

BANKS AND BANKING

CHAPTER 65

HOUSE BILL NO. 1153

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial
Institutions)

CREDIT UNION SUPERVISION

AN ACT to amend and reenact section 6-01-01 of the North Dakota Century Code, relating to department of banking and financial institutions supervision of state-chartered credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-01 of the North Dakota Century Code is amended and reenacted as follows:

6-01-01. Management and control - State department of banking and financial institutions. The state department of banking and financial institutions is under the supervision of the state banking board, state credit union board, and a chief officer designated as the commissioner of banking and financial institutions, and known as the state examiner. Whenever the term state examiner is used in this code, it means the commissioner of banking and financial institutions. The state department of banking and financial institutions has charge of the execution of all laws relating to state banks, trust companies, credit unions, building and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, and other financial corporations, exclusive of the Bank of North Dakota and ~~all credit unions, organized or doing business under the laws of this state. The same power granted to the state department of banking and financial institutions with reference to the corporations named in this section is granted to the state credit union board with reference to credit unions.~~

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 66

HOUSE BILL NO. 1175

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial
Institutions)

BANKING AT SEPARATE FACILITIES

AN ACT to amend and reenact sections 6-01-02, 6-03-13.1, 6-03-17, and 6-03-19 of the North Dakota Century Code, relating to the definition of paying and receiving activity conducted at separate facilities and paying and receiving stations, and to publishing a notice to discontinue a paying and receiving station.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-02 of the North Dakota Century Code is amended and reenacted as follows:

¹ **6-01-02. Definitions.** As used in this title, unless the context or subject matter otherwise requires:

1. "Association", "banking association", or "state banking association" means any corporation organized under the laws of this state covering state banking associations, and all corporations, partnerships, firms, or associations whose business in whole or in part consists of the taking of money on deposit, except national banks, trust companies, and the Bank of North Dakota.
2. "Bank" means any national bank, national banking association, corporation, state bank, state banking association, savings bank, or trust company, whether organized under the laws of this state or of the United States, engaged in the business of banking.
3. "Banking" means the business of receiving deposits, making loans, discounting commercial paper, issuing drafts, ~~travelers~~ checks, and similar instruments, handling and making collections, cashing checks and drafts, and buying and selling exchange.
4. "Banking department" means the state department of banking and financial institutions.
5. "Banking institution" means any bank, trust company, or bank and trust company organized under the laws of this state.
6. "Commissioner" means the commissioner of banking and financial institutions.

¹ NOTE: Section 6-01-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54, and by section 1 of Senate Bill No. 2227, chapter 67.

- 6.1. "Corporate central credit union" means a credit union operated for the primary purpose of serving corporate accounts. A credit union is deemed to be a corporate central credit union when its total dollar amount of outstanding corporate loans plus corporate share and deposit holdings is equal to or greater than seventy-five percent of its outstanding loans plus share and deposit holdings.
7. "Credit union" means a cooperative, nonprofit association organized for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to improve their economic and social condition.
- 7.1. "Financial institution" means any bank, industrial loan company, or savings and loan association organized under the laws of this state or of the United States.
8. "Mutual investment corporation" or "mutual savings corporation" means a corporation organized to engage in the investment or savings business, but having no capital stock or a nominal capital stock.
- 8.1. "National bank" or "national banking association" means an institution chartered by the comptroller of the currency under the National Bank Act [12 U.S.C. 24].
9. ~~"Paying and receiving station" means a place of business maintained by a banking institution separate from its main banking house within the county of its domicile or in an adjoining county for the purpose of receiving and paying out deposits, issuing drafts, traveler's checks, and similar instruments, making loans, handling and making collections, and cashing checks and drafts.~~
10. "Trust company" means any corporation formed for the purpose of transacting business as an annuity, safe deposit, surety, or trust company.

SECTION 2. AMENDMENT. Section 6-03-13.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-13.1. Separate facilities authorized. Upon compliance with section 6-03-13.3, any bank organized under chapter 6-02 and under the supervision of the state banking board, and any national bank doing business in this state, may maintain and operate separate and apart from its banking house facilities for drive-in and walkup service, in addition to such service at its main banking house, and at its paying and receiving stations, if any. A separate facility must be within the corporate city limits of the main banking house or within three miles [4.83 kilometers] of such city but may not be within the corporate limits of another city. The services rendered Any activity incidental to the business of banking may be transacted at a separate facility are limited to including receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, making loans, renting safe deposit boxes, exercising fiduciary powers if authorized by the board, and receiving payments payable at the bank.

SECTION 3. AMENDMENT. Section 6-03-17 of the North Dakota Century Code is amended and reenacted as follows:

6-03-17. Transaction of business at and regulation of station. ~~No banking~~ Any activity incidental to the business of banking may be transacted in any paying and receiving station ~~other than~~ including receiving and paying out deposits, issuing drafts, travelers' checks, and similar instruments, making loans, handling and making collections, renting safe deposit boxes, exercising fiduciary powers if authorized by the board, and cashing checks and drafts. The state banking board may prescribe rules for the operation of each station.

SECTION 4. AMENDMENT. Section 6-03-19 of the North Dakota Century Code is amended and reenacted as follows:

6-03-19. Cancellation of station permit on application to board. Whenever any banking institution which has been granted a permit to establish and maintain a paying and receiving station deems it advisable to discontinue the maintenance of such station, it may make written application to the state banking board for the cancellation of its permit, and thereupon the board may enter its order canceling such permit within such time as the board may specify therein. The banking institution shall publish notice of the application as required by the board by rule.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 67

SENATE BILL NO. 2227
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial
Institutions)

BANK FIDUCIARY POWERS

AN ACT to create and enact a new chapter to title 6 and a new subsection to section 6-03-02 of the North Dakota Century Code, relating to policies, self-serving practices, and administration of fiduciary powers by banking institutions; and to amend and reenact subsection 2 of section 6-01-02 and section 6-05-01 of the North Dakota Century Code, relating to removing trust companies from the definition of a bank and to banks exercising fiduciary powers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ SECTION 1. AMENDMENT. Subsection 2 of section 6-01-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Bank" means any national bank, national banking association, corporation, state bank, state banking association, or savings bank, or trust company, whether organized under the laws of this state or of the United States, engaged in the business of banking.

SECTION 2. A new subsection to section 6-03-02 of the North Dakota Century Code is created and enacted as follows:

To exercise fiduciary powers upon application as provided under section 6-05-01 as the board may prescribe by rule.

SECTION 3. AMENDMENT. Section 6-05-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-05-01. Who may form - Corporation has perpetual existence. Any number of persons, not less than nine, at least three of whom must be residents of this state, may associate themselves and form a corporation for the purpose of transacting business as an annuity, safe deposit, and trust company. Its existence shall be perpetual.

At the time and place stated, and through any sources of information at its command, the board ~~diligently~~ shall examine and consider all relevant factors including whether the place where such company is proposed to be located is in need of a further annuity, safe deposit, and trust company, whether the proposed institution is adapted to the filling of such need, and whether the proposed incorporators are possessed of such character, integrity, reputation, and financial

¹ NOTE: Section 6-01-02 was also amended by section 1 of House Bill No. 1175, chapter 66, and by section 106 of Senate Bill No. 2223, chapter 54.

standing as shown by a detailed financial statement to be furnished by them, that their connection with the company will be beneficial to the public welfare of the community in which such company is proposed to be established. The board shall hear any reasons advanced by the applicants why they should be permitted to organize the proposed institution, and any reasons advanced by any person why such institution should not be permitted to be organized. At the termination of such hearing, the board shall make a brief statement in writing of its conclusions, and if it finds that the proposed institution should not be permitted to organize, it shall state briefly the reasons why. A copy of such conclusions either shall be endorsed upon or attached to the organization certificate, together with the refusal or grant of permission to the proposed incorporators to present the said organization certificate to the secretary of state. A determination in favor of such organization must be joined in by all the members of the board.

Any banking association organized under chapter 6-02 may apply to the ~~state banking board for a hearing as provided for in this section and an order authorizing the applicant to transact business as a trust company exercise fiduciary powers.~~ If the determination of the board is in favor of the applicant the board shall make its order authorizing the applicant to engage in the business of a trust company upon its showing full compliance with sections 6-05-03, 6-05-04, and 6-05-05 except the capital stock of the banking association shall not be required to be divided in shares of one hundred dollars each as provided by section 6-05-03. Sections 6-05-06 and 6-05-07 are not applicable to banking associations granted authority to engage in the business of a trust company by the ~~state banking board.~~ Thereafter such banking association ~~shall~~ must be subject to the jurisdiction of the ~~state banking board~~ as to its trust company operations the same as trust companies organized under chapter 6-05.

Any corporation organized and authorized to transact the business of fidelity insurance and corporate suretyship prior to July 1, 1983, pursuant to the former sections 6-05-08 and 6-05-19 through 6-05-24 and sections 6-05-30 through 6-05-33 may continue to operate under the provisions of those sections as they existed on June 30, 1983.

SECTION 4. A new chapter to title 6 of the North Dakota Century Code is created and enacted as follows:

Policies and procedures on brokerage placement practices. Each banking institution exercising investment discretion with respect to an account must adopt and follow written policies and procedures intended to ensure that its brokerage placement practices comply with all applicable laws and regulations. Among other relevant matters, the written policies and procedures should address where appropriate:

1. The selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to such persons.
2. The acquisition of any services or products, including research services, in return for brokerage commissions.
3. The allocation of research or other services among accounts, including those which did not generate commissions to pay for the research or other services.

4. The need, in appropriate instances, to make disclosures concerning the policies and procedures to prospective and existing customers.

Administration of fiduciary powers.

1. The board of directors is responsible for the proper exercise of fiduciary powers by the banking institution. All pertinent matters, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees used by the banking institution in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of any of the banking institution's fiduciary powers as it may consider proper to assign to its directors, officers, employees, or committees as it may designate.
2. No fiduciary account may be accepted without the prior approval of the board of directors, or of the directors, officers, or committees to whom the board may have designated the performance of that responsibility. A written record must be made of all acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the banking institution has investment responsibilities, a prompt review of the assets must be made. The board must ensure that at least once during every calendar year, and within fifteen months of the last review, all the assets held in or for each fiduciary account where the banking institution has investment responsibilities are reviewed to determine the advisability of retaining or disposing of the trust assets.
3. All officers and employees taking part in the operating of trust activities must be adequately bonded.
4. Every banking institution exercising fiduciary powers must designate, employ, or retain legal counsel who is readily available to pass upon fiduciary matters and to advise the banking institution as to its trust activities.
5. Every banking institution exercising fiduciary powers must adopt written policies and procedures to ensure that the federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. The policies and procedures, in particular, must ensure the banking institution may not use inside information in connection with any decision or recommendation to purchase or sell any security.

Books and accounts.

1. Every banking institution exercising fiduciary powers must keep its fiduciary records separate and distinct from other records of the banking institution. All fiduciary records necessary for reporting purposes must be maintained for such time as to enable the banking institution to furnish such information or reports with the commissioner. The fiduciary records must contain full information relative to each account.

