporation that does business primarily in North Dakota or does substantially all of its production in North Dakota.
- 4- 6. "Primary sector business" means an individual, corporation, partnership, or association which through a process employing knowledge and labor adds value to a product produced for resale the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth, but does not include production agriculture.
7. "Rural" means any area in the state not urban under subsection 8.
8. "Urban" means any city or contiguous cities having a population greater than thirty thousand people as determined by the latest federal decennial census.

SECTION 15. AMENDMENT. Section 10-30.3-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-02. Purpose. It is the purpose of this chapter to create a statewide nonprofit development corporation that will have the authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new and existing or expanding businesses in North Dakota, or relocating businesses in to North Dakota. The corporation's principal mission is the development and expansion of primary sector business in North Dakota. The corporation may form additional corporations, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.

The exclusive focus of this corporation is business development in the state of North Dakota, however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to North Dakota residents in the creation of jobs or secondary business.

SECTION 16. AMENDMENT. Section 10-30.3-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-03. Organization. The statewide nonprofit development corporation must be managed by a board of directors. The board of directors shall adopt and amend articles of incorporation and bylaws consistent with the purposes detailed in section 10-30.3-02. The board of directors consists of five seven members who shall serve three-year terms. The terms must be staggered so that no more than two three positions require reappointment in any one year. Members must be appointed by the governor who shall only consider representatives who serve in executive capacities from the following areas in making the selections: private sector manufacturing, higher education, finance, and industrial technology and research, and private sector business. There must be at least one member who is enrolled in a federally recognized North Dakota tribe with at least one-fourth degree American Indian blood quantum and one member from a rural area, on the board of directors. Members may be reappointed for additional terms.

SECTION 17. AMENDMENT. Section 10-30.3-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-05. Management. The board of directors shall ensure that the corporation is managed by a full-time director The deputy director of the finance division of the department must be the chief executive officer of the corporation. The board of directors shall determine minimum qualifications of all other staff positions.

All investments, contracts, partnerships, and business transactions of the corporation are the responsibility of the deputy director and the board of directors. The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

SECTION 18. AMENDMENT. Section 10-30.3-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-07. Confidentiality of corporation records. The following records of the corporation are confidential:

1. Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity in which an equity interest is purchased or considered for purchase, to which a

loan has been made, or capital otherwise provided, under this chapter.

2. Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the corporation.

SECTION 19. Section 10-30.3-10 of the North Dakota Century Code is created and enacted as follows:

10-30.3-10. Primary sector development fund - Continuing appropriation. A primary sector development fund is established from moneys appropriated from the general fund. This is a revolving fund, and all moneys transferred into the fund, interest upon fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11.

SECTION 20. Section 10-30.3-11 of the North Dakota Century Code is created and enacted as follows:

10-30.3-11. Primary sector development fund uses - Distribution - Limitations.

1. The fund moneys may be used for the purposes of this chapter as provided in section 10-30.3-02. Moneys may be used to provide working capital or for financing the purchase of fixed assets, but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.
2. The director of the department of economic development and finance shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation. The rules must include a requirement that every full-time employee of a business receiving moneys or other assistance from the primary sector development fund must be paid an income at least equal to one hundred percent of the federal poverty level for a family of four for the life of the loan, equity position, or other financial relationship and must establish procedures for determining compliance with this requirement and sanctions for failure to comply with it. The rules must include requirements for and methods of distribution of the funds generally targeted for a distribution of forty percent businesses in rural areas, twenty percent businesses in urban areas, twenty percent North Dakota American Indian businesses, and twenty percent to be undesignated. Any unused funds in any category may be transferred to the undesignated portion during the second year of the biennium under rules adopted by the director of the department of economic development and finance. Moneys in the undesignated portion of the funds may be utilized in any of the three targeted areas.

SECTION 21. Section 10-30.3-12 of the North Dakota Century Code is created and enacted as follows:

10-30.3-12. Regional rural development revolving loan fund - Continuing appropriation. A regional rural development revolving loan fund is established. All moneys transferred to the fund, interest on moneys in the fund, and payments to the fund of principal and interest on loans made by the fund are hereby appropriated for the purpose of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanding primary sector businesses in areas in the state which are not within five miles of any city with a population of more than eight thousand. These funds must be allocated for the benefit of each of the areas delineated as regions by executive order of the governor pursuant to section 54-40.1-02. The director of the department of economic development and finance shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of this fund.

SECTION 22. TRANSITION. The statewide nonprofit development corporation established pursuant to North Dakota Century Code chapter 10-30.3 prior to the effective date of this Act shall continue to exist as the North Dakota economic development finance corporation. Upon the effective date of this Act, the board of directors shall amend the articles of incorporation to reflect the new name and mission of this corporation. All investments, contracts, partnerships, and business transactions of the corporation existing prior to the effective date of this Act are deemed to be as if made by the North Dakota economic development finance corporation and assets of the corporation shall be transferred to the primary sector development fund.

SECTION 23. Chapter 10-30.4 of the North Dakota Century Code is created and enacted as follows:

10-30.4-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board of directors" means the board of directors of the corporation.
2. "Corporation" means the science and technology corporation established under this chapter.
3. "Department" means the department of economic development and finance.
4. "Primary sector business" means an individual, corporation, partnership, or association which through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth.

10-30.4-02. Purpose. It is the purpose of this chapter to create a science and technology corporation that will provide a program and budgetary interface between the department of economic development and finance and the North Dakota university system. The primary objective of the interface is to focus the intellectual and technical resources of the university system on the discovery, development, and application of scientific and technological principles and concepts on North Dakota's primary sector business.

10-30.4-03. Organization.

1. A board of directors shall manage the corporation. The board of directors shall adopt articles of incorporation and bylaws consistent with the requirements of section 10-30.4-02. The board of directors consists of:
 - a. The president of the North Dakota state university of agriculture and applied science, or the president's designee.
 - b. The president of the state university of North Dakota, or the president's designee.
 - c. A representative from the board of directors of the North Dakota economic development finance corporation appointed under section 10-30.3-03.
 - d. A representative of the North Dakota industrial development association, as appointed by that association.
 - e. Three members appointed by the governor, representing the primary sector industries of agriculture, energy, manufacturing, and export services.
2. The members appointed under subdivisions c through e of subsection 1 must be appointed in a manner that results in subsequent terms of three years staggered so that the term of at least one member expires each year. Members may be reappointed for additional terms.

10-30.4-04. Powers. The corporation must be organized as a nonprofit corporation under chapter 10-24. In addition to the powers in chapter 10-24, the corporation has the power to:

1. Encourage, facilitate, and support cooperation, interaction, and coordination of activities between federal, state, and local government agencies; the state's institutions of higher education; private and other public research organizations; and business and industry within the state on matters of science and technology, and recommend to appropriate entities those policies, procedures, organizational structures, and financial requirements that will improve the state's capacity for scientific and technological innovation and enhance the accessibility of that innovation for commercial utilization by business and industry in the state.
2. Identify the scientific and technological research, development, and education needs of business and industry in the state and the barriers that hinder the development of the technology in the global economy.
3. Identify and support:
 - a. Emerging and future technologies that offer significant potential for application in this state; and
 - b. Research opportunities at institutions of higher education and other public and private institutions in the state which offer

significant potential for fostering primary sector businesses and employment.

4. Monitor changes in national and international economic conditions which may justify a reorientation of the state's research and technology activities.
5. Work with individuals and both public and private entities, including the state's congressional delegation, in identifying and pursuing potential federal, state, and other public and private sources of funding for the purpose of expanding the capacity of the state's universities and other institutions to focus on basic and applied research and technology transfer, product commercialization, byproduct utilization, and agricultural and industrial extension programs.
6. Receive funds from private and public sources to be expended by the corporation in a manner that effectuates the purposes of this chapter.
7. Provide support for specific projects as provided by law.
8. Have authority to do any and all other things necessary or convenient to carry out the purposes of this chapter.

10-30.4-05. Management. The board of directors shall hire, or contract for, a chief executive officer to manage the corporation. This officer shall also serve as deputy director of the division of science and technology of the department of economic development and finance. The board of directors shall determine minimum qualifications of all staff positions. All investments, contracts, partnerships, and business transactions of the corporation are the responsibility of the board of directors. The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

10-30.4-06. Confidentiality of records. To assure parties dealing with the corporation that their confidential information will not be made public and to protect the patent position of emerging technologies, the following records of the corporation are confidential:

1. Patents, trade secrets, and scientific information that is identified as proprietary and which has been submitted to the corporation on a confidential basis for consideration or investment.
2. Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity to or from which a license is granted, an equity interest is acquired, or considered for acquisition under this chapter.
3. Internal or interagency memorandums, working papers, letters, or statements of evaluation which would not be available by law to a party other than in litigation with the corporation.

10-30.4-07. Annual audit. The board of directors shall contract with a certified public accounting firm to audit annually the financial statements

of the corporation in accordance with generally accepted auditing standards. The cost of the audit must be borne by the corporation.

10-30.4-08. Annual report. The corporation shall prepare and publish an annual report of its activities for the information of the governor, the legislative assembly, and the public. The report must include audited financial statements of the corporation for the fiscal year covered by the report. This report may not include any information that is confidential as provided by law.

10-30.4-09. Divestiture. The board of directors shall establish a policy of divesting the corporation's interest in any venture or product when certain results or levels of profitability are obtained.

SECTION 24. AMENDMENT. Section 15-12-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-12-25. Grants and contributions - Continuing appropriation. The economic feasibility institute may contract for, accept, and receive grants, gifts, and contributions of money, property, services, or other things of value from individuals, the federal government, private and public corporations, political subdivisions of the state, and other sources. All revenue received from gifts, grants, and contributions is hereby appropriated for use by the economic feasibility institute in carrying out the provisions of sections 15-12-22 through 15-12-26. Any state funding for the institute may be provided through legislative appropriation to the economic development commission science and technology corporation for that purpose.

SECTION 25. AMENDMENT. Section 21-11-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-02. Application for loan - Form - Contents - Preference of applications. Any privately or cooperatively owned enterprise for the purpose of securing a loan from this state for purposes of planning, constructing, acquiring, equipping, improving, or extending facilities for the conversion of North Dakota's natural resources into low cost power and the generation and transmission of such power, and the acquisition of real and personal property and water and mineral rights needed for such facilities, or any of such purposes, may file an application with the North Dakota department of economic development commission and finance. The application shall must be in the form required by the commission department and shall must be accompanied by a complete and fully detailed outline and description of the applicant's plan of operation. In the consideration of applications the commission department shall consider the following factors:

1. Preference shall must be given to applicants with the following qualifications:
 - a. Applicants who are experienced in the generation or transmission of power, and who at the time of application have access to alternate markets for the sale of such power.
 - b. Applicants who are residents of North Dakota, or private or cooperative enterprises incorporated under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person or corporation owns part or all of the

stock of the applicant or is engaged in a partnership or joint enterprise with the applicant.

2. The provisions of subsection 1 ~~shall do not~~ prohibit the ~~commission department~~ from approving loans to applicants not possessing the qualifications therein described, if in the judgment of the ~~commission department~~ such approval would better carry out the objectives of this chapter as stated in section 21-11-01.
3. Each application shall include information for the purpose of showing to the ~~commission department~~ and ~~shall may~~ be approved only if the ~~commission shall determine~~ department determines:
 - a. That the facilities proposed to be financed by the loan will result in significant additional industrial or other economic activity in North Dakota which would not occur in the absence of a state loan.
 - b. That the cost of power furnished by the facilities financed by the loan will be significantly lower than it would be without a loan made under this chapter.
 - c. That the facilities financed will furnish power at the lowest possible cost to stimulate industrial development, benefit the general public, and expand the use of North Dakota fuel resources.
4. In considering applications the ~~commission shall have authority to~~ department may establish additional reasonable criteria with respect to the financial qualification of individuals and organizations requesting loans.

SECTION 26. AMENDMENT. Section 21-11-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-03. Processing of application - Fee - Purpose. The department of economic development ~~commission and finance~~ shall process each application and if it determines the applicant is eligible for the loan and has complied with all requirements, it shall request an application fee of not more than fifty thousand dollars. ~~Such~~ The fee shall must be deposited in a special and separate fund in the state treasury and ~~shall must~~ be expended by the ~~commission department~~ for purposes of investigating the applicant and evaluating the technical and economic feasibility of the plans and specifications as submitted by the applicant. The ~~commission department~~ may consult or contract with any person or private, state, or federal department, agency, or entity, for purposes of ~~such~~ that investigation or evaluation. All departments, agencies, institutions, and officials of this state and its political subdivisions shall provide to the ~~commission department~~ such aid, information, and assistance as it may request in regard to any matter relative to the applicant or such applicant's plans and specifications. The ~~commission shall be authorized to~~ department may conduct any private or public hearing it may deem necessary in the course of ~~such~~ that investigation or evaluation. Any unexpended portion of the funds received as an application fee ~~shall must~~ be refunded to the applicant after the payment of all costs of investigation and evaluation of the application. There is hereby appropriated from each application fee ~~such~~ these funds as may be

necessary to pay all costs of investigation and evaluation and pay refunds as provided in this section.

SECTION 27. AMENDMENT. Section 21-11-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-04. Approval or rejection of application. Upon completion of all investigations and evaluations of any matter relative to the applicant or the submitted application and plan, the department of economic development commission and finance shall either reject the application as submitted, approve the application as submitted, or offer to approve the application if modified in accordance with any recommendation made by the commission as a result of any such investigation or evaluation. If the applicant fails or refuses to agree to such those modifications, the application ~~shall~~ must be rejected.

* SECTION 28. AMENDMENT. Section 21-11-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-05. Approved application filed with industrial commission and legislative council. Upon approval of the application, as submitted or modified, the department of economic development commission and finance shall file such application, along with its report and recommendations, received by it as a result of any investigation and evaluation, with the state industrial commission and with the legislative council. The legislative council shall prepare and submit any necessary legislation for the appropriation of additional funds or the authorization of the issuance of bonds at the following session of the legislative assembly, or at a special session if called in accordance with the constitution.

SECTION 29. AMENDMENT. Section 21-11-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-06. Disbursements of loan - Inspection fee. If the industrial commission finds that the approved loan application has been filed and processed as required by this chapter and the proposed loan agreement is in proper legal form and the amount to be disbursed thereunder, with other previous disbursements, does not exceed the funds appropriated for that purpose, it shall authorize the execution of the loan agreement with the applicant by the director of the department of economic development commission and finance on behalf of the state. Prior to the disbursement of any funds pursuant to such the loan agreement, the applicant shall deliver to the director a supervision fee in such amount as may be specified in the loan agreement, which fee ~~shall~~ must be deposited in a special fund in the state treasury. ~~Such~~ The fee ~~shall~~ must be expended by the department of economic development commission and finance for the purpose of periodic inspection of the construction of such power generation or transmission facilities, and disbursements to the borrower under such the loan agreement ~~shall~~ may be made only upon certification by the director or a person appointed by the director that the construction is being carried on in accordance with the loan agreement and that the loan funds are due the borrower under the agreement. Upon the completion of the construction of such the facilities, any unexpended balance of such the inspection fee ~~shall~~ must be refunded to the borrower. There is hereby appropriated from each such inspection fee such those funds as may be necessary to provide for such the inspections and refunds as provided in this section.

* NOTE: Section 21-11-05 was also amended by section 3 of Senate Bill No. 2073, chapter 600.

* SECTION 30. AMENDMENT. Section 24-02-37.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-37.1. Special road advisory committee. The special road advisory committee consists of one member of the senate transportation committee and one member of the senate appropriations committee appointed by the chairman of the legislative council and one member of the house of representatives transportation committee and one member of the house of representatives appropriations committee appointed by the chairman of the legislative council and also the game and fish commissioner, the director of state parks and recreation, the director of the department of economic development commission and finance, and the commissioner. The committee shall meet at the call of the commissioner, who is chairman of the committee, to review requests for funding from the special road fund and to advise the commissioner regarding funding requested projects. All final decisions regarding funding requested projects are in the sole discretion of the commissioner. The members of the commission who are members of the legislative assembly must be compensated by the department, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided in section 54-35-10 and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

** SECTION 31. AMENDMENT. Section 24-03-21 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-03-21. Preparation of road maps - Publication of tourist information. The commissioner shall prepare for general distribution, road maps of the state highway system and such other roads as ~~he shall deem~~ the commissioner deems necessary. Any tourist-oriented material printed on road maps ~~shall~~ must be prepared by the economic development commission department of tourism at no expense to the department of transportation.

SECTION 32. AMENDMENT. Subsection 6 of section 26.1-05-19 of the North Dakota Century Code is amended and reenacted as follows:

6. Bonds guaranteed by ~~the economic development commission~~ under chapter 6-09.2.

*** SECTION 33. AMENDMENT. Subsection 1 of section 28-32-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "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, or 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 shall 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 relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating

* NOTE: Section 24-02-37.1 was also amended by section 91 of Senate Bill No. 2050, chapter 231; by section 3 of Senate Bill No. 2054, chapter 640; and by section 4 of Senate Bill No. 2073, chapter 600.

** NOTE: Section 24-03-21 was also amended by section 4 of Senate Bill No. 2054, chapter 640.

*** NOTE: Subsection 1 of section 28-32-01 was also amended by section 5 of Senate Bill No. 2054, chapter 640, and by section 9 of Senate Bill No. 2245, chapter 592.

to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.

- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of economic development ~~commission~~ and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational telecommunications 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, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.
- m. The director of institutions.
- n. The board of pardons.
- o. The parks and recreation department.
- p. The parole board.
- q. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07, rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18.
- r. The state board of public school education while administering the state school construction fund.
- s. The state fair association.
- t. The state toxicologist.
- u. The board of university and school lands except with respect to activities under chapter 47-30.1.
- v. 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.

* SECTION 34. AMENDMENT. Section 52-01-03 of the North Dakota Century Code is amended and reenacted as follows:

52-01-03. Disclosure of information. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual must be held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or his legal representative must be supplied with information from the records of the job insurance division, to the extent necessary for the proper presentation of his claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to such claim. Subject to such restrictions as the bureau by regulations may prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the North Dakota Unemployment Compensation Law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection with such request, may transmit any such report or return to the comptroller of the currency of the United States as provided in subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act.

The bureau may provide the workers compensation bureau, the state labor commissioner, the state department of economic development ~~commission~~ and finance, and the state tax commissioner with information obtained pursuant to the administration of the North Dakota Unemployment Compensation Law. Any information so provided must be used only for the purpose of administering the duties of the workers compensation bureau, the state labor commissioner, the state department of economic development ~~commission~~ and finance, and the state tax commissioner.

Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, workers compensation bureau, or the tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

The bureau shall request and exchange information as required of the bureau under federal law with any specified governmental agencies. Any information so provided may be used only for the purpose of administering the duties of such governmental agencies.

* NOTE: Section 52-01-03 was also amended by section 2 of Senate Bill No. 2244, chapter 568.

SECTION 35. AMENDMENT. Section 54-34-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-34-06.1. Certain architects and engineers to be provided product listing of in-state manufacturers.

1. ~~The state or any political subdivision of the state which contracts for the services of a registered architect or engineer pursuant to the requirements of section 10-12-04 or 40-02-02 shall notify the director of the economic development commission, at the time the architect or engineer is retained, of the nature of plans and specifications for the construction or work involved in the project and provide the director with information identifying the architect or engineer. The~~ Each year the director of the economic development commission department of economic development and finance immediately shall send a product listing of manufacturers located in this state to the ~~architect registered architects or engineer engineers, describing those manufacturers and their products in the following major industrial groups:~~
 - a. Lumber and wood products, except furniture;
 - b. Rubber and miscellaneous plastic products;
 - c. Stone, clay, glass, and concrete products;
 - d. Fabricated metal products, machinery, and transportation equipment; and
 - e. Any other major industrial groups that the director determines include manufactured products that may be used in the project.
2. An architect or engineer who receives a product listing under subsection 1, if possible, shall design the project with specifications that are met by listed products manufactured in this state.

SECTION 36. AMENDMENT. Section 54-34-12 of the North Dakota Century Code is amended and reenacted as follows:

54-34-12. ~~Economic Department of economic development commission and finance to establish venture capital network - Duties and functions. The department of economic development commission and finance may establish, from funds appropriated to or otherwise available to the commission department, the venture capital network as a clearinghouse for information on informal risk capital investment opportunities in the state. The economic development commission department may:~~

1. Enter into service contracts on a competitive bid basis with public and private agencies, institutions, organizations, and individuals for the purpose of establishing and operating the venture capital network.
2. Receive and approve contract proposals for the purpose of establishing the venture capital network.

3. Solicit the support and contributions of public and private agencies, organizations, institutions, and individuals.
4. Accept and administer contributions for the purpose of operating the venture capital network.
5. Advertise and promote the venture capital network.

SECTION 37. AMENDMENT. Section 54-34-15 of the North Dakota Century Code is amended and reenacted as follows:

54-34-15. Private sponsor. The department of economic development ~~commission~~ and finance may endeavor to locate a private sector sponsor or group of sponsors to assume administration of the venture capital network.

SECTION 38. Chapter 54-34.3 of the North Dakota Century Code is created and enacted as follows:

54-34.3-01. Department of economic development and finance established - Mission. The North Dakota department of economic development and finance is established to assume the functions, powers, and duties of the economic development commission with respect to programs and other efforts intended to enhance the economic development of the state. The mission of the department is to develop strategies and programs to:

1. Facilitate the growth, diversification, and expansion of existing enterprises and the attraction and creation of new wealth-generating enterprises in the state;
2. Promote economic diversification and innovation within the basic industries and economic sectors of this state, including strategies and programs designed to specialize and focus the state's economy on advanced agriculture and food processing, energy byproduct development, export services and tourism, and advanced manufacturing;
3. Promote increased productivity and value added products, processes, and services in the state, and the export of those goods and services by North Dakota enterprises to the nation and to the world;
4. Maintain and revitalize economically depressed rural areas by working in close collaboration with local communities and by encouraging communities to enter into cooperative relationships for more efficient and effective education, health care, government service, and infrastructure maintenance;
5. Forge a supportive partnership with the Bank of North Dakota, the board of higher education and the state's institutions of higher education, regional planning councils, local development organizations and authorities, the Myron G. Nelson Fund, Incorporated, the state's nonprofit development corporations, and other appropriate private and public sector organizations in achieving the economic goals of the state; and

6. Identify those statutes, administrative rules, and policies that impede the attraction, creation, and expansion of businesses and job creation in this state.

54-34.3-02. Definitions. As used in sections 54-34.3-01 through 54-34.3-08:

1. "Department" means the department of economic development and finance.
2. "Director" means the director of the department.

54-34.3-03. Department structure. The department consists of:

1. A division of finance;
2. A division of marketing and technical assistance;
3. A division of science and technology; and
4. Other divisions that the director upon the approval of the budget section of the legislative council determines necessary to carry out most efficiently and effectively the mission and duties of the department.