2. Every banking institution must keep an adequate record of all pending litigation to which it is a party in concerning its exercise of fiduciary powers.
3. A banking institution must retain the records required for a period of three years from the later of the termination of the fiduciary account relationship to which the records relate or of litigation relating to the account.

Audit of trust activities. A committee of directors, exclusive of any active officers of the bank, must at least once during each calendar year and within fifteen months of the last audit, make suitable audits of the trust activities or cause suitable audits to be made by auditors responsible to the board of directors, and must ascertain whether the trust activities have been administered in accordance with law and sound fiduciary principles. The board of directors may instead of the periodic audit, adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with any action taken, must be noted in the minutes of the board of directors.

Uninvested or undistributed funds. Uninvested or undistributed funds held by a banking institution in a fiduciary capacity must not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. Each banking institution exercising fiduciary powers must adopt and follow written policies and procedures intended to ensure that the maximum rate of return available for trust-quality, short-term investments is obtained consistent with the requirements of the governing instrument or law. The policies and procedures must take into consideration all relevant factors, including the anticipated return that could be obtained while the cash remains uninvested or undistributed, the cost of investing the funds, and the anticipated need for the funds.

Self-dealing.

1. Funds held by a banking institution as fiduciary may not be invested in stock or obligations of, or property acquired from, the banking institution or its directors, officers, or employees, or individuals with whom there exists such a connection, or organizations in which there exists such an interest, as affects the exercise of the best judgment of the banking institution in acquiring the property, or in stock or obligations of, or property acquired from, affiliates of the banking institution or their directors, officers, or employees, unless authorized by the instrument creating the relationship or as authorized by law.
2. Property held by a banking institution as fiduciary may not be sold or transferred, by loan or otherwise, to the banking institution or its directors, officers, or employees, or to individuals with whom there exists such a connection, or organizations in which there exists such an interest, as affects the exercise of the best judgment of the banking institution in selling or transferring the property, or to affiliates of the banking institution or their directors, officers, or employees except:
 - a. As authorized by the instrument creating the relationship or as authorized by law;
 - b. When the banking institution has been advised in writing by its counsel or auditor that it has incurred as a fiduciary a contingent or

potential liability and desires to relieve itself of that liability, a sale or transfer may be made with the approval of the board of directors, provided that the banking institution, upon consummation of the sale or transfer, makes reimbursement in cash at no loss to the account;

- c. To purchase at market value, defaulted investment funds; or
 - d. Where ordered by the board.
3. Funds held by a banking institution as fiduciary may not be invested by the purchase of stock or obligations of the banking institution or its affiliates unless authorized by the instrument or as authorized by law. If the retention of stock or obligations of the banking institution or its affiliates is authorized by the instrument creating the relationship, by court order, or by law it may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired.
 4. A banking institution may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and if the transaction is not prohibited by the terms of any governing instrument.
 5. A banking institution may make a loan to an account from the funds belonging to another account when the making of a loan to a designated account is authorized by the instrument creating the account from which the loan is made.
 6. A banking institution may make a loan to an account and may take as security for the loan, assets of the account provided the transaction is fair to the account.

Custody of investments.

1. The investment of each account must be kept separate from the assets of the banking institution, and must be placed in the joint custody or control of not less than two of the officers or employees of the banking institution designated for that purpose by the board of directors or by one or more officers designated by the board. The banking institution may permit the investments of a fiduciary account to be deposited elsewhere.
2. Except for commingled investments, the investments of each account must be kept separate from those of all other accounts, or adequately identified as the property of the relevant account.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 68

HOUSE BILL NO. 1171
(Industry, Business and Labor Committee)
(At the request of the Governor)

BANKING COMMISSIONER CONFIRMATION

AN ACT to amend and reenact section 6-01-08 of the North Dakota Century Code, relating to senate confirmation for the commissioner of the department of banking and financial institutions for an appointment made when the senate is not in session.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-08 of the North Dakota Century Code is amended and reenacted as follows:

6-01-08. Appointment of commissioner - Qualifications. The commissioner must be appointed by the governor and confirmed by the senate, and shall hold ~~his~~ office for a term of four years and until ~~his~~ a successor has been appointed, confirmed by the senate, and has qualified, unless ~~he~~ the commissioner is removed sooner as herein provided. ~~His~~ If the senate is not in session, the governor may make an interim appointment, and the interim appointee shall hold office until the senate confirms or rejects the appointment. ~~The commissioner's term of office commences on the first day of July in each year next following a national presidential election.~~ The commissioner must be a skilled accountant, and may not be an incumbent of any other public office in the state, or in any county, municipality, or public institution thereof, and may not own, hold, or control any stocks, capital, or bonds, or hold the office of trustee, assignee, officer, agent, or employee of any financial institution under his jurisdiction, or of any corporation engaged in the business of guarantying or ensuring the fidelity or faithful performance of the duties or the solvency of public officers or of public depositaries. The governor may remove from office any commissioner who violates or fails to discharge faithfully the duties of ~~his~~ office or who becomes disqualified under the provisions of this section.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 69

HOUSE BILL NO. 1151
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial
Institutions)

UNANNOUNCED BANK EXAMINATIONS

AN ACT to amend and reenact section 6-01-09 of the North Dakota Century Code, relating to unannounced examinations of banks and authority to examine bank holding companies and subsidiaries of banks under the commissioner's supervision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-09 of the North Dakota Century Code is amended and reenacted as follows:

6-01-09. Supervision and examination by commissioner of banking and financial institutions. The commissioner shall exercise a constant supervision over the business affairs of all financial corporations and institutions placed within the jurisdiction of the board. Either the commissioner or one or more examiners shall visit each of the state banking associations and other corporations and associations placed under the commissioner's jurisdiction at least once each thirty months to examine their affairs and ascertain their financial condition. ~~The visits must be made without previous notice to the corporation or institution to be examined.~~ The commissioner shall inspect and verify the assets and liabilities of the institution to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books. The commissioner shall examine the validity of mortgages held by savings institutions, and shall see that all of the mortgages are properly recorded. The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether such methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing such corporations and institutions, and for such purpose the commissioner may examine the officers, agents, and employees of such corporations and institutions and all persons doing business therewith. The commissioner may examine, or cause to be examined, or review the books and records of any subsidiary corporation of a bank under the commissioner's supervision and may require the bank to provide information on the holding company that owns the bank. The commissioner shall report the condition of such corporations and institutions, together with the commissioner's recommendations or suggestions in connection therewith, to the state banking board, and the board may take such action as, in its discretion, the exigencies may demand.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 70

HOUSE BILL NO. 1177
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial
Institutions)

REAL ESTATE LOANS AND APPRAISALS

AN ACT to amend and reenact sections 6-03-05 and 6-03-08 of the North Dakota Century Code, relating to real estate loans, limitations, and appraisals of real estate loans and other real estate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-05. Loans on real estate - Regulation - Limitation. ~~No association may own or carry among its assets at any one time loans dependent primarily upon real estate security in an aggregate sum in excess of the amount of the capital stock of such association paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of sixty six and two thirds percent of the amount of its nontransaction deposits, whichever is the greater.~~ Before any such real estate loan in excess of one hundred thousand dollars is made an appraisal must be conducted by a licensed or certified appraiser ~~if as required by federal law the Federal Financial Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.]~~ or, if not so required, by an individual or appraisal committee who is independent of the transaction. The selected appraiser or appraisal committee shall appraise both the land and the improvements thereon, if any, and shall report to the board of directors or its loan committee, in writing, the results of the appraisal together with any other facts relating to such proposed loan and proposed security as will best enable the board or its loan committee to determine if the loan shall be granted. Such written report must be made a permanent record in the bank's files and must be made available to the commissioner. No unamortized loan secured by realty may be made for a period exceeding five years ~~in an amount exceeding and may not exceed~~ fifty percent of the appraised value of the real estate offered as security.

Any ~~such~~ amortized real estate loan may be made in an amount not to exceed ninety percent of the appraised value of the real estate offered as security unless the amount above this limitation is government guaranteed or insured by a private mortgage loan within a period of not more than thirty years.

SECTION 2. AMENDMENT. Section 6-03-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-08. Powers as to other real estate. Every state banking association has the power to purchase, hold, and convey other real estate as herein provided, and not otherwise:

1. Such as is mortgaged to it in good faith by way of security for loans, or for debts previously contracted.
2. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.
3. Such as it purchases at sales under judgments, decrees, or mortgages held by the association, or purchases to secure debts due to it.

Upon transfer to other real estate owned, a current appraisal must be conducted by ~~a licensed or certified appraiser if required by federal law, or if not so required,~~ by an individual who is independent of the transaction.

Approved March 22, 1993

Filed March 22, 1993

CHAPTER 71

HOUSE BILL NO. 1173
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial
Institutions)

BANK INVESTMENTS IN FIXED ASSETS

AN ACT to amend and reenact section 6-03-07 of the North Dakota Century Code, relating to a banking association investment in fixed assets to include equipment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-07 of the North Dakota Century Code is amended and reenacted as follows:

6-03-07. Investment in banking facility, furniture, and fixtures - Limitation. No state banking association may invest more than one hundred percent of the amount of its unimpaired capital stock and surplus in a banking facility, furniture, ~~and fixtures,~~ and equipment without the approval of the state banking board.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 72

SENATE BILL NO. 2449
(Senators Wogsland, Lips)

INVESTMENTS

AN ACT to create and enact a new subsection to section 6-03-47.2 of the North Dakota Century Code, relating to investments by banks; to amend and reenact sections 6-03-38, 10-30.2-11, 10-30.2-12, 10-30.2-13, 10-30.2-13.1, 10-30.2-13.2, subsection 4.2 of section 57-38-01, subdivisions s of subsection 1 of section 57-38-01.2, and subsections 3 and 4 of section 57-38-30.3 of the North Dakota Century Code, relating to investments by banks, tax credits for investments in small business investment companies, the definition of a qualified investment fund, an exemption from income tax liability for distribution of a qualified investment fund, an exclusion from computation of income tax liability of distributions from a qualified investment fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-38 of the North Dakota Century Code is amended and reenacted as follows:

¹ **6-03-38. Assets not to be used in other business - Exceptions - Penalty.** No bank, except as otherwise authorized in this title, may employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may it employ or invest any of its assets or funds in the stock of any corporation, bank, partnership, firm, or association, ~~provided, however, that.~~ However, a state bank may, to the extent that banks subject to the laws of the federal government are permitted to do so, purchase voting common stock of Myron G. Nelson Fund, Incorporated, pursuant to section 10-30.2-04, or purchase shares of stocks ~~in,~~ or any other type of securities offered by small business investment companies organized and licensed under Public Law No. 85-699, ~~85th Congress,~~ known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et. seq.], and the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, or chapter 10-30, but in no event may any state bank hold ~~shares in securities of~~ small business investment companies in an amount aggregating more than two percent of the bank's capital and surplus, nor in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market, and to invest in stocks of subsidiary corporations, when the activities of such corporations are incidental to banking activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules ~~and regulations~~ for the subsidiary corporations, and to examine

¹ NOTE: Section 6-03-38 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

its records and affairs, as it has for other financial corporations under ~~the provisions of section 6-01-04.~~ ~~In the event that~~ if the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition ~~to the above,~~ the state banking board has power to authorize state banks to engage in any banking activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this code. Any officer, director, or employee of any bank who invests or uses its funds contrary to ~~the provisions of~~ this title is guilty of a class A misdemeanor.