54-34.3-04. Department director - Appointment - Compensation - Duties. A director shall supervise and control the department. The governor shall appoint as director a person who is qualified by training, knowledge, and experience that is necessary to ensure a high degree of professional competency in carrying out the duties of the director as enumerated in this section. The director shall serve at the will of the governor and shall receive a salary set by the governor within the limits of legislative appropriations. The director shall:

1. Manage the internal operations of the department and establish policies that promote the orderly and efficient administration of the department;
2. Appoint personnel as may be determined necessary to carry out sections 54-34.3-01 through 54-34.3-08 and fix their compensation within the limits of legislative appropriations;
3. Assume central responsibility to develop, implement, and coordinate within state government a comprehensive program of economic development consistent with the mission of the department;
4. Coordinate that program of economic development with all other appropriate state and local government departments, agencies, institutions, and organizations that perform research, develop and administer programs, gather statistics, or perform other functions relating to economic development, and those government entities shall advise, cooperate, and provide reasonable assistance to the director in carrying out sections 54-34.3-01 through 54-34.3-08;
5. Advise, and cooperate with, departments and agencies of the federal government and of other states, private business and agricultural organizations and associations, research institutions, and any

individual or other private or public entity, and call upon those entities or individuals for consultation and assistance in their respective fields of endeavor or interest in order that the department and the state may benefit from up-to-date technical advice, information, and assistance;

6. Cooperate with individuals and both public and private entities, including the state's congressional delegation, in identifying and pursuing potential sources of funding and to receive those funds to be expended for purposes consistent with sections 54-34.3-01 through 54-34.3-08;
7. Have authority to enter into contracts upon terms and conditions as determined by the director to be reasonable and to effectuate the purposes of sections 54-34.3-01 through 54-34.3-08;
8. Report at least annually to an interim committee designated by the legislative council on loan performance and performance of the department of economic development and finance, including evaluations of the division of finance, the division of marketing and technical assistance, and the division of science and technology. A report must include a comparison of dollars spent to the jobs created of all programs administered or supervised by the director and a review of the timeliness of the loan processing practices including a log of activities from application to final determination; and
9. Have authority to do any and all other things necessary and proper to carry out sections 54-34.3-01 through 54-34.3-08.

54-34.3-05. Division of finance - Deputy director. The director shall appoint a deputy director who shall administer the division of finance. The deputy director shall serve at the will of the director and receive a salary set by the director within the limits of legislative appropriations. The purpose of the division of finance is to identify and coordinate sources of capital and financial assistance, including lending programs of the Bank of North Dakota, and administer programs of financial assistance placed under the administration of the division, to business and industry, local governments, and other entities and individuals in the state consistent with the mission of the department. The division of finance shall:

1. Implement the review and decisionmaking functions of the economic development component of the state's community development block grant program established pursuant to the Housing and Community Development Act of 1974 [Pub. L. 93-383, 88 Stat. 633, 42 U.S.C. 5301 et seq.].
2. Administer other programs of financial assistance assigned to it by law or otherwise.
3. Perform such other duties as assigned to it by the director.

54-34.3-06. Division of marketing and technical assistance - Deputy director - Duties. The director shall appoint a deputy director who shall administer the division of marketing and technical assistance. The deputy director shall serve at the will of the director and receive a salary set by the director within the limits of legislative appropriations. The duties of

the division of marketing and technical assistance are, as consistent with the mission of the department, to:

1. Coordinate, develop, and make available technical services on the state, regional, and local levels in order to aid business and industry in their startup or expansion in the state.
2. Foster and promote international trade.
3. Collaborate in partnership with local communities in the state to provide technical assistance and to coordinate state, regional, and local programs that stimulate and support economic development activity.
4. Promote and encourage the growth and diversification of the economy, innovation, and retention of business and industry in the state.
5. Attract new business and industry from outside the state, in a manner that creates quality jobs, attracts new capital investment, and expands and diversifies the state's economic tax base.
6. Maintain and keep current available information regarding the industrial opportunities and possibilities of the state, including raw materials and byproducts, power and water resources, transportation facilities, available markets and the marketing limitations of the state, labor supply, banking and financing facilities, available industrial sites, and the advantages the state and its particular regions have as industrial locations. This information must be used for the encouragement of new industries in the state and the expansion of existing industries within the state, as well as made available to local development corporations, cities, and the various political subdivisions of the state in their efforts to encourage the location of business and industry within the state.
7. Establish an office of North Dakota American Indian business development to assist North Dakota tribal and individual economic development representatives and North Dakota American Indian entrepreneurs with access to state and federal programs designed to assist them.
8. Provide appropriate resources to ensure increased business opportunities for women.
9. Provide administrative services to the department.
10. Utilize existing marketing entities from private and other sources such as the microbusiness marketing alliance.
11. Perform such other duties as assigned to the division by the director.

54-34.3-07. Division of science and technology - Deputy director - Duties. A deputy director, hired, or contracted for, by the board of directors of the science and technology corporation and reporting administratively to the director, shall administer the division of science

and technology. The deputy director shall serve at the will of the board of directors and receive a salary set by the board within the limits of legislative appropriations. The purpose of the division of science and technology is to support the development and implementation of policies and programs that respond to the scientific and technological needs and opportunities of business and industry in the state through basic and applied research and technology transfer, product commercialization, agricultural and industrial extension, and private sector research and development. The division shall perform such duties as assigned to it by the director.

54-34.3-08. Patents. The department of economic development and finance, the science and technology corporation, the North Dakota economic development finance corporation, and the North Dakota agricultural products utilization commission may hold or assign for remuneration all or a portion of their interest in patents or royalty rights acquired in the course of their operation and performance of duties as provided by law.

* SECTION 39. AMENDMENT. Section 54-36-01 of the North Dakota Century Code is amended and reenacted as follows:

54-36-01. Commission - Members - Officers - Expenses of members. The North Dakota Indian affairs commission shall consist of the governor; attorney general; executive director of the department of human services; state health officer; director of job service North Dakota; the tribal chairmen of the Standing Rock, Fort Berthold, Fort Totten, and Turtle Mountain Indian Reservations or their designees; one other representative of each reservation appointed by the tribal council; a representative of the North Dakota county commissioners' association who lives on or adjacent to an Indian reservation; a representative of the league of North Dakota cities; three members at large who must be at least one-fourth degree of Indian blood appointed by the governor; and a representative of each house of the legislative assembly who must be chosen on a bipartisan basis by the presiding officer of each house. The commission may call upon the director of the department of economic development ~~commission~~ and finance for consultation upon business and industrial matters involved in the operation of the commission department. The governor or ~~his~~ the governor's authorized representative shall act as chairman of the commission and the commission shall select one of its members as secretary. All members of the commission or their designees shall receive the mileage and expenses allowed state officers which must be paid from the appropriation made to such commission except mileage and expenses of state officials must be paid from the appropriation for the department they represent.

SECTION 40. AMENDMENT. Section 54-40.1-01 of the North Dakota Century Code is amended and reenacted as follows:

54-40.1-01. Legislative findings and purpose. The legislative assembly finds that the citizens of the state have a fundamental interest in the orderly development of the state and its resources. This finding recognizes the fact that the mobility of the population within and without the state presents problems which cannot always be met by individual counties or cities and that local government planning can be strengthened when aided by studies and planning of both a statewide and regional character.

The legislative assembly further finds that the state has a positive interest in the establishment, preparation, and maintenance of a long-term, continuing, comprehensive planning process for the physical, social, and

* NOTE: Section 54-36-01 was also amended by section 2 of Bill No. 2205, chapter 602.

economic development of the state and each of its regions to serve as a guide for activities of state and local governmental units.

It is the purpose of this chapter to establish a consistent, comprehensive statewide policy for planning, economic development, program operations, coordination, and related cooperative activities of state and local governmental units and to enhance the ability of and opportunity for local governmental units to resolve issues and problems transcending their individual boundaries. In furtherance of this purpose, the legislative assembly finds that the governor, through the department of economic development ~~commission~~ and finance, is required to assure orderly and harmonious coordination of state and local plans and programs with federal, state, and regional planning and programming.

SECTION 41. AMENDMENT. Subsection 7 of section 54-40.1-02 of the North Dakota Century Code is amended and reenacted as follows:

7. "Office" means the department of economic development ~~commission~~ and finance.

* SECTION 42. AMENDMENT. Section 54-40.1-04 of the North Dakota Century Code is amended and reenacted as follows:

54-40.1-04. Regional council - Powers and duties. A regional council shall:

1. Adopt agreements, rules, or procedures as may be necessary to effectuate planning in the region.
2. Coordinate planning and development within the region for all matters of regional concern as determined by the regional council, including land use, social and economic planning, transportation, health, environmental quality, water and sewerage, solid waste, flood relief, parks and open spaces, hospitals, and public buildings.
3. Participate with other public agencies and private organizations in regard to research for planning activities relevant to the region.
4. For the purpose of coordination, work with state departments, agencies, and institutions in reviewing and commenting on all plans and federal aid applications as to their impact on the region.
5. Develop guidelines for the coordination of land use plans and ordinances within the region.
6. Prepare a regional comprehensive plan and upon the preparation of such a plan or any phase, amendment, revision, extension, addition, functional part, or part thereof, file such plan, phase, functional part, amendment, revision, extension, addition, or part thereof with the office, all local planning agencies within the region, and other planning agencies in adjoining areas.
7. Develop an annual budget for operations during a fiscal year and submit the budget to participating units of general local government for approval.

* NOTE: Section 54-40.1-04 was also amended by section 2 of House Bill No. 1497, chapter 605.

8. Receive and expend federal, state, and local funds, and contract for services with units of general local government and private individuals and organizations, consistent with the scope and objectives of a planning function.
9. Upon availability of funds, hire an executive director who must be given full control over the staff of the regional council. The executive director shall act as a liaison between the regional council and the staff of the regional council and shall advise and assist the regional council in the selection of staff.
10. Provide technical assistance for primary sector business development by leveraging local funds to assist in product development, product testing, business plan development, feasibility studies, gaining patent protection, legal services, market strategy development, and other needs to stimulate business development.
11. Host business outreach forums to stimulate entrepreneurship and interchange with potential investment.

SECTION 43. AMENDMENT. Section 54-40.1-05 of the North Dakota Century Code is amended and reenacted as follows:

54-40.1-05. Reports. Each regional council shall prepare an annual report within sixty days after the end of each fiscal year. Copies of the report must be submitted to the participating units of general local government, to the governor or his designee, to the department of economic development ~~commission~~ and finance, and to members of the legislative assembly in each region. To the extent practicable, the report must include projects completed or in progress and sources of funding.

SECTION 44. AMENDMENT. Section 54-53-02 of the North Dakota Century Code is amended and reenacted as follows:

54-53-02. Advisory transportation council - Composition. There is hereby established a transportation council which shall serve in an advisory capacity to the upper great plains transportation institute. The director of the institute shall serve as the executive secretary of the council and it shall elect its own chairman. The council membership shall consist of one representative from and appointed by the following organizations:

1. The greater North Dakota association.
2. The public service commission.
3. The North Dakota farm bureau.
4. The North Dakota farmers union.
5. The livestock industry council.
6. The North Dakota wheat commission.
7. The North Dakota department of economic development ~~commission~~ and finance.

8. The North Dakota farmers grain dealers association.
9. The North Dakota railway lines.
10. The North Dakota motor carriers association.
11. The North Dakota aeronautics commission.
12. A traffic counsel selected by the members of the council appointed by the above-named organizations.

Members of the council shall serve without pay, but they may receive reimbursement for actual and necessary expenses incurred in the performance of their duties, if authorized by the director.

The council shall consult with the institute in matters of policy affecting the administration of this chapter and in the development of transportation in the state of North Dakota. The council shall meet at the call of the executive director or upon the written request of three or more members of the council.

SECTION 45. AMENDMENT. Section 55-06-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-06-01. Yellowstone-Missouri-Fort Union commission. There shall be a Yellowstone-Missouri-Fort Union commission, hereinafter referred to as the "commission", declared to be a governmental agency with the authority to exercise the powers specified herein, or which may be reasonably implied, composed of the governor as chairman, the president of the senate, the speaker of the house, the superintendent of the state historical board, the director of the department of economic development ~~commission~~ and finance, all ex officio, and five citizens of the state to be appointed by the governor who shall serve without compensation for the purpose of investigating, in cooperation with the state of Montana and the national park service, the historical importance and significance of the area and for formulating and executing plans for the preservation of the historic sites illustrative of the history of the United States. The commission may expend its operating expenses and other funds provided by legislative appropriations, and public and private grants, for programs, improvements, and facilities to preserve and improve the Yellowstone-Missouri confluence area.