SECTION 2. A new subsection to section 6-03-47.2 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Investments, in either equity or debt instruments or securities, offered by small business investment companies organized and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], and the Small Business Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto.

SECTION 3. AMENDMENT. Section 10-30.2-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

² **10-30.2-11. Tax credits for investment by banks, savings and loan associations, trust companies, and insurance companies.** A bank, savings and loan association, trust company, or insurance company that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, or investments in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, is entitled, subject to section 10-30.2-13, to a credit in an amount equal to twenty-five percent of the total amount invested against the tax liability imposed against the taxpayer pursuant to sections 26.1-03-17, 57-35-02, 57-35.1-02, and 57-35.2-02, if applicable. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years.

SECTION 4. AMENDMENT. Section 10-30.2-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

² NOTE: Section 10-30.2-11 was also amended by section 5 of Senate Bill No. 2222, chapter 92.

3 10-30.2-12. Income tax credits for investment. A taxpayer that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, or in investments in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, is entitled, subject to section 10-30.2-13, to a credit in the amount equal to twenty-five percent of the total amount invested against any state income tax liability imposed against the taxpayer. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years. No taxpayer claiming a credit under this section is eligible to claim a credit for the same investment under chapter 10-30.1.

SECTION 5. AMENDMENT. Section 10-30.2-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-13. Limitation on tax credits. The state tax commissioner shall allow tax credits pursuant to sections 10-30.2-11 and 10-30.2-12 which are attributable to not more than the first ten million dollars of total investment in the corporation or in an affiliate of the corporation, or in investments in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto. However, the total amount of investments for which tax credits are allowed for all taxpayers under this chapter for the period beginning January 1, 1989, and ending December 31, 1990, is one million two hundred fifty thousand dollars. If investments reported to the state tax commissioner pursuant to section 10-30.2-13.1 exceed the ten million dollar limitation imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in either the corporation or an affiliate of the corporation or a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, as determined from the forms provided for in section 10-30.2-13.1.

SECTION 6. AMENDMENT. Section 10-30.2-13.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-13.1. Investment reporting forms. Within thirty days of the date on which an investment is purchased, or within sixty days from July 1, 1989, the

³ NOTE: Section 10-30.2-12 was also amended by section 6 of Senate Bill No. 2222, chapter 92.

corporation ~~or~~, an affiliate of the corporation, or a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, must file with the state tax commissioner and provide to the investor the completed form prescribed by the state tax commissioner stating with respect to the investment in the corporation or an affiliate of the corporation the following:

1. The name, address, and identification number of the taxpayer who purchased the investment.
2. The dollar amount paid by the taxpayer for the investment.
3. The date on which the corporation or an affiliate of the corporation received full consideration for the investment.

SECTION 7. AMENDMENT. Section 10-30.2-13.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-13.2. Tax credit procedure. To receive the tax credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual tax return in the manner prescribed by the state tax commissioner and file with that tax return a copy of the form issued by the corporation ~~or~~, an affiliate of the corporation, or a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, pursuant to section 10-30.2-13.1.

SECTION 8. AMENDMENT. Subsection 4.2 of section 57-38-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 4.2. ~~"Qualified investment fund" means any investment company or trust registered with the securities and exchange commission, or any segregated portfolio of assets of such a company or trust regulated investment company as defined under the Internal Revenue Code, which for the calendar year in which the distribution is paid:~~
 - a. ~~Has investments limited to in interest-bearing obligations issued by or on behalf of this state, any political subdivision of this state, or any instrumentality of the United States government; and~~
 - b. ~~Has, within thirty days after the close of the calendar year, provided to shareholders and provided the tax commissioner with a detailed schedule of allocation of its assets and its sources of income showing that it is a qualified investment fund; and the assets contained in its investment portfolio and a schedule of the income attributable to each asset in its investment portfolio for the calendar year.~~
 - e. ~~Has, within thirty days after the close of the calendar year, provided to each shareholder a statement of the amount of distributions earned by the shareholder in the calendar year which are attributable to income from obligations issued by or on behalf of this state, any~~

political subdivision of this state, or any instrumentality of the United States government.

SECTION 9. AMENDMENT. Subdivision s of subsection 1 of section 57-38-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- s. Reduced by the amount portion of any a distribution from a qualified investment fund described in subdivision e of subsection 4.2 of section 57-38-01 received from a qualified investment fund that is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions; provided the amount of the distribution excluded under this subdivision is included in federal taxable income.

SECTION 10. AMENDMENT. Subsections 3 and 4 of section 57-38-30.3 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. The adjusted federal income tax liability for a resident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income taxable to this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. Interest income from United States obligations and other income not taxable to this state because of federal statutes, United States, or state constitutional provisions and distributions described in subdivision e of subsection 4.2 of section 57-38-01 from a qualified investment fund to the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator:
 - a. Interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - b. The portion of a distribution from a qualified investment fund described in subsection 4.2 of section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
4. The adjusted federal income tax liability of a nonresident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income derived from sources within this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. Interest income from United States obligations and other income not taxable to this state because of federal statutes, United States, or state constitutional provisions and distributions described in subdivision e of subsection 4.2 of section 57-38-01 from a qualified investment fund

To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator:

- a. Interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
- b. The portion of a distribution from a qualified investment fund described in subsection 4.2 of section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

SECTION 11. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 73

HOUSE BILL NO. 1154
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial
Institutions)

BANK BORROWING REPORT

AN ACT to amend and reenact section 6-03-53 of the North Dakota Century Code, relating to a banking association's report of borrowings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-53 of the North Dakota Century Code is amended and reenacted as follows:

6-03-53. Borrowing and rediscounting - Report required. Whenever a state banking association borrows money or rediscounts with recourse such association shall immediately make a full written report of the transaction to the commissioner upon the commissioner's request, which report must include a full description of all collateral security given or to be given by such association for the credit obtained. ~~Whenever it appears to the commissioner that any association is borrowing money or rediscounting its paper with recourse for the purpose of making or carrying speculative loans or investments or that the association is in an extended or unsound condition, the commissioner after reasonable notice and an opportunity for a hearing may by written order to the association require it to discharge its liability for borrowed money or on rediscounted paper either in full or to such extent as the order may specify. If the association so notified fails to comply with such order within thirty days of the receipt thereof, it shall thereafter cease to make any new loans or investments until such order has been complied with, and any director, officer, or employee of the association who authorizes or in any way participates in the making of any new loan or investment in violation of the provisions of this section is personally liable to the association for all losses sustained by it in connection with any such new loan or investment.~~

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 74

SENATE BILL NO. 2209
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial
Institutions)

CREDIT UNION ACCOUNT INSURANCE

AN ACT to amend and reenact subsection 4 of section 6-06-02 of the North Dakota Century Code, relating to maintaining national credit union administration insurance of accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 6-06-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The applicants shall apply for and, secure, and maintain national credit union administration insurance of accounts.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 75

HOUSE BILL NO. 1211
(Finance and Taxation Committee)
(At the request of the Office of Management and Budget)

SECRETARY OF STATE FEES

AN ACT to amend and reenact subsection 6 of section 6-06-02, sections 6-06-04, 6-06-36, 6-08-26, subsections 3 and 4 of section 10-15-36, sections 10-15-54, 10-23-02, 10-23-04, 10-23-05, 10-23-06, 10-23-07, 10-28-01, 10-28-02, 43-07-07, 44-06-02, 45-10.1-15, 45-11-01, subsection 1 of section 54-05.1-03, and section 54-09-04 of the North Dakota Century Code, relating to fees collected by the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 6-06-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. The commissioner shall notify the applicants and the state credit union board of his decision, and if it is favorable, the board shall instruct the secretary of state to issue a charter, which must be attached to the certificate of organization and returned, together with the bylaws, to the applicants upon payment of a filing fee of ~~five~~ thirty dollars to the secretary of state.

SECTION 2. AMENDMENT. Section 6-06-04 of the North Dakota Century Code is amended and reenacted as follows:

6-06-04. Amendment of certificate or bylaws - Approval by state credit union board. The certificate of organization or bylaws of a credit union may be amended by the board of directors or the membership of the credit union as specified in the bylaws. If the bylaws provide for amendments by the board of directors, such amendments require an affirmative vote of two-thirds of the authorized number of members of the board of directors of the credit union at any duly held meeting of the board, if the members of the board have been given prior written notice of said meeting and the notice contains a copy of the proposed amendment or amendments. If the bylaws provide for amendments by the membership of the credit union, such amendments require an affirmative vote of two-thirds of the members present and voting at a duly called regular or special meeting of the membership, providing the members have been given prior written notice of said meeting and the notice contains a copy or summary of the proposed amendment or amendments. No amendment of the bylaws or of the certificate of organization becomes effective, until approved in writing by the state credit union board. Amendments to the certificate of organization together with a filing fee of twenty dollars must be filed with the secretary of state within thirty days after the amendments have been approved by the state credit union board.

SECTION 3. AMENDMENT. Section 6-06-36 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-06-36. Merger. Any credit union chartered under this chapter or under act of Congress may merge under rules and regulations established by the state credit union board. A federal credit union proposing to merge into a state-chartered credit union shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund. The secretary of state shall charge a fee of fifty dollars for all services in connection with a merger authorized by the state credit union board, including filing of a certificate of organization or bylaws, and issuing or canceling charters.

SECTION 4. AMENDMENT. Section 6-08-26 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-26. Requirements of foreign bank or trust company serving as fiduciary in state. Before qualifying or serving in this state in any fiduciary capacity as defined in section 6-08-25, such bank or trust company shall file in the office of the secretary of state a filing fee of ~~twenty-five~~ fifty dollars, a copy of its charter certified by its secretary, and a power of attorney designating the said secretary of state or his successor in office as the person upon whom all notices and processes issued by any court of this state may be served in any action or proceeding relating to any trust, estate, or matter within this state in respect of which such bank or trust company is acting in any fiduciary capacity with like effect as personal service on such bank or trust company. Such power of attorney is irrevocable so long as any such liability remains outstanding against such bank or trust company in this state. Upon receipt of such notice or process with a filing fee of twenty-five dollars, it is the duty of the said secretary of state forthwith to forward the same by registered or certified mail to such bank or trust company at the address stated in the said power of attorney, and such bank or trust company shall comply with the provisions of chapter 6-05, insofar as the provisions of said chapter pertain to banks or trust companies.

¹ SECTION 5. AMENDMENT. Subsections 3 and 4 of section 10-15-36 of the North Dakota Century Code are amended and reenacted as follows:

3. The annual report shall be delivered to the secretary of state between January first and March thirty-first of each year following incorporation. A fee of ~~ten~~ twenty dollars shall be paid to the secretary of state for filing the report. If the report does not conform to requirements, it shall be returned to the cooperative for necessary corrections. The penalties for failure to file such report shall not apply if it is corrected and returned within thirty days after receipt thereof. The secretary of state may extend the filing date for the annual report of any cooperative whenever in his discretion he the secretary of state considers such an extension of time advisable and proper.

¹ NOTE: Section 10-15-36 was also amended by section 3 of House Bill No. 1508, chapter 88.

4. Any report filed after March thirty-first may be filed only upon payment to the secretary of state of the following fees:
 - a. If filed prior to May first, ~~fifteen~~ twenty-five dollars.
 - b. If filed thereafter but not later than the following December first, ~~twenty-five~~ thirty-five dollars.

SECTION 6. AMENDMENT. Section 10-15-54 of the North Dakota Century Code is amended and reenacted as follows:

10-15-54. Fees. No document may be filed or recorded nor any certificate issued until all fees therefor have been paid. Any fee or penalty due under this chapter may be recovered in a suit brought by the attorney general in the name of the state. The secretary of state shall charge and collect from any association for:

1. Filing articles of association and issuing a certificate of association, ~~twenty-five~~ thirty dollars.
2. Filing articles of amendment and issuing a certificate of amendment, ~~twenty-five~~ twenty dollars.
3. Filing restated articles of association, ~~twenty-five~~ thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, ~~twenty-five~~ fifty dollars.
5. Filing articles or decree of dissolution, ~~seven~~ twenty dollars and ~~fifty~~ cents.
6. Receiving service of any process, notice, or demand, ~~ten~~ twenty-five dollars.
7. Filing an application of a foreign cooperative for a certificate of authority to do business in this state and issuing a certificate therefor, ~~thirty-seven~~ forty dollars and ~~fifty~~ cents.
8. Filing any other document or statement, or issuing any other certificate, ~~ten~~ twenty dollars.

SECTION 7. AMENDMENT. Section 10-23-02 of the North Dakota Century Code is amended and reenacted as follows:

10-23-02. Filing of annual report of domestic corporation - Penalty for late filing. The annual report for the preceding year of a domestic corporation shall be delivered to the secretary of state on or before the first day of August of each year, except that the first annual report of a domestic corporation shall be filed on or before the first day of August of the year next succeeding the calendar year in which its certificate of incorporation was issued by the secretary of state. Proof to the satisfaction of the secretary of state that on or before the first day of August, such report was postmarked by the United States postal service, or other carrier service, in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of section 10-23-01, the report shall be filed. If the report does not so conform, it shall be returned to the

corporation for any necessary corrections, in which event the penalties hereinafter prescribed for the failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of section 10-23-01 and returned to the secretary of state on or before thirty days after such corporation received the annual report for corrections. The secretary of state may extend the filing date for the annual report of any corporation, if a written application for an extension is received before the filing deadline.

Each domestic corporation that fails or refuses to file its annual report for any year within the time prescribed by this section shall be subject to a penalty of twenty dollars if filed within ninety days after the due date, or ~~thirty~~ fifty ~~sixty~~ dollars if filed thereafter. A corporation which fails to file its annual report along with those statutory filing and penalty fees within one year after the date required by this section ceases to exist and is considered involuntarily dissolved by operation of law.

SECTION 8. AMENDMENT. Section 10-23-04 of the North Dakota Century Code is amended and reenacted as follows:

10-23-04. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, thirty dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing restated articles of incorporation, thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, ~~thirty~~ fifty dollars.
5. Filing an application to reserve a corporate name, ten dollars.
6. Filing a notice of transfer of a reserved corporate name, ten dollars.
7. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
8. Filing statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.
9. Filing a registered agent's consent to serve in such capacity, ten dollars.
10. Filing a resignation as registered agent, ten dollars.
11. Filing a statement of the establishment of a series of shares, twenty dollars.
12. Filing a statement of cancellation of shares, twenty dollars.
13. Filing a statement of reduction of stated capital, twenty dollars.
14. Filing a statement of intent to dissolve, ten dollars.

15. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
16. Filing articles of dissolution, twenty dollars.
17. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, forty dollars.
18. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.
19. Filing a certificate of fact stating a merger of a foreign corporation holding a certificate of authority to transact business in this state, ~~twenty~~ fifty dollars.
20. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
21. Filing annual report of domestic corporation, ~~twenty~~ twenty-five dollars; of foreign corporation, ~~twenty~~ twenty-five dollars; any other statement or report of either, ~~ten~~ twenty dollars.
22. Filing any process, notice, or demand for service, ~~twenty~~ twenty-five dollars.
23. Filing articles of abandonment of merger, ~~thirty~~ fifty dollars.
24. Filing a consent to use of name, ten dollars.

SECTION 9. AMENDMENT. Section 10-23-05 of the North Dakota Century Code is amended and reenacted as follows:

10-23-05. Miscellaneous charges. The secretary of state shall charge and collect for furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages, or fraction thereof, and ~~ten~~ fifteen dollars for the certificate and affixing the seal ~~thereto~~ to the certificate.

SECTION 10. AMENDMENT. Section 10-23-06 of the North Dakota Century Code is amended and reenacted as follows:

10-23-06. License fees payable by domestic corporations - Exempting building and loan and savings and loan associations. The secretary of state shall charge and collect from each domestic corporation license fees, based upon the value of its authorized shares, at the time of:

1. Filing articles of incorporation.
2. Filing articles of amendment increasing the number or value of authorized shares.
3. Filing articles of merger or consolidation increasing the number or value of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number or

value of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

The license fees shall be the sum of fifty dollars for the first fifty thousand dollars of its authorized shares, or fraction thereof, and the further sum of ten dollars for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.

The license fees payable on an increase in authorized shares shall be imposed only on the additional shares, but the amount of previously authorized shares shall be taken into account in determining the rate applicable to the additional authorized shares.

For the purposes of this section, shares without par value shall be considered worth ~~ten cents~~ one dollar per share.

The provisions of this section shall not apply to a building and loan or savings and loan association.

SECTION 11. AMENDMENT. Section 10-23-07 of the North Dakota Century Code is amended and reenacted as follows:

10-23-07. License fees payable by foreign corporation. The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state, the sum of ~~seventy-five~~ eighty-five dollars as an initial license fee.

Thereafter, the secretary of state shall fix the license fee for each foreign corporation as follows:

1. He shall first ascertain the license fee which a newly organized domestic corporation would be required to pay under the law if it had authorized shares of the same kind and amount as the issued or allotted shares of the reporting foreign corporation shown by its filed report.
2. Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of the corporation located in this state and the gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report.
3. From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation, and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a notice of the amount of such additional license fee to the corporation at its ~~registered~~ principal office ~~in this state~~. The additional license fee shall be paid by the corporation to the

secretary of state within thirty days after the mailing of the notice. Amounts less than five dollars may not be collected.

SECTION 12. AMENDMENT. Section 10-28-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-28-01. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, thirty dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, ~~thirty~~ fifty dollars.
4. Filing restated articles of incorporation, thirty dollars.
5. Filing articles of dissolution, twenty dollars.
6. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
7. Filing a registered agent's consent to serve in that capacity, ten dollars.
8. Filing a resignation as registered agent, ten dollars.
9. Filing an application to reserve a corporate name, ten dollars.
10. Filing a notice of transfer of a reserved corporate name, ten dollars.
11. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, forty dollars.
12. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.
13. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, ~~twenty~~ fifty dollars.
14. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
15. Filing any other statement or report of a domestic or foreign corporation, twenty dollars.
16. Filing a consent to use of a deceptively similar name, ten dollars.

SECTION 13. AMENDMENT. Section 10-28-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-28-02. Miscellaneous charges. The secretary of state shall charge and collect:

1. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages or fraction thereof and ~~ten~~ fifteen dollars for the certificate and affixing the seal thereto.
2. At the time of any service of process on him as resident agent of a corporation, ~~twenty~~ twenty-five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

SECTION 14. AMENDMENT. Section 43-07-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-07. License fees. At the time of making application for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:

1. For a class A license, the sum of ~~two~~ three hundred ~~fifty~~ dollars.
2. For a class B license, the sum of ~~one~~ two hundred ~~fifty~~ dollars.
3. For a class C license, the sum of one hundred fifty dollars.
4. For a class D license, the sum of fifty dollars.

All moneys collected by the registrar under this chapter shall be deposited by him with the state treasurer, who shall credit them to the general fund of the state.

SECTION 15. AMENDMENT. Section 44-06-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-06-02. Commission - Record - Fee - Notice. The secretary of state shall issue a commission to each notary public appointed by the secretary of state which shall be posted by such notary in a conspicuous place in his office. The secretary of state shall collect ~~twenty~~ twenty-five dollars for the issuance of such commission. Such sum shall be paid into the state treasury and credited to the general fund. The secretary of state shall keep in his office a record of such appointments and the date of the expiration of the same, and shall notify each notary public by mail at least thirty days before the expiration of his term of the date upon which his commission will expire. Such notice shall be addressed to such notary public at his last known place of residence.

SECTION 16. AMENDMENT. Section 45-10.1-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-15. Fees for filing documents. The secretary of state shall charge and collect for:

1. Filing a limited partnership, ~~seventy-five~~ one hundred dollars.
2. Filing a limited partnership amendment, ~~twenty-five~~ forty dollars.
3. Filing a limited partnership dissolution, twenty-five dollars.
4. Filing a limited partnership cancellation, twenty-five dollars.
5. Filing a reservation of name, ten dollars.

6. Filing a statement of renewal of a limited partnership or renewal of registration of foreign limited partnership, ~~twenty-five~~ forty dollars.
7. Filing a registration of foreign limited partnership, ~~seventy-five~~ one hundred dollars.
8. Filing a certified statement of amendment of foreign limited partnership, twenty-five dollars.
9. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.
10. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.
11. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
12. Filing a consent to use of a deceptively similar name, ten dollars.

SECTION 17. AMENDMENT. Section 45-11-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

² **45-11-01. Use of fictitious partnership name.** Any partnership transacting business in this state under a fictitious name or under a designation that does not show the names of the persons interested as partners must file a fictitious name certificate with the secretary of state, together with a filing fee of twenty-five dollars. When a partnership has more than two members, an additional three dollars must be paid for each additional member not to exceed two hundred and fifty dollars. A limited partnership or a foreign limited partnership transacting business under a name filed under chapter 45-10.1 and as provided in section 45-11-03 is not required to file a fictitious name certificate under this section. The fictitious name:

1. May not contain the word "corporation", "company", "incorporated", or "limited", or an abbreviation of any of 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.