* SECTION 46. AMENDMENT. Section 55-08-02.1 of the North Dakota Century Code is amended and reenacted as follows:

55-08-02.1. Outdoor recreation interagency council - Composition - Functions. A state outdoor recreation interagency council shall exist and ~~shall be~~ is composed of the state engineer of the water commission, commissioner of the state game and fish department, superintendent of the state historical board, ~~commissioner of the state highway department~~ director of the department of transportation, executive secretary of the state soil conservation committee, state parks and recreation director, chairman of the state water commission, state health officer, director of the department of economic development ~~commission~~ and finance, state forester, and the commissioner of university and school lands. The governor or ~~his~~ the governor's designee ~~shall be~~ is council chairman.

* NOTE: Section 55-08-02.1 was also amended by section 94 of Senate Bill No. 2050, chapter 231, and by section 19 of Senate Bill No. 2054, chapter 640.

The members of the council:

1. Shall deal with the distribution of state general fund appropriations which are to be matched with federal outdoor recreation grants-in-aid at the state level. Each member ~~shall have~~ shall have one vote in ~~such~~ those matters.
2. Shall meet periodically at the call of the chairman and shall keep minutes and other financial records dealing with ~~such~~ those meetings.
3. Shall cooperate with the United States or any appropriate agency thereof, particularly in connection with the distribution and use of federal aid funds which the state may become eligible to receive.
4. Shall encourage cooperation among public, voluntary, and commercial agencies and organizations.
5. Subject to the approval of the governor, may adopt rules for the conduct of its affairs as may be deemed necessary, including the time, place, and notice of regular meetings, call and notice of special meetings, and number of members required for a quorum to transact business.

SECTION 47. AMENDMENT. Section 8 of House Bill No. 1046, as approved by the fifty-second legislative assembly, is amended and reenacted as follows:

SECTION 8. APPROPRIATION. There is hereby appropriated, subject to the availability of state general fund revenues as provided in section 9 of this Act, out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$9,500,000 which shall be transferred by the state treasurer to the regional rural development revolving loan fund to carry out the purposes of ~~sections 7 through 5 of this Act~~ section 10-30.3-12 created in section 21 of Senate Bill No. 2058, as approved by the fifty-second legislative assembly, for the biennium beginning July 1, 1991, and ending June 30, 1993.

* SECTION 48. REPEAL. Sections 54-34-01, 54-34-02, 54-34-03, 54-34-03.1, 54-34-04, 54-34-05.1, 54-34-06, and 54-34-08 of the North Dakota Century Code, section 1 of chapter 112 of the 1989 Session Laws, and sections 1, 2, and 3 of House Bill No. 1046, as approved by the fifty-second legislative assembly, are repealed.

SECTION 49. COLLOCATION OF ECONOMIC DEVELOPMENT FUNCTIONS.

1. By July 1, 1992, regional councils, small business development centers, the small business management programs, area extension services, and the other regional development entities must be collocated in the various regions. Any entity not collocated as required by this subsection may not receive any further moneys from the state. The director of the department of economic development and finance may exempt an entity from this subsection for compelling reasons.

* NOTE: Section 54-34-06 was amended by section 15 of Senate Bill No. 2054, chapter 640.

2. It is the intent of the legislative assembly that the Bank of North Dakota and the department of economic development and finance collocate in the future. The legislative council shall conduct a study concerning collocation and make recommendations to the fifty-third legislative assembly relating to methods for accomplishing the collocation, including the time frame, funding, and other elements pertinent to the collocation.

SECTION 50. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of \$23,217,457 from the accumulated and undivided profits of the Bank of North Dakota. The moneys must be transferred during the biennium beginning July 1, 1991, and ending June 30, 1993, upon the order of the industrial commission, with one-half of the transfer to be made no later than June 30, 1992.

SECTION 51. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the following general fund appropriations and transfers will be made by the legislative assembly for the biennium beginning July 1, 1991, and ending June 30, 1993:

Department of economic development and finance	\$ 5,265,626
Primary sector development fund	6,730,000
Science and technology corporation	3,000,000
Partnership in assisting community expansion fund	2,700,000
Agriculture partnership in assisting community expansion fund	996,000
Beginning farmer revolving loan fund	<u>1,000,000</u>
S.B. 2058 appropriations and transfers total	<u>\$19,691,626</u>
Commissioner of agriculture	
Pride of Dakota logo promotion	150,000
Agricultural mediation service	750,000
Agricultural products utilization commission	
Farm diversification grants	300,000
Cooperative marketing grants	<u>200,000</u>
Agricultural appropriations total in other bills	<u>\$ 1,400,000</u>
Total all general fund transfers and appropriations	<u>\$21,091,626</u>

SECTION 52. APPROPRIATION - TRANSFER. The funds provided in this section, or so much thereof as necessary, are hereby appropriated from the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income and shall be transferred to the department of economic development and finance for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$2,273,555
Information services	96,510
Operating expenses	1,509,264
Equipment	102,850
Grants	<u>1,554,182</u>
Total all funds	<u>\$5,536,361</u>
Less other funds	<u>270,735</u>
Total general fund appropriation	<u>\$5,265,626</u>

The department of economic development and finance and the commissioner of agriculture shall coordinate the pride of Dakota logo promotion initiatives and other agricultural products marketing initiatives. At least seventy-five percent of the general fund dollars appropriated for the pride of Dakota logo promotion must be used for out-of-state marketing efforts.

The department of economic development and finance, upon approval of the budget section of the legislative council, may substitute alternative positions for authorized positions to utilize its personnel in the most effective manner.

The department of economic development and finance and the North Dakota state university extension service shall coordinate their community economic development program initiatives.

On and after the effective date of this Act, the department of economic development and finance is substituted for the economic development commission for the purpose of making expenditures from the unobligated funds of the appropriation made to the economic development commission in chapter 24 of the 1989 Session Laws.

SECTION 53. APPROPRIATION - TRANSFER. The amount of \$6,730,000 is hereby appropriated from the general fund in the state treasury, not otherwise appropriated, and shall be transferred to the primary sector development fund for the purposes of North Dakota Century Code section 10-30.3-11 for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 54. APPROPRIATION - TRANSFER. The amount of \$3,500,000 is hereby appropriated from the general fund in the state treasury, not otherwise appropriated, and shall be transferred to the science and technology corporation for the purposes of North Dakota Century Code chapter 10-30.4 for the biennium beginning July 1, 1991, and ending June 30, 1993. Of this appropriation, \$500,000 must be used to investigate and research potential value-added opportunities for livestock and crops and examine alternatives that can produce a system of agriculture which can sustain the state's present agriculture population. No more than \$300,000 of the moneys appropriated in this section may be used for administrative costs. The science and technology corporation may not duplicate, and shall coordinate with, existing programs at the university of North Dakota and North Dakota state university.

SECTION 55. APPROPRIATION - TRANSFER. The amount of \$2,700,000 is hereby appropriated from the general fund in the state treasury, not otherwise appropriated, and shall be transferred to the partnership in assisting community expansion fund for the purposes of North Dakota Century Code chapter 6-09.14 for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 56. APPROPRIATION - TRANSFER. The amount of \$996,000 is hereby appropriated from the general fund in the state treasury, not otherwise appropriated, and shall be transferred to the agriculture partnership in assisting community expansion fund for the purposes of North Dakota Century Code chapter 6-09.13 for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 57. APPROPRIATION - TRANSFER. The amount of \$1,000,000 is hereby appropriated from the general fund in the state treasury, not

otherwise appropriated, and shall be transferred to the beginning farmer revolving loan fund for the purposes of North Dakota Century Code section 6-09-15.5 for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 58. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 1991
Filed April 19, 1991

CHAPTER 96

HOUSE BILL NO. 1247
(Representatives Dorso, Freier, Kretschmar)
(Senator Holmberg)

SECURITIES EXEMPTIONS AND FEES

AN ACT to create and enact a new subsection to section 10-04-05 of the North Dakota Century Code, relating to securities exemptions; and to amend and reenact subsection 7 of section 10-04-10 of the North Dakota Century Code, relating to fees collected by the securities commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 10-04-05 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

- a. Any security listed or designated, or approved for listing or designation upon notice of issuance on:
 - (1) The New York stock exchange;
 - (2) The American stock exchange;
 - (3) The national association of securities dealers automated quotation national market system; or
 - (4) Any other stock exchange or automated quotation system which the commissioner approves by rule;
- b. Any other security of the same issuer which is of senior or substantially equal rank;
- c. Any security called for by subscription rights or warrants so listed or approved; or
- d. Any warrant or right to purchase or subscribe to any of the foregoing.

The commissioner may withdraw this exemption by order as to any exchange or system, or any particular security, if the commissioner determines that the exchange, system, or particular security does not comply with paragraphs 1 through 4 of the memorandum of understanding regarding a model uniform marketplace exemption from state securities registration requirements [53 Federal Register 52550, December 28, 1988], as they may be amended by agreement of the parties to that memorandum. The commissioner shall make this determination in accordance with the provisions of section 10-04-06.1, except that no summary suspension may be entered pending a final determination for an exchange or system.

SECTION 2. AMENDMENT. Subsection 7 of section 10-04-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Fees. The fee, which must accompany the application, for registration, transfer, and for each annual renewal thereof is:

a. For each dealer	¢175.00	<u>\$200.00</u>
b. For each salesman	¢ 35.00	<u>\$ 50.00</u>
c. For each investment adviser		<u>\$100.00</u>
d. For each investment adviser representative		\$ 35.00

Approved April 8, 1991
Filed April 8, 1991

CHAPTER 97

HOUSE BILL NO. 1231
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

SECURITIES LAWS REVISIONS

AN ACT to create and enact a new subsection to section 10-04-05 and a new subdivision to subsection 1 of section 10-04-11 of the North Dakota Century Code, relating to securities exemptions and license revocation; and to amend and reenact paragraph 4 of subdivision b of subsection 9 of section 10-04-06, subsection 1 of section 10-04-10, subsection 4 of section 10-04-16.1, subsection 1 of section 10-04-17, subsections 4 and 5 of section 51-19-07, and subdivision e of subsection 2 of section 51-19-13 of the North Dakota Century Code, relating to the advertisement of securities, dealer indemnity bonds, use immunity for compelled testimony, civil statute of limitations, and franchise registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 10-04-05 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor. This exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.

SECTION 2. AMENDMENT. Paragraph 4 of subdivision b of subsection 9 of section 10-04-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (4) No public advertising matter or general solicitation, other than tombstone advertisements that the commissioner shall prescribe by rule, is used in connection with any offers or sales.

SECTION 3. AMENDMENT. Subsection 1 of section 10-04-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Dealers. Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration must be made in writing in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed in the office of the commissioner, and must contain the following information:

- a. The name of the applicant.
- b. The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.
- c. The form of business organization and the date of organization of the applicant.
- d. The names and business addresses of all members, partners, officers, directors, trustees, or managers of the applicant; a statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten years.
- e. A brief description of the general character of the business conducted or proposed to be conducted by the applicant.
- f. A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer has ever been refused, canceled, suspended, or withdrawn in any state, full details with respect thereto.
- g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act in amendment thereof and whether any such registration of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.
- h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers, or employees is a member, and whether any such membership has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require.
- k. Whether the applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor

highway traffic offenses and, if so, all pertinent information with respect to any such conviction.

1. Any other information which the commissioner may by rule or order require.

The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees as he may deem necessary to establish whether or not the applicant should be registered as a dealer under the provisions of this law.

There must be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-04-14, and payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection the commissioner may register such applicant as a dealer unless he finds that the applicant is not of good business reputation, or is not solvent, or does not appear qualified by training or experience to act as a dealer in securities.

The commissioner ~~shall~~ may require an indemnity bond or a deposit of cash or other properties approved by the commissioner running to the state of North Dakota conditioned for the faithful compliance by the dealer, his agents, and his salesmen with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and his agents and salesmen.

The bond or deposit must be of such type as may be approved by the commissioner and must be in such amount as he shall deem necessary to protect purchasers when there is taken into consideration the volume of business engaged in by the applicant and the number of salesmen employed by the applicant. Any such bond must have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer he shall notify the applicant of such registration.

SECTION 4. A new subdivision to subsection 1 of section 10-04-11 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an agent, broker, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02.

SECTION 5. AMENDMENT. Subsection 4 of section 10-04-16.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. No person is excused from attending and testifying or from producing any document or record before the commissioner, or in

obedience to the subpoena of the commissioner or any officer designated by ~~him~~ the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of ~~him~~ the person may tend to incriminate ~~him~~ the person or subject ~~him~~ the person to a penalty or forfeiture; ~~but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise).~~ No testimony or evidence, documentary or otherwise, compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

SECTION 6. AMENDMENT. Subsection 1 of section 10-04-17 of the North Dakota Century Code is amended and reenacted as follows:

1. That no action shall be brought under this section for the recovery of the purchase price after ~~three~~ five years from the date of such sale or contract for sale nor more than one year after the purchaser has received information as to matter or matters upon which the proposed recovery is based; and

SECTION 7. AMENDMENT. Subsections 4 and 5 of section 51-19-07 of the North Dakota Century Code are amended and reenacted as follows:

4. a. If no stop order under section 51-19-09 is in effect under this chapter, registration of the offer of franchises ~~automatically becomes effective at twelve noon of the fifteenth business day after the filing of the application for registration or the last amendment thereto or at such earlier time as the commissioner determines. The registrant may request in writing a delay in effectiveness which will suspend the operation of this subdivision and upon entry by the commissioner into the register of franchises.~~
- b. A franchise offering must be deemed duly registered for a period of one year from the effective date of the registration, unless the commissioner by order or rule specifies a different period.
5. a. The registration may be renewed for additional periods of one year each, unless the commissioner by rule or order specifies a different period, by submitting to the commissioner a registration renewal statement no later than fifteen business days prior to the expiration of the registration unless such period is waived by order of the commissioner. If no stop order or other order under section 51-19-09 is in effect under this chapter, registration of the offer of the franchises ~~automatically becomes renewed effective at twelve noon of the date on which the prior registration is due to expire or at such earlier time as the commissioner determines upon entry by the commissioner into the register of franchises.~~

- b. The registration renewal statement must be in the form prescribed by the commissioner and must be accompanied by a proposed prospectus. Each such registration renewal statement must be accompanied by the fee prescribed in section 51-19-17.

SECTION 8. AMENDMENT. Subdivision e of subsection 2 of section 51-19-13 of the North Dakota Century Code is amended and reenacted as follows:

- e. No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by ~~him~~ the commissioner or in any proceeding instituted by the commissioner on the ground that the testimony or evidence, documentary or otherwise, required of ~~him~~ the person may tend to incriminate ~~him~~ the person or subject ~~him~~ the person to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce. No testimony or evidence, documentary or otherwise, compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Approved March 27, 1991
Filed March 28, 1991

CHAPTER 98

HOUSE BILL NO. 1451
(Representatives Mahoney, Delzer)
(Senator Moore)

FILINGS WITH SECRETARY OF STATE

AN ACT to amend and reenact sections 10-15-07, 10-15-38, 10-15-52.3, 10-15-52.5, 10-15-53, subsection 11 of section 10-19.1-01, subsection 2 of section 10-19.1-03, sections 10-19.1-11, 10-19.1-14, subsection 2 of section 10-19.1-15, subsection 1 of section 10-19.1-16, section 10-19.1-23, subsection 2 of section 10-19.1-25, subsection 2 of section 10-19.1-99, subsection 4 of section 10-19.1-100, subsection 2 of section 10-19.1-101, subsection 2 of section 10-19.1-106, subsection 1 of section 10-19.1-108, subsection 3 of section 10-19.1-112, subsection 1 of section 10-19.1-113, sections 10-22-05, 10-22-06, 10-22-13, 10-22-14, 10-22-15, subsection 2 of section 10-23-01, sections 10-24-07.1, 10-24-08, 10-24-09, 10-24-28, 10-24-30, 10-24-35, 10-24-36, 10-24-38, 10-25-04, 10-26-05, 10-26-06, 10-27-05, 10-27-06, 10-27-08, 10-27-09, 10-27-13, 10-27-14, 10-27-15, and 54-56-04 of the North Dakota Century Code, relating to requirements for filing documents with the secretary of state and to the effective dates of certain documents filed with the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-15-07 of the North Dakota Century Code is amended and reenacted as follows:

10-15-07. ~~Articles; filing~~ Filing articles of association - Cooperative existence. ~~Duplicate originals~~ An original of the articles of association, duly signed and acknowledged, shall must be delivered to the secretary of state for filing. The legal corporate existence of a cooperative begins when the ~~duplicate~~ original articles are so delivered. The secretary of state shall stamp on ~~both originals~~ the articles of association the date of filing and ~~return one provide to the cooperative with his~~ a certificate of ~~such~~ the filing.

SECTION 2. AMENDMENT. Section 10-15-38 of the North Dakota Century Code is amended and reenacted as follows:

10-15-38. Filing amendments - Limitation of action.

1. Amendments to articles ~~shall~~ must be signed ~~and acknowledged by the president or a vice president and the secretary or an assistant secretary; such signatures shall be acknowledged; the amendments shall~~ an officer of the cooperative, be sealed with the cooperative's seal, and ~~shall~~ set forth:

- a. The name of the cooperative.

- b. The amendments and date of adoption.
 - c. The number of members.
 - d. The number of members voting for and against such the amendment.
2. One copy of such the amendment ~~shall~~ must be retained in the records of the association, and one copy ~~shall~~ must be filed in the office of the secretary of state, ~~who shall issue a certificate of amendment thereon.~~
 3. No amendment may affect any existing claim for relief or proceedings to which the cooperative is a party, or existing rights of persons other than members or stockholders.
 4. No action may be maintained to invalidate any amendment because of the manner of its adoption unless commenced within two years after the date of filing.

SECTION 3. AMENDMENT. Section 10-15-52.3 of the North Dakota Century Code is amended and reenacted as follows:

10-15-52.3. Amended certificate of authority. A foreign cooperative authorized to transact business in this state ~~shall~~ must procure an amended certificate of authority ~~in the event if~~ it changes its cooperative name, or desires to pursue in this state ~~other or additional~~ purposes other than those set forth in its prior application for a certificate of authority, by making application ~~therefor~~ to the secretary of state.

The requirements in respect to the ~~form and contents of such~~ application, ~~the manner of its execution, the filing of duplicate originals thereof with the secretary of state, and the issuance of an amended certificate of authority, and the effect thereof, shall be~~ are the same as in ~~the case of~~ an original application for a certificate of authority.

SECTION 4. AMENDMENT. Section 10-15-52.5 of the North Dakota Century Code is amended and reenacted as follows:

10-15-52.5. Filing of application for withdrawal for foreign cooperatives. ~~Duplicate originals of an~~ An application by a foreign cooperative for withdrawal ~~shall~~ must be delivered to the secretary of state. If the secretary of state finds that such the application conforms to the provisions of section 10-15-52.4, ~~he shall, when and that~~ all fees have been paid, the secretary of state shall

1. ~~Endorse~~ endorse on each of ~~such duplicate originals~~ the original application the word "filed", and the month, day, and year of the filing ~~thereof.~~
2. ~~File one of such duplicate originals in his office.~~
3. ~~Issue and issue~~ a certificate of withdrawal ~~to which he shall affix the other duplicate original.~~

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall

be returned to the cooperative or its representative. Upon the issuance of such the certificate of withdrawal, the authority of the cooperative to transact business in this state shall cease ceases.

SECTION 5. AMENDMENT. Section 10-15-53 of the North Dakota Century Code is amended and reenacted as follows:

10-15-53. Filing documents. ~~When~~ Except as otherwise required by law, if any document is to be filed, ~~duplicate originals shall~~ an original must be delivered to the secretary of state. ~~He,~~ who shall stamp on both the date of filing on the document and ~~return one~~ provide to the cooperative with his a certificate of filing.

SECTION 6. AMENDMENT. Subsection 11 of section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Filed with the secretary of state" means that a signed ~~duplicate originals~~ original of a document, together with the fees provided in chapter 10-23, ~~have~~ has been delivered to the secretary of state and ~~have~~ has been determined by the secretary of state to conform to law. The secretary of state shall then endorse on ~~each~~ the original the word "filed" and the month, day, and year, ~~and~~ record the document in the office of the secretary of state, ~~and shall then return one original to the person who delivered it for filing.~~

SECTION 7. AMENDMENT. Subsection 2 of section 10-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

2. An election by a corporation to become governed by this chapter must be made by resolution approved by the affirmative vote of the holders of the same proportion or number of the voting power of the shares entitled to vote that is required for amendment of the articles, of the corporation prior to the election. The ~~duplicate originals~~ original of the resolution, and articles of amendment if required, must be filed with the secretary of state, together with the fees provided in chapter 10-23. The resolution and articles of amendment become effective upon acceptance by the secretary of state ~~or at another time within thirty days after acceptance of the resolution and articles of amendment so provided.~~ If no amendment of the articles is required, the resolution must state that the articles of the corporation conform to the requirements of this chapter.

SECTION 8. AMENDMENT. Section 10-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-11. Filing of articles of incorporation. ~~Duplicate originals~~ An original of the articles of incorporation must be filed with the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, and that all fees have been paid ~~as is provided in~~ under chapter 10-23, ~~then~~ the secretary of state shall issue a certificate of incorporation. ~~The certificate of incorporation and the duplicate original of the articles of incorporation must be returned to the incorporators or their representative.~~

SECTION 9. AMENDMENT. Section 10-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-14. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-19.1-13 may be reserved by any person.
2. The reservation must be made by filing ~~in duplicate original~~ with the secretary of state a request that the name be reserved, together with the fees provided in chapter 10-23. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing ~~in duplicate original~~ with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in chapter 10-23.

SECTION 10. AMENDMENT. Subsection 2 of section 10-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation shall designate in its articles a registered agent. The registered agent may be an individual residing in this state, a domestic corporation, or a foreign corporation authorized to transact business in this state. The registered agent shall maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in ~~such that~~ capacity must be filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23.

SECTION 11. AMENDMENT. Subsection 1 of section 10-19.1-16 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing ~~in duplicate original~~ with the secretary of state, along with the fees provided in chapter 10-23, a statement containing:
 - a. The name of the corporation.
 - b. The present record address of its registered office.
 - c. The name of its registered agent.
 - d. If the address of its registered office is to be changed, the new address of its registered office.
 - e. If its registered agent is to be changed, the name of its new registered agent.
 - f. If the name of its registered agent is to be changed, the name of its registered agent as changed.

- g. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
- h. A statement that the change of registered office or registered agent was authorized by resolution approved by the board.

SECTION 12. AMENDMENT. Section 10-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-23. Filing articles of amendment. ~~Duplicate originals~~ An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in chapter 10-23, then ~~one duplicate original the articles of amendment~~ must be recorded in the office of the secretary of state, ~~while the other duplicate original must be returned to the corporation or to its representatives.~~

SECTION 13. AMENDMENT. Subsection 2 of section 10-19.1-25 of the North Dakota Century Code is amended and reenacted as follows:

2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:
 - a. Articles of amendment approved by decree or order of the court must be executed and verified ~~in duplicate~~ by the person or persons designated or appointed by the court for that purpose and must set forth the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, and the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to under the provisions of an applicable statute of the United States.
 - b. ~~Duplicate originals~~ An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in chapter 10-23 ~~then one duplicate,~~ the original must be recorded in the office of the secretary of state ~~while the other duplicate original must be returned to the corporation or to its representative.~~ The articles of amendment become effective upon their acceptance by the secretary of state ~~or at another time within thirty days after their acceptance if the articles of amendment so provide.~~ The articles are deemed to be amended accordingly, ~~without any action by the directors or shareholders of the corporation and with the same effect as if the amendment had been adopted by unanimous action of the directors and shareholders.~~

SECTION 14. AMENDMENT. Subsection 2 of section 10-19.1-99 of the North Dakota Century Code is amended and reenacted as follows:

2. The articles of merger must be signed on behalf of each constituent corporation and filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23.