³ **SECTION 18. AMENDMENT.** Subsection 1 of section 54-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

² NOTE: Section 45-11-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

³ NOTE: Section 54-05.1-03 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

1. Any person who shall engage himself or be engaged by any other person either on a part-time or on a full-time basis for any of the activities listed in section 54-05.1-02, shall, before doing anything in furtherance of such purposes, register with the secretary of state and receive a certificate of registration and a distinctive lobbyist identification badge. The registrant shall state in writing his full name and business address, the name and address of the person or persons upon whose behalf he appears, all persons, corporations, associations, groups, or organizations in whose interest he appears or works, the duration of such employment or appearances, and by whom he is paid or is to be paid. The registration expires on December thirty-first of each calendar year unless an earlier expiration date is requested by the registrant. Lobbyists required to be registered shall file with the secretary of state, within ten days of registration, a written authorization to act as lobbyist. Such authorization must be signed by the person or official of the corporation, association, group, or organization employing such lobbyist. The secretary of state shall charge a fee of ~~ten~~ twenty dollars for registering each lobbyist.

SECTION 19. AMENDMENT. Section 54-09-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-09-04. Fees. The secretary of state, ~~for services performed in his office,~~ unless otherwise provided by law, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in ~~his~~ the secretary of state's office, one dollar for every four pages or fraction thereof.
2. For affixing ~~his~~ the signature of the secretary of state, certificate, or seal, or combination thereof to any document, ~~five~~ ten dollars.
3. For filing a certificate of appointment of attorney, five dollars.
4. For any other document signed by the governor, except a commission, and attested by the secretary of state, five dollars.
5. For searching records and archives of the state, five dollars.
6. For filing any paper not otherwise provided for, ~~five~~ ten dollars.
7. For filing utility property transfers, five dollars, and issuing a certificate of filing, five dollars.
8. For sending a copy of a document by electronic transmission, one dollar for each page.
9. For filing any process, notice, or demand for service, twenty dollars.
10. For preparing any listing or compilation of any information recorded or filed in the office of the secretary of state, thirty-five dollars plus the actual cost for assembling and providing the information on the medium requested.

No member of the legislative assembly, and no state or county officer may be charged for any search relative to matters appertaining to duties of his office, nor may he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to his the person's official duties. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state. Unless otherwise provided by statute, the secretary of state shall retain a handling charge from filing fees tendered when a document submitted to the secretary of state under any law is rejected and not perfected. The handling charge is five dollars or fifty percent of the filing fee, whichever is greater, but may not exceed one hundred dollars. This section does not apply to fees submitted for filing in, or information obtained from, the computerized central notice system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 76

SENATE BILL NO. 2341
(Senators Krauter, Mutch)

CREDIT UNION VOTING AND RESERVES

AN ACT to amend and reenact sections 6-06-10 and 6-06-21 of the North Dakota Century Code, relating to voting by mail by credit union members and reserve requirements for corporate central credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-10 of the North Dakota Century Code is amended and reenacted as follows:

6-06-10. General and special meetings - Notice - Quorum - Voting privileges. General and special meetings may be held in the manner and for the purposes indicated in the bylaws of the credit union. Ten days before any regular or special meeting, written notice thereof must be mailed to each member, and, in the case of a special meeting, the notice must state clearly the purpose of the meeting and what matters will be considered thereat. The members present at a general or special meeting constitute a quorum for the transaction of the business of the credit union. At all meetings, a member has but a single vote, whatever his the member's share holdings. There is no voting by proxy, but any firm, society, or corporation having a membership in the credit union may cast its vote by one person upon presentation by him to the credit union of written authority from such firm, society, or corporation. The credit union may allow members to vote by mail ballot for directors and committee members.

SECTION 2. AMENDMENT. Section 6-06-21 of the North Dakota Century Code is amended and reenacted as follows:

6-06-21. Reserve fund - Amount required and how raised. Every credit union, ~~except including~~ corporate central credit unions, shall maintain a reserve fund in accordance with the rules of the national credit union administration to be used as a reserve against bad loans and other losses. This fund may not be distributed except upon liquidation.

~~Every corporate central credit union shall maintain a reserve fund to be used as a reserve against bad loans and other losses. This fund may not be distributed except upon liquidation. At the end of each fiscal year, the corporate central credit union shall transfer to the reserve fund two percent of gross earnings until the reserve fund equals one and one-half percent of total assets. Thereafter, there must be added annually to the reserve fund at the end of each fiscal year the contribution amounts or the percentage of the gross earnings of the corporate central credit union, not to exceed two percent of gross earnings, required to maintain its reserve fund at one and one-half percent of total assets.~~

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 77

HOUSE BILL NO. 1152
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial
Institutions)

BANKING INSTITUTION SALE

AN ACT to amend and reenact section 6-08-08.1 of the North Dakota Century Code, relating to the sale or purchase of a banking institution or association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08-08.1 of the North Dakota Century Code is amended and reenacted as follows:

¹ 6-08-08.1. Sale or purchase of associations, banking institutions, or holding companies - Notification to commissioner - Hearing.

1. No person, acting directly or indirectly or through or in concert with one or more other persons, may sell or otherwise dispose of an association, or banking institution, or purchase or otherwise acquire control of an association or banking institution unless the state banking board has been given ~~at least sixty days~~ prior written notice by application of the proposed disposition or acquisition. The written ~~notice~~ application must include such information as the state banking board shall specify. The transaction may not be consummated before the board has granted approval.
2. The applicant shall publish notice of the application as required by the board by rule.
- 2- 3. Within ten business days after the date ~~of mailing the notification application is received~~ the commissioner shall determine if the application ~~as filed~~ is complete and notify the applicant by mail of the determination. If the commissioner determines the application is incomplete the commissioner will, within the ten business days, request additional information deemed necessary to complete the application. Within ten business days after the receipt of the additional information, the commissioner will notify the applicant by mail of the commissioner's determination of completeness. Within ~~thirty~~ sixty days after the mailing of a notice of completeness by the commissioner, ~~the transaction is deemed approved, unless the board issues an order calling a hearing. If a hearing is called by the board, the parties to the transaction must be given at least a ten day written notice of the time, date, and place of the hearing, to be held before the board, to examine into the following matters: must either approve or disapprove the application.~~

¹ NOTE: Section 6-08-08.1 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

4. The board may disapprove any application if the board determines that:
- a. The character, reputation, general fitness, financial standing, and responsibility of the persons proposed as new stockholders, directors, or officers is such that the interests of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management.
 - b. Whether The qualifications of management do not include adequate experience with financial institutions or other approved related experience.
 - c. Whether the interests of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management.

~~The determination to call a hearing may be made by the commissioner after consulting the board members and an order calling a hearing may be issued by the board without a formal meeting.~~

3. ~~If the evidence produced at the hearing establishes that the character, reputation, general fitness, financial standing, and responsibility of the persons proposed as stockholders, directors, or officers is such that the interests of other stockholders, depositors, creditors, and the general public might be jeopardized by the change in control and management, then the board, within ten business days of the date of the hearing, shall issue its order disapproving the transaction and shall notify the parties. If no order is issued within ten business days after the hearing is held, the transaction is deemed approved by the board. Any decision of the board is reviewable under the provisions of chapter 28-32.~~
 5. Within three business days after the board's decision to disapprove an application, the board shall notify the applicant in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.
 6. Within twenty days after receipt of the notice of disapproval, the applicant may request a hearing on the disapproval. The board must conduct a hearing, if requested, under the provisions of chapter 28-32. At the conclusion of the hearing, the board shall by order approve or disapprove the application on the basis of the record at the hearing.
- 4- 7. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting securities of an association, banking institution, controlling holding company, or the direct or indirect power to control in any manner the election of a majority of the directors of an association or banking institution, or to direct the management or policies of an association or banking institution, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. "Holding company"

means any partnership, corporation, business trust, association, or entity or organization of any type which controls an association or banking institution.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 78

HOUSE BILL NO. 1410
(Representatives Maragos, Christopherson, Kilichowski)

BAD CHECKS

AN ACT to amend and reenact section 6-08-16.2 of the North Dakota Century Code, relating to issuing a check without an account or with insufficient funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08-16.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

1. As used in this section:

- a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
- b. "Dishonor" is synonymous with "nonpayment".
- c. "Instrument" means any check, draft, or order for the payment of money.
- d. "Issues" means draws, utters, or delivers.

2. A person who, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1 or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:

- a. At the time of issuing the instrument ~~with intent to defraud~~, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
- b. At the time of issuing the instrument ~~with intent to defraud~~, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of fifteen dollars, which are recoverable by civil action by the holder of the instrument.

- 3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least ten thousand dollars, and:
 - a. At the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of fifteen dollars, which are recoverable by civil action by the holder of the instrument.

- 4. A civil penalty is also recoverable by civil action by the holder of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.
- 5. ~~The fact that payment has been refused by a drawee because of insufficient funds or because the drawer has no account with the drawee from which payment could legally be made constitutes an inference of intent to defraud.~~
- 6- An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution. A criminal complaint for violation of subdivision b of subsection 2 or subdivision b of subsection 3 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of nonpayment. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2 or subdivision b of subsection 3.

7- 6. A notice of dishonor may be mailed by the holder of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Instrument

Date _____
 Name of Issuer _____
 Street Address _____
 City and State _____
 You are according to law hereby notified that
 an instrument dated _____, 19____, drawn on the
 _____ Bank of _____ in
 the amount of _____ has been returned
 unpaid with the notation the payment has been
 refused because (of nonsufficient funds) (the

drawer does not have an account). Within ten days from the receipt of this notice, you must pay or tender to _____

(Holder)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of fifteen dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 79

HOUSE BILL NO. 1114
(Agriculture Committee)
(At the request of the Bank of North Dakota)

BEGINNING FARMER LOAN PROGRAM

AN ACT to amend and reenact subdivision c of subsection 1 of section 6-09-15 and subsections 3 and 4 of section 6-09-15.5 of the North Dakota Century Code, relating to the appraised value of real estate securing a loan and interest rates for loans to beginning farmers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 6-09-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 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 seventy eight percent of the value of the security.

SECTION 2. AMENDMENT. Subsections 3 and 4 of section 6-09-15.5 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. A loan made from the fund may not exceed seventy eight 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 shall take a first mortgage as security for a loan from the fund.
4. A loan made from the fund must ~~bear interest at a maximum rate of six percent per year on the first five years of the loan and eight percent per year the next five years~~ have the interest rate fixed at one percent below the Bank's then current base rate for the first five years with a maximum rate of six percent per year and fixed again at one percent below the Bank's then current base rate for the next five years with a maximum rate of eight percent per year. 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.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 80

HOUSE BILL NO. 1400
 (Representatives Keiser, Kempenich, Rydell)
 (Senators DeMers, Maxson, Nelson)

PARKS AND RECREATION AND TOURISM DEPARTMENTS

AN ACT to create and enact a new chapter to title 54 of the North Dakota Century Code, relating to the establishment of a tourism department; to amend and reenact subdivision g of subsection 1 of section 6-09-15, subsection 3 of section 10-06-04.3, sections 24-02-37.1, 24-03-21, subdivision o of subsection 1 of section 28-32-01, section 37-03-14, paragraph 7 of subdivision a of subsection 2 of section 39-01-01, section 39-24-05, subsection 3 of section 39-24-08, sections 39-24-09.1, 39-24-11, 39-29-01.1, subsection 2 of section 39-29-05, subsection 3 of section 39-29-08, sections 39-29-10, 39-29-12, 55-08-01.1, 55-08-01.2, 55-08-01.3, 55-08-02.1, subsection 1 of section 55-08-03.1, sections 55-08-07, 55-08-07.1, 55-08-07.2, 55-08-08, 55-08-09, 55-08-10, 55-08-11, 55-08-12, 55-08-13, 55-08-14.1, 55-10-04, subsection 3 of section 55-11-02, section 57-02-08.7, subsection 6 of section 57-39.2-28, section 61-29-04, and subsection 1 of section 61-33-09 of the North Dakota Century Code, relating to the parks and tourism department and the allocation of powers and duties to the parks and recreation department or the tourism department; and to repeal sections 55-08-01.4, 55-08-01.5, and 55-08-01.6 of the North Dakota Century Code, relating to the tourism division of the parks and tourism department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision g of subsection 1 of section 6-09-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 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 parks and ~~tourism~~ recreation department.