SECTION 15. AMENDMENT. Subsection 4 of section 10-19.1-100 of the North Dakota Century Code is amended and reenacted as follows:

4. Within thirty days after a copy of the plan of merger is mailed to shareholders of the subsidiary, or upon waiver of the mailing by the holders of all outstanding shares, the articles of merger must be signed on behalf of the parent and filed ~~in duplicate original~~ with the secretary of state, along with the fees provided in chapter 10-23.

SECTION 16. AMENDMENT. Subsection 2 of section 10-19.1-101 of the North Dakota Century Code is amended and reenacted as follows:

2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned, a resolution abandoning the plan of merger or exchange may be approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan. If articles of merger have been filed with the secretary of state, the board shall file ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23, articles of abandonment that contain:
 - a. The name of the corporation;
 - b. The provision of this section under which the plan is abandoned; and
 - c. The text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.

SECTION 17. AMENDMENT. Subsection 2 of section 10-19.1-106 of the North Dakota Century Code is amended and reenacted as follows:

2. The articles of dissolution must be filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23.

SECTION 18. AMENDMENT. Subsection 1 of section 10-19.1-108 of the North Dakota Century Code is amended and reenacted as follows:

1. If dissolution of the corporation is approved pursuant to subsections 1 and 2 of section 10-19.1-107, the corporation shall file ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23, a notice of intent to dissolve. The notice must contain:
 - a. The name of the corporation;
 - b. The date and place of the meeting at which the resolution was approved pursuant to subsections 1 and 2 of section 10-19.1-107; and
 - c. A statement that the requisite vote of the shareholders was received, or that all shareholders entitled to vote signed a written action.

SECTION 19. AMENDMENT. Subsection 3 of section 10-19.1-112 of the North Dakota Century Code is amended and reenacted as follows:

3. Revocation of dissolution proceedings is effective when a notice of revocation is filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23. The corporation may thereafter resume business.

SECTION 20. AMENDMENT. Subsection 1 of section 10-19.1-113 of the North Dakota Century Code is amended and reenacted as follows:

1. Articles of dissolution for a corporation dissolving pursuant to section 10-19.1-107 must be filed ~~in duplicate original~~ with the secretary of state, along with the fees provided in chapter 10-23, after:
 - a. The payment of claims of all known creditors and claimants has been made or provided for; and
 - b. The longer of the periods described in subdivision c of subsection 1 of section 10-19.1-111 has expired, if the corporation has given notice to creditors and claimants of the corporation in the manner described in section 10-19.1-110; or ~~in all other cases,~~
 - c. ~~The~~ In all other cases, the two-year period described in subsection 2 of section 10-19.1-111 has expired.

SECTION 21. AMENDMENT. Section 10-22-05 of the North Dakota Century Code is amended and reenacted as follows:

10-22-05. Application for certificate of authority. A foreign corporation may procure a certificate of authority to transact business in this state by applying to the secretary of state. The application must set forth:

1. The name of the corporation and the state or country where it is incorporated.
2. The name of the corporation, containing the word "corporation", "company", "incorporated", or "limited", or an abbreviation of one of these words, or the name of the corporation with the word or abbreviation which it elects to add for use in this state.
3. The date of incorporation and the period of duration of the corporation.
4. The address of the principal executive office of the corporation in the state or country where it is incorporated.
5. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state.
6. The purposes of the corporation which it proposes to pursue through the transaction of business in this state.

7. The names and respective addresses of the directors and officers of the corporation.
8. Any additional information ~~which~~ that is necessary or appropriate to enable the secretary of state to determine whether the corporation is entitled to a certificate of authority to transact business in this state and to determine the fees payable as prescribed in chapter 10-23.

The application must be made on forms prescribed and furnished by the secretary of state and must be executed in duplicate by the corporation's president or vice president and by its secretary or assistant secretary an officer of the corporation.

SECTION 22. AMENDMENT. Section 10-22-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-22-06. Filing of application for certificate of authority. ~~Duplicate originals of the~~ The application of the corporation for a certificate of authority must be delivered to the secretary of state, together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated, and the consent of the designated registered agent for service of process to serve in that capacity.

The secretary of state shall, upon determining that the application conforms to law and that all fees have been paid as prescribed in chapter 10-23:

1. Endorse on each document the word "filed" and the month, day, and year of the filing.
2. File ~~one of the duplicate originals~~ of the application, the certificate of good standing or certificate of existence, and the consent of the registered agent.
3. Issue to the corporation or its representative a certificate of authority to transact business in this state ~~with the other duplicate original application affixed.~~

SECTION 23. AMENDMENT. Section 10-22-13 of the North Dakota Century Code is amended and reenacted as follows:

10-22-13. Amended certificate of authority. A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority when the corporation changes its name or when purposes other than those set forth in its last application for a certificate of authority are sought, by making application to the secretary of state. The application, together with the required fee, must be filed within thirty days of the corporate action necessitating the filing.

The requirements for the form and contents of the application, the manner of its execution, ~~the its~~ filing of ~~duplicate originals~~ with the secretary of state, the issuance of an amended certificate of authority, and the effect of the amended certificate are the same as the original application for a certificate of authority.

An application must be accompanied by a certified statement of amendment duly authenticated by the proper officer of the state or country where the corporation is incorporated.

SECTION 24. AMENDMENT. Section 10-22-14 of the North Dakota Century Code is amended and reenacted as follows:

10-22-14. Withdrawal of foreign corporation. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. ~~In order to~~ To procure a certificate of withdrawal, a foreign corporation shall deliver to the secretary of state an application for withdrawal, ~~which~~ that sets forth:

1. The name of the corporation and the state or country where it is incorporated.
2. That the corporation is not transacting business in this state.
3. That the corporation surrenders its authority to transact business in this state.
4. That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any claim for relief arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on ~~such~~ the corporation by service on the secretary of state.
5. A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on ~~him~~ the secretary of state.
6. A statement of the aggregate number of shares ~~which~~ that the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of ~~such~~ the application.
7. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of ~~such~~ the application.
8. A statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of ~~such~~ the application.
9. Any additional information necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees payable by the foreign corporation.

The application for withdrawal must be made on forms prescribed and furnished by the secretary of state and must be executed by an officer of the corporation by its president or vice president and by its secretary or assistant secretary or, if the corporation is in the hands of a receiver or trustee, must be executed on behalf of the corporation by the receiver or trustee.

SECTION 25. AMENDMENT. Section 10-22-15 of the North Dakota Century Code is amended and reenacted as follows:

10-22-15. Filing of application for withdrawal. ~~Duplicate originals of such~~ An application for withdrawal, together with the required fee, must be delivered to the secretary of state. If the application conforms to section 10-22-14, the secretary of state ~~shall~~, when all fees prescribed in chapter 10-23 have been paid-

- ~~1- Endorse, shall endorse on each of such duplicate originals the application the word "filed" and the month, day, and year of the filing-~~
- ~~2- Retain one of the duplicate originals-~~
- ~~3- Issue and issue to the corporation or its representative a certificate of withdrawal with the other duplicate original affixed.~~

Upon the issuance of a certificate of withdrawal, the authority of the corporation to transact business in this state ceases.

SECTION 26. AMENDMENT. Subsection 2 of section 10-23-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The address of the registered office of the corporation in this state, ~~and the name of its registered agent in this state at such that~~ address, and, ~~in the case of a foreign corporation,~~ the address of its principal office ~~in the state or country under the laws of which it is incorporated.~~

SECTION 27. AMENDMENT. Section 10-24-07.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-07.1. Reserved name.

1. The exclusive right to the use of a corporate name permitted by section 10-24-07 may be reserved by any person.
2. The reservation must be made by filing ~~in duplicate original~~ with the secretary of state a request that the name be reserved, with the fees provided in chapter 10-28. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing ~~in duplicate original~~ with the secretary of state a notice of the transfer and specifying the name and address of the transferee, with the fees provided in chapter 10-28.

SECTION 28. AMENDMENT. Section 10-24-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-08. Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

1. A registered office ~~which~~ that may or may not be the same as its principal office.
2. A registered agent, ~~which agent~~ that may be an individual resident residing in this state whose business office is identical with ~~such the~~ the registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state having an office identical with such registered office. Proof of the registered agent's consent to serve in that capacity must be filed ~~in duplicate original~~ in duplicate with the secretary of state, with the fees provided in chapter 10-28.

SECTION 29. AMENDMENT. Section 10-24-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-09. Change of registered office or registered agent. A corporation may change its registered office or ~~change its~~ change registered agent, ~~or both,~~ upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent.
5. If its registered agent be changed, the name of its successor registered agent.
6. That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.
7. That ~~such the~~ such change was authorized by resolution duly adopted by its board of ~~directors.~~ directors.

~~Such~~ The statement must be executed by an officer of the corporation by ~~its president or a vice president~~ and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that ~~such the~~ such statement conforms to the provisions of chapters 10-24 through 10-28, ~~he~~ the secretary of state shall file ~~such the~~ such statement ~~in his office,~~ and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, ~~or both, as the case may be, shall become~~ becomes effective.

Any registered agent of a corporation may resign as ~~such~~ such agent upon filing a written notice ~~thereof, executed in duplicate,~~ with the secretary of state, who shall forthwith mail a copy ~~thereof~~ thereof to the corporation in care of an officer, who is not the resigning registered agent, at the last known address of ~~such the~~ such officer. The appointment of ~~such the~~ such agent shall

terminate ~~upon the expiration of~~ thirty days after receipt of ~~such~~ the notice by the secretary of state.

SECTION 30. AMENDMENT. Section 10-24-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-28. Incorporators. One or more persons may incorporate a corporation by signing and delivering articles of incorporation ~~in duplicate original~~ to the secretary of state.

SECTION 31. AMENDMENT. Section 10-24-30 of the North Dakota Century Code is amended and reenacted as follows:

10-24-30. Filing of articles of incorporation. ~~Duplicate originals of the~~ The articles of incorporation ~~shall must~~ be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law; ~~he shall; when~~ and that all fees have been paid as prescribed in chapters 10-24 through 10-28 ~~prescribed~~:

- 1- ~~Endorse, the secretary of state shall endorse on each of such duplicate originals the articles of incorporation the word "filed" and the month, day, and year of the filing thereof.~~
- 2- ~~File one of such duplicate originals in his office.~~
- 3- ~~Issue and issue a certificate of incorporation to which he shall affix the other duplicate original.~~

~~The certificate of incorporation; together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state; shall be returned to the incorporators or their representative.~~

SECTION 32. AMENDMENT. Section 10-24-35 of the North Dakota Century Code is amended and reenacted as follows:

10-24-35. Articles of amendment. The articles of amendment ~~shall must~~ be executed in duplicate by an officer of the corporation by its president or a vice president and by its secretary or an assistant secretary and ~~shall must~~ set forth:

1. The name of the corporation.
2. The amendment ~~so~~ adopted.
3. ~~where~~ If there are members having voting rights, either of the following:
 - a. A statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such the amendment received at least two-thirds of the votes ~~which that~~ members present at such the meeting or represented by proxy were entitled to cast.
 - b. A statement that such the amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

4. ~~Where~~ If there are no members, or no members having voting rights, a statement of such that fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such the amendment received the vote of a majority of the directors in office.

SECTION 33. AMENDMENT. Section 10-24-36 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-36. Filing of articles of amendment. ~~Duplicate originals of the~~ The articles of amendment must be delivered to the secretary of state. If ~~the~~ secretary of state finds that the articles of amendment conform to law, ~~he shall, when and that~~ all fees have been paid as prescribed in chapters 10-24 through 10-28 ~~prescribed~~:

1. ~~Endorse,~~ the secretary of state shall endorse on each of such duplicate originals the articles of amendment the word "filed" and the month, day, and year of the filing thereof.
2. ~~File one of such duplicate originals in his office.~~

~~A duplicate original of the articles of amendment must be returned to the corporation or its representative.~~

SECTION 34. AMENDMENT. Section 10-24-38 of the North Dakota Century Code is amended and reenacted as follows:

10-24-38. Restated articles of incorporation. A nonprofit domestic corporation may at any time restate its articles of incorporation as amended, in the following manner:

1. ~~Where~~ If there are members having voting rights, the board of directors ~~shall must~~ adopt a resolution setting forth the proposed restated articles of incorporation and directing that they be submitted to a vote at a meeting of members having voting rights, ~~which may be either at~~ an annual or a special meeting. Written or printed notice setting forth the proposed restated articles of incorporation ~~shall must~~ be given each member entitled to vote at ~~such the~~ meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed restated articles of incorporation ~~shall be are~~ adopted upon receiving at least two-thirds of the votes ~~which that~~ members present at ~~such the~~ meeting or represented by proxy are entitled to cast.
2. ~~Where~~ If there are no members, or no members having voting rights, proposed restated articles of incorporation ~~shall be are~~ adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.
3. Upon ~~their~~ approval the restated articles of incorporation ~~shall must be executed in duplicate~~ by an officer of the corporation ~~by its president or a vice president and by its secretary or assistant secretary and shall must~~ set forth:
 - a. The name of the corporation.

- b. The period of its duration, which may be perpetual.
- c. The purpose or purposes ~~which~~ that the corporation is then authorized to pursue.
- d. Any provisions, not inconsistent with law, which are then set forth in the articles of incorporation as theretofore amended, for the regulation of the internal affairs of the corporation.
- e. A statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

~~Duplicate originals of the~~ The restated articles of incorporation ~~shall~~ must be delivered to the secretary of state. If the secretary of state finds that ~~such~~ the restated articles of incorporation conform to law, and ~~that~~ all fees have ~~been~~ paid, ~~he~~ the secretary of state shall endorse on ~~each of such duplicate originals~~ the restated articles of incorporation the word "filed" and the month, day, and year of the filing thereof, ~~file one of such duplicate originals in his office,~~ and issue a restated certificate of incorporation to which ~~he shall affix the other duplicate original.~~

~~The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the secretary of state, shall be returned to the corporation or its representative.~~

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation ~~shall~~ become effective and ~~still~~ supersede the original articles of incorporation and all amendments thereto.

SECTION 35. AMENDMENT. Section 10-25-04 of the North Dakota Century Code is amended and reenacted as follows:

10-25-04. Articles of merger or consolidation.

1. Upon ~~such~~ their approval, articles of merger or articles of consolidation ~~shall~~ must be executed ~~in duplicate~~ by ~~each an officer of the corporation by its president or a vice president and by its secretary or an assistant secretary~~ and ~~shall~~ set forth:
 - a. The plan of merger or the plan of consolidation.
 - b. ~~Where~~ If the members of any merging or consolidating corporation have voting rights, then as to each ~~such~~ corporation (1) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at ~~such~~ the meeting, and that ~~such~~ the plan received at least two-thirds of the votes ~~which~~ that members present at ~~such~~ the meeting or represented by proxy were entitled to cast, or (2) a statement that ~~such~~ the amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

- c. Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such that fact, the date of the meeting of the board of directors at which the plan was adopted, and a statement of the fact that such the plan received the vote of a majority of the directors in office.
2. ~~Duplicate originals of the~~ The articles of merger or articles of consolidation ~~shall~~ must be delivered to the secretary of state. If the secretary of state finds that such the articles conform to law, ~~he shall, when~~ and that all fees have been paid as prescribed in chapters 10-24 through 10-28 ~~prescribed:~~
- a. ~~Endorse, the secretary of state shall endorse on each of such duplicate originals the~~ articles of merger or of consolidation the word "filed" and the month, day, and year of the filing thereof.
- b. ~~File one of such duplicate originals in his office.~~
- c. ~~Issue and issue~~ a certificate of merger or a certificate of consolidation to which ~~he shall affix the other duplicate original.~~
3. ~~The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.~~

SECTION 36. AMENDMENT. Section 10-26-05 of the North Dakota Century Code is amended and reenacted as follows:

10-26-05. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, ~~then when after~~ all debts, liabilities, and obligations of the corporation ~~shall~~ have been paid and discharged, or adequate provision ~~shall have~~ has been made therefor, and all of the remaining property and assets of the corporation ~~shall~~ have been transferred, conveyed, or distributed in accordance with the provisions of this chapter, articles of dissolution ~~shall~~ must be executed in duplicate by an officer of the corporation by its president or a vice president, and by its secretary or an assistant secretary and ~~shall~~ set forth:

1. The name of the corporation.
2. ~~Where~~ If there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such the meeting, and that such the resolution received at least two-thirds of the votes ~~which that~~ members present at such the meeting or represented by proxy were entitled to cast, or (b) a statement that such the resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.
3. ~~Where~~ If there are no members, or no members having voting rights, a statement of such that fact, the date of the meeting of the board

of directors at which the resolution to dissolve was adopted, and a statement of the fact that ~~such~~ the resolution received the vote of a majority of the directors in office.

4. That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.
5. That all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter.
6. That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

SECTION 37. AMENDMENT. Section 10-26-06 of the North Dakota Century Code is amended and reenacted as follows:

10-26-06. Filing of articles of dissolution. ~~Duplicate originals of such~~ The articles of dissolution ~~shall must~~ be delivered to the secretary of state. If the secretary of state finds that ~~such the~~ articles of dissolution conform to law, ~~he shall, when~~ and that all fees have been paid as ~~prescribed~~ in chapters 10-24 through 10-28 ~~prescribed~~.

- 1- ~~Endorse, the secretary of state shall endorse on each of such duplicate originals the articles of dissolution the word "filed" and the month, day, and year of the filing thereof.~~
- 2- ~~File one of such duplicate originals in his office.~~
- 3- ~~Issue and issue a certificate of dissolution to which he shall affix the other duplicate original.~~

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of ~~such a~~ certificate of dissolution the existence of the corporation ~~shall cease ceases~~, except for the ~~purpose purposes~~ of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in chapters 10-24 through 10-28.

SECTION 38. AMENDMENT. Section 10-27-05 of the North Dakota Century Code is amended and reenacted as follows:

10-27-05. Application for certificate of authority. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, ~~shall must~~ apply to the secretary of state. The application ~~shall must~~ set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. The date of incorporation and the period of duration of the corporation.

3. The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.
4. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at ~~such~~ that address.
5. The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state.
6. The names and respective addresses of the directors and officers of the corporation.
7. ~~Such additional~~ Additional information as may be necessary or appropriate ~~in order~~ to enable the secretary of state to determine whether ~~such~~ the corporation is entitled to a certificate of authority to conduct affairs in this state.

~~Such~~ The application ~~shall~~ must be made on forms prescribed and furnished by the secretary of state and ~~shall~~ be executed ~~in duplicate~~ by an officer of the corporation by its president or a vice president and by its secretary or an assistant secretary.

SECTION 39. AMENDMENT. Section 10-27-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-06. Filing of application for certificate of authority. ~~Duplicate originals of the~~ The application of the corporation for a certificate of authority must be delivered to the secretary of state, together with a certificate of good standing or a certificate of existence, duly authenticated by the incorporating officer of the state or country ~~under the laws of which~~ where it is incorporated.

If the secretary of state finds that ~~such~~ the application conforms to law; ~~he shall, when~~ and that all fees have been paid as provided in chapters 10-24 through 10-28-

- 1- ~~Endorse,~~ the secretary or state shall endorse on each of ~~such documents~~ document the word "filed" and the month, day, and year of the filing ~~thereof~~.
- 2- ~~File in his office one of such duplicate originals of the application and the good standing certificate or certificate of existence-~~
- 3- ~~Issue and issue~~ a certificate of authority to conduct affairs in this state to which he shall ~~affix the other duplicate original application.~~

~~The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, must be returned to the corporation or its representative.~~

SECTION 40. AMENDMENT. Section 10-27-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-08. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to conduct affairs in this state ~~shall~~ must have and continuously maintain in this state:

1. A registered office ~~which~~ that may or may not be the same as its principal office.
2. A registered agent, ~~which agent~~ that may be an individual ~~resident~~ residing in this state whose business office is identical with ~~such~~ the registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state having an office identical with ~~such~~ the registered office. Proof of the registered agent's consent to serve in that capacity must be filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-28.

SECTION 41. AMENDMENT. Section 10-27-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-09. Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to conduct affairs in this state may change its registered office or ~~change~~ its registered agent, ~~or both~~, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent.
5. If its registered agent be changed, the name of its successor registered agent.
6. That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.
7. That ~~such~~ the change was authorized by resolution duly adopted by its board of directors.

~~Such~~ The statement must be executed by an officer of the corporation by ~~its president or a vice president~~ and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that ~~such~~ the statement conforms to the provisions of this chapter, ~~he~~ the secretary of state shall file ~~such~~ the statement ~~in his office~~, and upon ~~such~~ the filing the change of address of the registered office, or the appointment of a new registered agent, ~~or both~~, ~~as the case may be~~, shall ~~become~~ becomes effective.

Any registered agent in this state appointed by a foreign corporation may resign ~~as such agent upon~~ by filing a written notice ~~thereof~~, ~~executed in duplicate~~, with the secretary of state who shall forthwith mail a copy ~~thereof~~ to the foreign corporation at its principal office in the state or

country under the laws of which it is incorporated. The appointment of such the registered agent shall terminate ~~upon the expiration of~~ thirty days after receipt of such the notice by the secretary of state.

SECTION 42. AMENDMENT. Section 10-27-13 of the North Dakota Century Code is amended and reenacted as follows:

10-27-13. Amended certificate of authority. A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority ~~in the event~~ if it changes its corporate name, or desires to pursue in this state ~~other or additional~~ purposes other than those set forth in its prior application for a certificate of authority, by making application ~~thereof~~ to the secretary of state.

The requirements in respect to the form and contents of such the application, the manner of its execution, ~~the or its~~ filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority, and the effect thereof, ~~shall be~~ are the same as in the case of an original application for a certificate of authority.

SECTION 43. AMENDMENT. Section 10-27-14 of the North Dakota Century Code is amended and reenacted as follows:

10-27-14. Withdrawal of foreign corporation. A foreign corporation authorized to conduct affairs in this state may withdraw from this state ~~upon~~ by procuring from the secretary of state a certificate of withdrawal. ~~in order to procure such certificate of withdrawal, such~~ The foreign corporation ~~shall~~ must deliver to the secretary of state an application for withdrawal, ~~which shall set~~ setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. That the corporation is not conducting affairs in this state.
3. That the corporation surrenders its authority to conduct affairs in this state.
4. That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any claim for relief arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on the corporation by service ~~thereof~~ of process on the secretary of state.
5. A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on ~~him~~ the secretary of state.

The application for withdrawal ~~shall~~ must be made on forms prescribed and furnished by the secretary of state and ~~shall~~ be executed by an officer of the corporation by its president or a vice president and by its secretary or an assistant secretary or, if the corporation is in the hands of a receiver or trustee, ~~shall be~~ executed on behalf of the corporation by such the receiver or trustee.

SECTION 44. AMENDMENT. Section 10-27-15 of the North Dakota Century Code is amended and reenacted as follows:

10-27-15. Filing of application for withdrawal. ~~Duplicate originals of such~~ The application for withdrawal ~~shall~~ must be delivered to the secretary of state. If the secretary of state finds that ~~such the~~ application conforms to the provisions of section 10-27-14, ~~he shall, when and that~~ all fees have been paid as is provided in chapters 10-24 through ~~10-28.~~

- 1- ~~Endorse, the secretary of state shall endorse on each of such duplicate originals the application for withdrawal~~ the word "filed" and the month, day, and year of the filing ~~thereof.~~
- 2- ~~File one of such duplicate originals in his office.~~
- 3- ~~Issue and issue a certificate of withdrawal to which he shall affix the other duplicate original.~~

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of ~~such the~~ certificate of withdrawal, the authority of the corporation to conduct affairs in this state ~~shall cease~~ ceases.