¹ **SECTION 2. AMENDMENT.** Subsection 3 of section 10-06-04.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first

¹ NOTE: Section 10-06-04.3 was also repealed by section 107 of Senate Bill No. 2223, chapter 54.

submit a proposed acquisition plan to an advisory committee consisting of the director of the parks and ~~outdoor~~ recreation sites ~~division~~ department, the state engineer, the commissioner of agriculture, the state forester, the director of the game and fish department, and the manager of the Garrison Diversion Conservancy District, for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall review the proposed acquisition plan and shall make recommendations to the governor within thirty days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

SECTION 3. AMENDMENT. Section 24-02-37.1 of 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 director of the game and fish department, the director of the parks and ~~outdoor~~ recreation sites ~~division~~ department, the director of the department of economic development 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. The commissioner shall provide staff services to the committee. 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 4. AMENDMENT. Section 24-03-21 of 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 other roads as the commissioner determines necessary. Any tourist-oriented material printed on road maps must be prepared by the tourism ~~division of the parks and tourism~~ department at no cost to the department of transportation.

² **SECTION 5. AMENDMENT.** Subdivision o of subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- o. The parks and ~~tourism~~ recreation department.

² NOTE: Subsection 1 of section 28-32-01 was also amended by House Bill Nos. 1047, 1193, 1264, 1336, and Senate Bill Nos. 2215 and 2228, chapters 135, 186, 328, 327, 173, and 236.

SECTION 6. AMENDMENT. Section 37-03-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

³ **37-03-14. North Dakota veterans' cemetery - Administration.** The adjutant general shall establish and operate the North Dakota veterans' cemetery, which the adjutant general shall locate within or adjacent to Fort Abraham Lincoln state park. The adjutant general may accept and utilize private and federal funds to establish and operate the veterans' cemetery. All moneys received from private or federal sources must be paid into a veterans' cemetery maintenance fund. The adjutant general, with the approval of the governor, may enter into an agreement with the director of the parks and ~~outdoor recreation sites division~~ department for the maintenance of the cemetery. The adjutant general shall provide lots in the state veterans' cemetery for the interment of deceased members of the national guard, other reserve components, and veterans, and their spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. The adjutant general may adopt, amend, or rescind any rules under chapter 28-32 as deemed necessary to implement and administer this section.

SECTION 7. AMENDMENT. Paragraph 7 of subdivision a of subsection 2 of section 39-01-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (7) Vehicles operated by or under the control of the director of the North Dakota parks and ~~outdoor recreation sites division~~ department.

SECTION 8. AMENDMENT. Section 39-24-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁴ **39-24-05. Disposition of registration fees.** Fees from registration of snowmobiles must be deposited with the state treasurer and credited to the motor vehicle registrar fund. The snowmobile trail tax must be deposited in a state snowmobile fund in the state treasury. The parks and ~~tourism recreation~~ department may, upon appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of administering snowmobile safety programs and establishing and maintaining snowmobile facilities.

SECTION 9. AMENDMENT. Subsection 3 of section 39-24-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The director of the parks and ~~outdoor recreation sites division~~ department shall adopt rules for regulating use of snowmobiles in state parks and other state-owned land under the supervision of the director.

SECTION 10. AMENDMENT. Section 39-24-09.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

³ NOTE: Section 37-03-14 was also amended by section 1 of Senate Bill No. 2168, chapter 360.

⁴ NOTE: Section 39-24-05 was also amended by section 1 of Senate Bill No. 2120, chapter 397.

39-24-09.1. Operation by persons under age sixteen. Except as otherwise provided in this section, it is unlawful for any person twelve years of age and over who has not reached sixteen years of age and who is not in possession of a valid driver's license or permit to operate a snowmobile, except upon the lands of the person's parent or guardian, unless and until the person has completed a snowmobile safety training course as prescribed by the director of the parks and ~~outdoor recreation sites division~~ department pursuant to chapter 28-32 and has received the appropriate snowmobile safety certificate issued by the commissioner. The failure of an operator to exhibit a snowmobile safety certificate upon demand to any official authorized to enforce this chapter is presumptive evidence that the person is not the holder of the certificate. Fees collected from each person receiving certification must be deposited into the snowmobile trail tax fund for purposes of establishing snowmobile safety programs.

SECTION 11. AMENDMENT. Section 39-24-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁵ **39-24-11. Penalties.** Any person who violates subdivision b, c, or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. Any person who violates any other provision of section 39-24-09 must be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register as required by section 39-24-02 must be assessed a fee of twenty-five dollars. A person who operates an unregistered snowmobile on land owned, leased, or managed by the parks and ~~tourism recreation~~ recreation department must be assessed a fee of fifty dollars; however, if the person provides proof of registration since the violation, the fee may be reduced by one-half. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

SECTION 12. AMENDMENT. Section 39-29-01.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-29-01.1. Safety fee - Imposition - Collection by dealer - Payment to department - Use of fee. Upon the sale of an all-terrain vehicle, each dealer shall collect a five dollar safety fee from the buyer. By the end of each calendar quarter, the dealer shall file a report with the parks and ~~tourism recreation~~ recreation department which discloses the number of all-terrain vehicles sold the previous months and includes the fees collected from the buyer. Fees imposed under this section must be deposited in the all-terrain vehicle fund established under subsection 2 of section 39-29-05. The fees may be used only by the parks and ~~tourism recreation~~ recreation department and only for all-terrain vehicle safety education and promotion.

SECTION 13. AMENDMENT. Subsection 2 of section 39-29-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The all-terrain vehicle trail tax must be deposited in a state fund in the state treasury. The parks and ~~tourism recreation~~ recreation department may, on appropriation by the legislative assembly, expend from that fund moneys

⁵ NOTE: Section 39-24-11 was also amended by section 1 of Senate Bill No. 2123, chapter 398.

for establishing all-terrain vehicle facilities, all-terrain vehicle use areas, and all-terrain vehicle safety and education programs.

SECTION 14. AMENDMENT. Subsection 3 of section 39-29-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The director of the parks and ~~outdoor~~ recreation sites ~~division~~ department shall adopt rules to regulate use of all-terrain vehicles in state parks and other state-owned land under the supervision of the director.

SECTION 15. AMENDMENT. Section 39-29-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-29-10. Operation by persons under age sixteen. Except as otherwise provided in this section, a person under sixteen years of age who is not in possession of a valid operator's license or permit to operate an all-terrain vehicle may not, except upon the lands of the person's parent or guardian, operate an all-terrain vehicle. A person at least twelve years of age may operate an all-terrain vehicle if the person has completed an all-terrain vehicle safety training course prescribed by the director of the parks and ~~outdoor~~ recreation sites ~~division~~ department and has received the appropriate all-terrain vehicle safety certificate issued by the commissioner. The failure of an operator to exhibit an all-terrain vehicle safety certificate on demand to any official authorized to enforce this chapter is presumptive evidence that that person does not hold such a certificate. Fees collected from each person receiving certification must be deposited in the all-terrain vehicle trail tax fund for all-terrain vehicle safety education and training programs.

SECTION 16. AMENDMENT. Section 39-29-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁶ **39-29-12. Penalties.** Violation of subdivision b, c, or g of subsection 5 of section 39-29-09 is a class B misdemeanor. Violation of any other provision of section 39-29-09 is an infraction for which a fee of twenty dollars must be assessed. Violation of section 39-29-02 is an infraction, for which a fee of twenty-five dollars must be assessed; however, if the violation occurs on land owned, leased, or managed by the parks and ~~tourism~~ recreation department a fee of fifty dollars must be assessed. If the person provides proof of registration since the violation, the fee may be reduced by one-half. Violation of any other provision of this chapter is an infraction, for which a fee of ten dollars must be assessed.

SECTION 17. A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

Tourism department - Director.

1. The tourism department is established to foster and promote tourism to, and within, the state and the full development of the state's tourism resources, and to serve as a planning and coordinating agency for

⁶ NOTE: Section 39-29-12 was also amended by section 1 of Senate Bill No. 2122, chapter 400.

tourism-related programs of the state and the state's political subdivisions.

2. The governor shall appoint a director of the tourism department who shall serve at the will of the governor. The director shall supervise and control the tourism department.

Duties of director. The director of the tourism department, within the limits of legislative appropriations, shall:

1. Implement the state's tourism policy;
2. Prepare and update annually a tourism master plan for the development of tourism in the state which identifies the state's tourism resources, estimates the impact of tourism on the state's economy, and proposes a five-year plan for activities of the division;
3. Measure and forecast visitor volume, receipts, and related social and economic impacts;
4. Work with the private sector and local, state, and federal agencies to develop the state's tourism-related infrastructure, facilities, services, and attractions, including the state's highways and parks;
5. Organize and coordinate programs designed to promote tourism to, and within, the state through various means. Those means may include:
 - a. Display advertising in magazines and newspapers;
 - b. Advertising on radio and television or other advertising media;
 - c. Publishing pamphlets, brochures, and other graphic and pictorial materials; and
 - d. Aiding and assisting representatives of the media to ensure greater coverage of the state's visitor attractions;
6. Participate in travel shows;
7. Supervise and administer visitor information centers that receive funding from the state;
8. Develop opportunities for professional and technical education and training in the visitor industry;
9. Foster an understanding among the state's residents of the economic importance to the state of hospitality and tourism;
10. Cooperate with local, state, and federal agencies and organizations and the private sector for the promotion and development of tourism to, and within, the state;
11. Provide advice and technical assistance to local, public, and private tourism organizations in promoting and developing tourism; and
12. Monitor the policies and programs of state agencies that significantly affect the visitor industry, notify those agencies of the effects of their

actions on travel to, and within the state, and if necessary recommend programs or policy changes to those agencies.

State tourism policy.

1. The legislative assembly declares that:

- a. This state is endowed with scenic beauty, historical sites, cultural resources, local festivals, attractions, recreational facilities, and a population whose ethnic diversity and traditions are attractive to visitors;
- b. These human and physical resources should be preserved and nurtured, not only because they are appreciated by other Americans and by visitors from other lands, but because they are valued by the state's residents;
- c. Tourism contributes to economic well-being by creating job opportunities, generating revenues for local businesses, and creating new wealth in the economy;
- d. Tourism is an educational and informational medium for personal growth which informs residents about their state's geography and history, their political institutions, their cultural resources, their environment, and about each other;
- e. Tourism instills state pride and a sense of common interest among the state's residents;
- f. Tourism enhances the quality of life and well-being of the state's residents by affording opportunities for recreation, new experiences, and relief from job stress;
- g. Tourism promotes international understanding and good will, and contributes to intercultural appreciation;
- h. Tourism engenders appreciation of the state's cultural, architectural, technological, agricultural, and industrial achievements;
- i. The development and promotion of tourism to and within the state is in the interest of the people of this state;
- j. Tourism should develop in an orderly manner in order to provide the maximum benefit to the state and its residents;
- k. The development of a strong and competitive state visitor industry depends upon the availability of trained personnel, necessary infrastructure, and a receptive climate for tourism investment; and
- l. A comprehensive tourism policy is essential if tourism in the state is to grow in an orderly manner.

2. The legislative assembly declares it is the policy of this state to:

- a. Encourage the orderly growth and development of tourism to, and within, the state;

- b. Promote the availability of public tourism training to increase the skills and productivity of the tourism labor force and to broaden access to employment opportunities and the visitor industry;
- c. Encourage a healthy competitiveness in the visitor industry;
- d. Promote the availability of reliable public highways and transport services between the state's principal tourism destinations and the main tourism generating markets;
- e. Expand off-season tourism to the state and thereby increase the productivity of the accommodation sector and reduce seasonal layoffs within the visitor and visitor-related industries;
- f. Promote a sense of history in the state's young people by encouraging family visits to state historic sites, and promoting the preservation and restoration of historic sites, trails, buildings, and districts;
- g. Promote the mental, emotional, and physical well-being of the American people by encouraging outdoor recreational activities within the state;
- h. Encourage the talents and strengthen the economic independence of the state's residents by encouraging the preservation of traditional craft skills, the production of handicrafts and native and folk art by private artisans and crafts people, and the holding of craft demonstrations;
- i. Encourage an optimum of satisfaction and high quality service to visitors;
- j. Promote a tourist environment that respects our visitors' rights as consumers;
- k. Afford visitors and residents the best possible conditions of public sanitation;
- l. Facilitate tourism to, and within, the state by developing an essential tourism infrastructure, providing investment incentives to tourism businesses, and encouraging city and county officials to plan for tourism needs and capitalize on local tourism resources;
- m. Promote a better understanding among the state's residents of the social and economic importance of tourism through appropriate formal and informal learning experiences about tourism, and foster among all citizens the capacity for courtesy to visitors;
- n. Encourage the holding of conventions, trade shows, and expositions throughout the state;
- o. Promote tourism in a manner that fosters visitors' understanding and respect for native and religious beliefs, customs, and ethnic traditions of the state's residents;

- p. Monitor tourist impact on the basic human rights of the state's residents and ensure equal access by visitors and residents to public recreational resources;
- q. Take measures to protect wildlife and natural resources in the preservation of geological, archaeological, and cultural treasures in tourist areas;
- r. Encourage, assist, and coordinate when possible the tourism activities of local and area promotional organizations; and
- s. Ensure that the tourism interest of the state is considered fully by state agencies and the legislative assembly in their deliberations; and harmonize to the maximum extent possible, all state activities in support of tourism with the needs of the general public, the political subdivisions of the state, and the visitor industry.

SECTION 18. AMENDMENT. Section 55-08-01.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-01.1. State parks and tourism policy. The parks and ~~tourism recreation~~ department shall plan and coordinate government programs encouraging the full development and preservation of existing and future parks, outdoor recreation areas, and nature preserves, ~~and the promotion of tourism.~~

SECTION 19. AMENDMENT. Section 55-08-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-01.2. Parks and ~~tourism recreation~~ department - ~~Directors~~ Director. There is created a parks and ~~tourism recreation~~ department to serve as the focal point in the state for activities related to parks ~~and tourism~~. The department shall plan and coordinate programs for all governmental levels to fulfill the state parks ~~and tourism~~ policy. ~~The department consists of two divisions: a parks and outdoor recreation sites division and a tourism division.~~ The governor shall appoint a director of ~~each division~~ the parks and recreation department who shall serve at the will of the governor.

SECTION 20. AMENDMENT. Section 55-08-01.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-01.3. Director of parks and ~~outdoor recreation sites division~~ department - Powers - Penalty. The director of the parks and ~~outdoor recreation sites division~~ department shall:

1. Manage all state parks, state campgrounds, state recreational areas, or reserves, and any other property under the control of the parks and ~~tourism recreation~~ department, including site selection and planning, establishment of fees and charges, establishment of hours and seasons of operation, and regulation of the conduct of guests and visitors.
2. Appoint personnel necessary to carry out the duties and functions of the ~~division~~ department, and fix their compensation within the limits of legislative appropriations.
3. Accept on behalf of the state, gifts or grants of property for the department.

4. Acquire by purchase, gift, or condemnation any real property or interest in real property in this state or an adjoining state if necessary for park purposes. However, condemnation proceedings may be instituted only upon approval by the emergency commission.
5. Lease, sell, or exchange real property under the department's control if necessary for the improved management of state parks, state campgrounds, and state recreational areas or reserves.
6. Administer all real property and interests in real property and personal property held for recreational purposes as an agent for any state or federal agency or a political subdivision of the state.
7. Adopt rules relating to the protection, care, and use of state parks, state campgrounds, state recreational areas, or reserves, and any other real or personal property administered by the director.
8. Sell, mortgage, transfer, or dispose of property under the control of the department as authorized by law.
9. Seek the advice of the superintendent of the state historical board on all matters relating to history, prehistory, and paleontology of the state parks. If additional assistance is needed or required, the superintendent shall coordinate the assistance.
10. Advise in advance and consult with the superintendent of the state historical board before undertaking any earthmoving operations or major constructions so that the director may be advised whether the earthmoving operations or constructions might endanger historical archaeological artifacts or the paleontological value of the area. The superintendent of the state historical board and the director shall jointly agree on the disposition of historical artifacts and archaeological material at state monuments and state parks.
11. In the director's discretion, designate any state park or state campground or an area within any state park or state campground as an area within which the use of alcoholic beverages is prohibited. Any person violating that designation is guilty of an infraction.

SECTION 21. AMENDMENT. Section 55-08-02.1 of the 1991 Supplement to 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 is created and must be composed of the state engineer of the water commission, director of the game and fish department, superintendent of the state historical board, director of the department of transportation, executive secretary of the state soil conservation committee, the director of the parks and ~~outdoor recreation sites division~~ department, chairman of the state water commission, state health officer, director of the department of economic development and finance, state forester, and the commissioner of university and school lands. The governor or the governor's designee is council chairman.

The members of the council:

1. Shall deal with the distribution of state general fund appropriations that are to be matched with federal outdoor recreation grants-in-aid at the state level. Each member has one vote in those matters.
2. Shall meet periodically at the call of the chairman and shall keep minutes and other financial records dealing with the 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 that 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 22. AMENDMENT. Subsection 1 of section 55-08-03.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Apply for and receive federal grants-in-aid for recreation purposes. The director of the parks and ~~outdoor recreation sites division~~ department may approve their allocation to political subdivisions of the state only after the director has determined that sufficient funds, including those funds necessary for adequate maintenance, are and will be available from the political subdivisions for meeting the state's share of project costs. If for any reason it is necessary for any department or agency of the state to expend state funds in order to fulfill any obligation of a political subdivision which it has agreed to perform in the construction or maintenance of such projects, the state has a claim against the subdivision for the money expended. All funds allocated to the state for recreation purposes must be distributed to the departments, agencies, or political subdivisions entitled to the funds.

SECTION 23. AMENDMENT. Section 55-08-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-07. State park and ~~tourism~~ fund - Appropriation. All revenues collected as permit fees, admissions, use charges, rentals, compensation for concession agreements, or otherwise, with the exception of revenue from bequests, trusts, or gifts, and with the exceptions noted in subsections 1 and 2 of section 55-08-06, must be placed in the state park and ~~tourism~~ fund, together with all proceeds of bonds issued pursuant to section 55-08-08. This fund must be maintained by the state treasurer as a special trust fund and is irrevocably appropriated and must be used and disbursed solely for the following purposes:

1. To pay the current cost of furnishing each special service provided in accordance with this chapter. For this purpose the charges, fees, and rentals for each service must be credited to a special operating account, from which must be paid only the current, reasonable, and necessary cost of operating that service, determined in accordance with accepted accounting practice, including the purchase price of merchandise and utilities sold and the compensation of employees necessarily attributable

to the furnishing of that service. The director may incur no operating cost for any building, structure, or facility leased, and the leases must provide for the payment of the costs by the lessee and for the payment of a net rental in addition to the costs. No lease rentals and no motor vehicle permit fees may be credited to operating accounts.

2. To provide for the payment and security of the principal and interest when due on any state park ~~and tourism~~ revenue bonds issued under section 55-08-08. For this purpose the treasurer shall credit to a special service account within the state park ~~and tourism~~ fund, as received, all bond proceeds, all motor vehicle permit fees and all rental payments by lessees, and all net income remaining in the operating account for each special service at the end of each month, in excess of the costs of operation thereof which are then payable or are to become due and payable within one month, and shall transfer from this fund and account to the revenue bond fund described in section 55-08-09, whenever necessary, so much of the revenues then on hand as may be required to produce a balance in the revenue bond fund equal to the interest due and to become due within eighteen months plus the principal due and to become due within twenty-four months thereafter on all outstanding series of the bonds.
3. To finance the acquisition, construction, reconstruction, improvement, betterment, or extension of the department's properties, for projects within state parks, state campgrounds, state recreation areas, and reserves including the acquisition of land and water, the erection of buildings and structures, and the improvement of properties held in trust for or leased by the state, as authorized by the legislative assembly. For this purpose the director shall authorize the disbursement of bond proceeds and revenues received in the fund. However, a disbursement may not be made in excess of the amounts of revenue bonds issued and other funds granted or appropriated and received for this purpose, and no disbursements may be made at any time when the balance in the revenue bond fund is less than specified in subsection 2.
4. For any other purpose for which funds have been appropriated by the legislative assembly to the parks and ~~tourism~~ recreation department. A disbursement may not be made at any time when the balance in the revenue bond fund is less than specified in subsection 2.

SECTION 24. AMENDMENT. Section 55-08-07.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-07.1. State parks and ~~tourism~~ department recreation concession revolving fund. The director shall maintain a state parks and ~~tourism~~ recreation concession revolving fund to be used for the following:

1. Procurement and maintenance of an inventory of food, nonintoxicating beverages, and other merchandise and supplies of a suitable nature for the operation of concession stands, including payment of costs and travel expenses necessarily incurred to obtain or sell such items.
2. Repair, replacement, construction, and maintenance of concession buildings, facilities, and properties contained therein.