SECTION 45. AMENDMENT. Section 54-56-04 of the North Dakota Century Code is amended and reenacted as follows:

54-56-04. Charter public corporations. The children's services coordinating committee may charter public corporations to implement programs for the classes of children and programs described in section 54-56-03. The committee shall prescribe conditions for the creation, continuance, and ~~longevity~~ duration of ~~such those~~ corporations. Each ~~such~~ corporation must possess all powers and perform all the duties usual to corporations for public purposes or conferred upon it by law. Under its name, it may sue and be sued, enter into contracts, receive and expend moneys, employ personnel, and convey property ~~as that~~ comes into its possession by will or otherwise. The employees of ~~such those~~ corporations must be deemed state employees for purposes of immunity and participation in fringe benefits are not liable for acts performed within the scope of their employment, as defined in section 26.1-21-10.1. After approval by the children's services coordinating committee, ~~the a corporate charters become~~ charter becomes effective upon filing with the secretary of state ~~or at a later date cited in the charter.~~

Approved March 27, 1991
Filed March 28, 1991

CHAPTER 99

HOUSE BILL NO. 1507
(Mahoney, Urlacher)

FOREIGN CORPORATIONS

AN ACT to amend and reenact sections 10-22-01, 10-27-01, and 57-39.2-23 of the North Dakota Century Code, relating to the right of foreign corporations to transact business in this state and the release of certain confidential information by the tax commissioner; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-22-01 of the North Dakota Century Code is amended and reenacted as follows:

10-22-01. Admission of foreign corporation - Transacting business and obtaining licenses and permits. No foreign corporation may transact business in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state. No foreign corporation may ~~procure a certificate of authority under this chapter~~ to transact in this state any business ~~which that~~ is prohibited a corporation organized under chapters 10-19.1, 10-22, and 10-23. A foreign corporation may not be denied a certificate of authority because the laws of the state or country where the corporation is organized differ from the laws of this state, and nothing in chapters 10-19.1, 10-22, and 10-23 authorizes this state to regulate the organization or the internal affairs of a foreign corporation.

A Without excluding other activities that may not constitute transacting business, a foreign corporation is not considered to be transacting does not transact business in this state, for the purposes of chapters 10-19.1, 10-22, and 10-23, by reason of carrying on because it conducts in this state any one or more of the following activities which do not constitute transacting business in this state, including:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting a settlement of any claim or dispute.
2. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.
3. Maintaining bank accounts.
4. Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.
5. Effecting sales through independent contractors.

6. Soliciting or procuring orders through any means where the orders require acceptance outside this state before becoming binding contracts.
7. Creating evidences of debt, mortgages, or liens on real or personal property.
8. Securing or collecting debts or enforcing any rights in property securing a debt or right.
9. Transacting any business in interstate commerce.
10. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

This section does not affect the taxation of or service of process on foreign corporations.

SECTION 2. AMENDMENT. Section 10-27-01 of the North Dakota Century Code is amended and reenacted as follows:

10-27-01. Admission of foreign corporation - Conducting affairs and obtaining licenses and permits. No foreign corporation shall have the right to may conduct affairs in this state or obtain any license or permit required by this state until it shall have has procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to may conduct in this state any affairs which that a corporation organized under chapters 10-24 through 10-28 is not permitted to conduct. A foreign corporation shall may not be denied a certificate of authority by reason of the fact that because the laws of the state or country under which such where the corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize authorizes this state to regulate the organization or the internal affairs of such a foreign corporation.

Without excluding other activities which that may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting does not conduct affairs in this state, for the purposes of chapters 10-24 through 10-28, by reason of carrying on because it conducts in this state any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
2. Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.
3. Maintaining bank accounts.
4. Creating evidences of debt, mortgages, or liens on real or personal property.
5. Securing or collecting debts due to it or enforcing any rights in property securing the same.

SECTION 3. AMENDMENT. Section 57-39.2-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-23. Information deemed confidential - Certain releases of information authorized. ~~It~~ Except as provided by law, it is unlawful for the commissioner, or any person having an administrative duty under this chapter, to divulge, or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof to be seen or examined by any person except as provided by law. The commissioner may authorize examination of such those returns by other state officers, and at his the discretion of the commissioner furnish to the tax officials of another state other states, the multistate tax commission, and the United States any information contained in the tax returns and reports and related schedules and documents filed pursuant to under this chapter, and in the report of an audit or investigation made with respect thereto, provided only that said if the information be is furnished solely for tax purposes, and the. The multistate tax commission may make said the information available to the tax officials of any other state and the United States for tax purposes.

The commissioner is hereby authorized to may furnish to the workers compensation bureau or to, the job insurance division of job service North Dakota, and the secretary of state upon request of either the respective agency a list or lists of holders of permits issued pursuant to the provisions of under this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of such those permitholders, provided, that any such list shall be used by the bureau to which it is furnished. The agency may use the list or lists only for the purpose of administering the duties of such bureau the agency. The commissioner, or any person having an administrative duty under this chapter, is hereby authorized to may announce that a permit has been revoked.

SECTION 4. EXPIRATION DATE. Section 3 of this Act is effective through June 30, 1993, and after that date is ineffective.

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 100

HOUSE BILL NO. 1430
(Representatives Bodine, Mahoney)
(Senator Krebsbach)

SIMILAR NAME USE

AN ACT to create and enact a new subsection to section 10-28-01 and a new subsection to section 45-10.1-15 of the North Dakota Century Code, relating to fees for filing documents related to nonprofit corporations and to limited partnerships; and to amend and reenact subsection 2 of section 10-24-07, section 10-27-03, subsection 5 of section 45-10.1-02, sections 45-11-01, 47-25-03, and 47-25-04 of the North Dakota Century Code, relating to deceptively similar corporate, limited partnership, fictitious partnership, and trade names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 10-24-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. May not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, ~~existing under any act of this state~~, or the name of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered ~~as permitted by~~ under the laws of this state, or the name of a limited partnership authorized to do business in this state, or a fictitious name registered with the ~~office of the~~ secretary of state under chapter 45-11, or a trade name registered with the secretary of state under chapter 47-25, unless there is filed with the articles the written consent of the holder of the similar name to use the name proposed by the corporation.

SECTION 2. AMENDMENT. Section 10-27-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-03. Corporate name of foreign corporation. ~~No~~ A certificate of authority may not be issued to a foreign corporation ~~unless if~~ the corporate name ~~of such corporation~~:

1. ~~Shall not contain~~ Contains any word or phrase ~~which that~~ indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.
2. ~~Shall not be~~ Is the same as, or deceptively similar to, the name of any domestic Corporation, whether for profit or not for profit, ~~existing under any act of this state~~, or the name of any foreign corporation, whether for profit or not for profit, authorized to

transact business or conduct affairs in this state, or a corporate name reserved or registered ~~as permitted by~~ under the laws of this state, or the name of a limited partnership authorized to do business in this state, or a fictitious name registered with the ~~office of the~~ secretary of state under chapter 45-11, or a trade name registered with the secretary of state under chapter 47-25, unless there is filed with the articles the written consent of the holder of the similar name to use the name proposed by the corporation.

3. ~~Shall be~~ is transliterated into letters of the English alphabet, if it is not in English.

SECTION 3. A new subsection to section 10-28-01 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Filing a consent to use of a deceptively similar name, ten dollars.

SECTION 4. AMENDMENT. Subsection 5 of section 45-10.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. May not be the same as, or deceptively similar to, the name of any corporation or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state, or a trade name or fictitious name certificate on file with the secretary of state, unless there is filed with the certificate of limited partnership a written consent of the holder of the similar name to use the name proposed by the limited partnership.

SECTION 5. A new subsection to section 45-10.1-15 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Filing a consent to use of a deceptively similar name, ten dollars.

SECTION 6. AMENDMENT. Section 45-11-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-11-01. Use of fictitious partnership name. Every Any partnership transacting business in this state under a fictitious name, or under a designation ~~not showing that does not show~~ the names of the persons interested as partners in such business, must file a fictitious name certificate with the secretary of state, together with a filing fee of twenty-five dollars. A limited partnership or a foreign limited partnership transacting business under a name filed ~~pursuant to~~ under chapter 45-10.1, and as ~~otherwise~~ provided in section 45-11-03, is not required to file a fictitious name certificate ~~pursuant to~~ under this section.

The fictitious name:

1. May not contain the word "corporation", "company", "incorporated", or "limited", or an abbreviation of ~~one any of~~ such those words. This subsection does not preclude the word "limited" from being used in conjunction with the word "partnership".

2. May not be the same as, or deceptively similar to, any corporate name, trade name, limited partnership name, foreign limited partnership name, or fictitious name certificate on file with the secretary of state, unless there is filed with the fictitious name certificate a written consent of the holder of the similar name to use the proposed name and a filing fee of ten dollars.

SECTION 7. AMENDMENT. Section 47-25-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-03. Trade name - Nature. No trade name registered may be the same as, or deceptively similar to, any other trade name, domestic or foreign corporation name, or a name of any limited partnership authorized to do business in this state, or a name the right to which is in any manner reserved or registered in the office of the secretary of state, unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name.

SECTION 8. AMENDMENT. Section 47-25-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-04. Trade names - Registration - Fees - Renewal - Notice. For the registration of each a trade name as provided for in under this chapter, ~~there must be paid the registrant shall pay~~ to the secretary of state a fee of twenty-five dollars for an original registration, a fee of twenty-five dollars for an assignment, and a fee of ten dollars for a consent to use of a similar name or any other change in the original registration as provided in under this chapter. Any A registration remains in force for a period of five years from the date of the original registration, and may be renewed within thirty days before its expiration date by reregistering in the same manner as an original registration, if renewed within thirty days before the expiration date. The secretary of state shall notify the registrant by mail at least ninety days before the expiration of ~~such registrations~~ the registration.

Approved March 25, 1991

Filed March 26, 1991

CHAPTER 101

SENATE BILL NO. 2531
(Schoenwald)

VENTURE CAPITAL QUALIFIED ENTITIES

AN ACT to amend and reenact subsection 1 of section 10-30.1-01 and subsection 1 of section 10-30.1-05 of the North Dakota Century Code, relating to the definition of a qualified entity for purposes of investment by a venture capital corporation and investments by an investor in a venture capital corporation which are eligible for an income tax credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 10-30.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Qualified entity" means a business that:
 - a. Is a small business concern as defined under Public Law No. 85-536, § 2[3], 72 Stat. 384; 15 U.S.C. 632, as amended.
 - b. Is a business which through a process employing knowledge and labor adds value to a product for resale.
 - c. Has its principal office in this state and is primarily doing business within this state.

However, after July 1, 1989, a "qualified entity" does not include any business or an affiliate of a business that owns tax-exempt securities. ~~In addition, any venture capital corporation organized before January 1, 1989, may invest not more than five hundred thousand dollars in an entity or an affiliate of an entity that owns tax-exempt securities.~~

SECTION 2. AMENDMENT. Subsection 1 of section 10-30.1-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to sections 10-30.1-06, 10-30.1-07, and 10-30.1-08, a taxpayer is entitled to a credit against any state income tax liability which may be imposed on the taxpayer for a particular taxable year that begins after December 31, 1984, if the taxpayer makes an investment in a venture capital corporation. However, a taxpayer that makes an investment in a venture capital corporation on or after July 1, 1989, is only entitled to a tax credit if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a

business that owns tax-exempt securities. Investments by Myron G. Nelson Fund, Incorporated, in a venture capital corporation do not qualify for the tax credit provided by this chapter. Tax credits under this chapter are not subject to payment of interest as provided in section 57-38-35.1. For a venture capital corporation that was organized before January 1, 1989, which invested in an entity or affiliate of an entity that owned tax-exempt securities, investments made in that venture capital corporation after February 28, 1991, do not qualify for the tax credit provided by this chapter.

Approved April 3, 1991
Filed April 4, 1991