The sum of fifty thousand dollars is hereby established in the state parks and ~~tourism~~ recreation concession revolving fund for the purpose provided in this section as a limit on the fund balance after accrued liabilities on June thirtieth of each year. Any surplus in this fund in excess of fifty thousand dollars on June thirtieth of each year must be transferred to the state park and ~~tourism~~ operating fund.

SECTION 25. AMENDMENT. Section 55-08-07.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-07.2. State parks and ~~tourism~~ gift fund - Fund use. There is established in the state treasury a special fund designated as the state parks and ~~tourism~~ gift fund. All donations to the parks and recreation department in the form of gifts, trusts, and bequests of money, that would cause the department to exceed its appropriated spending authority and any interest accruing thereon, must be placed in the state parks and ~~tourism~~ gift fund and is hereby appropriated to the department. The fund may be used and disbursed by the parks and ~~tourism~~ recreation department, with the approval of the state emergency commission, in accordance with the terms of the donation as determined by the director.

SECTION 26. AMENDMENT. Section 55-08-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-08. State park and ~~tourism~~ revenue bonds. For the purpose of paying all or part of the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of properties for state parks, state campgrounds, state recreation areas, and reserves, as described in subsection 2 of section 55-08-07, which may be authorized by the legislative assembly, the money may be borrowed on the credit of the revenues to be received in the state park and ~~tourism~~ fund. The borrowing must be authorized by a board consisting of the governor, the state treasurer, and the director of the parks and ~~outdoor~~ recreation sites division department, by resolution or resolutions duly adopted by the vote of a majority of all members of the board. In anticipation of the collections of the revenues, negotiable bonds may be issued in an amount as, in the opinion of the board, may be necessary for that purpose, within the limits of the authority granted by the legislative assembly in each instance, and the board may provide for the payment of the bonds and the rights of the holders of the bonds as provided in this chapter. The bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their date, may be in such denomination or denominations, may be in such form, either coupon or fully registered or registered as to ownership or principal, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment at such place or places, may be subject to such terms of redemption with or without premium, and may bear such rate or rates of interest, as may be provided by resolution or resolutions to be adopted by the board, subject to this section. The bonds may be sold in such manner and at such price or prices, not less than ninety-eight percent of par plus accrued interest to date of delivery, as may be considered by the board to be advisable. The bonds must have all of the qualities and incidents of negotiable paper, and the bonds and the income from the bonds are exempt from any taxes, except inheritance, estate, and transfer taxes. The board may in its discretion authorize one series of bonds hereunder for more than one project, at more than one state park, state campground, state recreation area, or reserve. It may also issue series of bonds hereunder for the refunding of outstanding bonds issued hereunder when such action is desirable in its judgment and

is consistent with the terms of the resolution or resolutions authorizing the outstanding bonds.

SECTION 27. AMENDMENT. Section 55-08-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-09. Revenue bond fund. After the issuance of any bonds under section 55-08-08, the state treasurer shall transfer revenues at the times and in the amounts directed in section 55-08-07 to a special trust fund to be known as the state park ~~and tourism~~ revenue bond fund, which must be maintained in the state treasury until all bonds issued under section 55-08-08 and all interest on the bonds is fully paid and discharged. This fund must be disbursed by the state treasurer solely for the purpose of paying principal and interest when due on the bonds, and the treasurer shall also maintain in the fund, by the transfer of revenues from the state park ~~and tourism~~ fund whenever necessary and available, a reserve at all times equal to the total amount of principal and interest to become due on all the bonds within the then next period of twelve months. As principal and interest become due from time to time, the director of the office of management and budget, not less than fifteen days before the payment dates, shall issue warrants upon the state treasurer against the revenue bond fund for the amount of the payment coming due, and the state treasurer shall make payments from the fund of the amounts due.

SECTION 28. AMENDMENT. Section 55-08-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-10. Covenants of board. The board shall pledge irrevocably the revenues appropriated by section 55-08-07 to the state park ~~and tourism~~ fund for the payment of principal and interest due on all bonds issued pursuant to section 55-08-08 and for the accumulation and maintenance of the reserve in the state park ~~and tourism~~ revenue bond fund as provided in section 55-08-09. To secure the prompt payment of the principal and interest and the proper application of the revenues pledged thereto, the board may by appropriate provisions in the resolution or resolutions authorizing the bonds covenant as to the use and disposition of the proceeds of the sale of the bonds; the rights, liabilities, powers, and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds; the issuance of any other obligation payable from the revenues; and any other matters other than and in addition to those expressly mentioned in this section, as to which covenants may be considered necessary or advisable to effect the purposes of this chapter. All such agreements and covenants entered into by the board are enforceable by appropriate action or suit at law or in equity, which may be brought by any holder or holders of bonds issued hereunder.

SECTION 29. AMENDMENT. Section 55-08-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-11. Limitation on use of bond proceeds. No buildings or additions may be erected, and no bonds may be issued or the proceeds used for the payment of the cost of any projects under section 55-08-08, except for specified projects designated and authorized by legislative act, or the board if permitted by the legislative assembly. No such project may be erected at a cost exceeding the amount fixed by the legislative assembly or by the board if provided by the legislative assembly as the maximum to be expended for the project. The proceeds of all bonds credited to the state park ~~and tourism~~ fund must be used solely for the purpose or purposes for which the bonds are authorized. The board may make and execute all

instruments which may be deemed necessary or advisable to provide for the completion of any project or for the sale of the bonds or for interim financing deemed necessary or advisable pending the sale of the bonds, and pledging the proceeds of the bonds. The director of the office of management and budget shall issue warrants upon the state treasury against the fund for such amounts as is due upon audited itemized estimates and claims that bear the approval of the officials designated by the board for that purpose. The state park and ~~tourism~~ fund and revenue bond fund may be deposited by the state treasurer with the Bank of North Dakota or in a bank that is a duly designated depository for state funds, or may be invested under direction of the board in securities that are direct obligations of the United States of America, except to the extent that the investment is prohibited or restricted by any covenant made with or for the benefit of bondholders.

SECTION 30. AMENDMENT. Section 55-08-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-12. Contracts with federal agencies. The director of the parks and ~~outdoor recreation sites~~ division department may enter into any agreements or contracts with the United States of America or any agency or instrumentality thereof, when the director considers such action advisable or necessary in order to obtain a grant of funds or other aid to be used in connection with the proceeds of the bonds in paying the cost of a project.

SECTION 31. AMENDMENT. Section 55-08-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-13. Construction of chapter - Statement to be included in bonds. This chapter does not authorize or permit any state board or agency or any state officer to create any indebtedness of the state, or to incur any obligation of any kind or nature except an obligation payable solely from the special trust funds created under this chapter and the revenues appropriated to the funds. The state or any funds or moneys of the state other than the special trust funds may not be deemed obligated for the payment of bonds issued under section 55-08-08. All such bonds must include or must have endorsed on the bonds a statement that the bonds do not constitute an indebtedness of the state and are payable solely from the revenues appropriated to the state park and ~~tourism~~ fund and revenue bond fund.

SECTION 32. AMENDMENT. Section 55-08-14.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-14.1. Leadership and facilities grants. The parks and ~~tourism~~ recreation department shall administer the funds made available to provide for recreational leadership grants and facilities grants in the following manner:

1. One-fourth of all moneys made available to the department for the grants must be used for a leadership grant program. This program shall provide enhanced recreational opportunities to state residents, particularly in communities with a population of thirteen thousand or less, regardless of age or state of health. Moneys must be provided on a three-to-one basis for the first year of a grant, one-to-one for the second year of a grant, and one-to-three for the third year of the grant, after which the program must be fully funded locally.
2. Three-fourths of all moneys made available to the department for the grants must be used for a facilities grant program. This program must

provide funds, on a fifty percent matching basis, for political subdivisions to improve, renovate, or construct any type of facility primarily used for community, park, and recreation purposes.

SECTION 33. AMENDMENT. Section 55-10-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-10-04. State historic sites - Registry - State-owned lands administered by the parks and ~~tourism~~ recreation department or state historical society. The land and water areas in this section are designated as state historic sites, and this section is a registry of state historic sites situated on property owned by the state and administered by the parks and ~~tourism~~ recreation department, or state historical society:

1. Fort Rice, located near the town of Fort Rice in Morton County, and consists of seven acres [2.83 hectares].
2. Whitestone Hill battlefield, site of battle of Whitestone Hill, located in Whitestone Hill State Park in Dickey County, and consists of sixty-six acres [26.71 hectares].
3. Fort Abercrombie, located in Fort Abercrombie State Park in Richland County, and consists of twenty-one and ninety-five one-hundredths acres [8.88 hectares].
4. Fort Buford, located in Fort Buford State Park in Williams County, and consists of thirty-six and fifty-three ~~one-hundredth~~ one-hundredths acres [14.78 hectares].
5. Fort McKeen, located in Fort Abraham Lincoln State Park in Morton County.
6. Fort Abraham Lincoln, located in Fort Abraham Lincoln State Park in Morton County.
7. Slant Indian village, located in Fort Abraham Lincoln State Park in Morton County.

SECTION 34. AMENDMENT. Subsection 3 of section 55-11-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Department" means the parks and ~~tourism~~ recreation department.

SECTION 35. AMENDMENT. Section 57-02-08.7 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.7. License fee in lieu of property taxes on leases for tourism or concession purposes. Payment of the license fee as provided in this section by the lessee of any leasehold interest in state-owned property leased from the superintendent of the state historical board or the director of the parks and outdoor recreation sites division of the parks and tourism department is a payment in lieu of all ad valorem taxes on the leasehold interest or any associated building or other improvement if the lessee uses the property, building, or other improvement primarily for tourism or concession purposes. The superintendent or the director shall establish the license fee at an annual amount not less than one dollar and not more than one percent of the gross receipts from the tourism or concession enterprise. The lessee shall pay the license fee to the treasurer of the county in

which the tourism or concession enterprise is located and all fees received under this section must be deposited in the county general fund. The lease must indicate that the superintendent or the director approves use of the property primarily for tourism or concession purposes and intends the license fee paid by the lessee to be in lieu of ad valorem taxes.

SECTION 36. AMENDMENT. Subsection 6 of section 57-39.2-28 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding section 57-39.2-23, the commissioner may provide names and addresses of Canadian residents claiming a North Dakota sales tax refund to the director of the ~~tourism division of the parks and tourism department~~.

SECTION 37. AMENDMENT. Section 61-29-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-29-04. Administration. This chapter must be administered by a Little Missouri River commission composed of the director of the parks and ~~outdoor recreation sites division~~ department, the state health officer of the state department of health and consolidated laboratories, the chief engineer of the state water commission, or their designated representatives, and one member from each of the following counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members representing the above-mentioned counties must be appointed by their respective boards of county commissioners and shall serve without compensation except that each appointing board of county commissioners may reimburse its county representative for actual and necessary mileage to and from meetings of the commission at the same rate as state officers. The county representatives appointed must be resident landowners who live adjacent to the Little Missouri River with the exception of the Golden Valley county representative. A county representative unable to attend a meeting of the commission may be represented by a person who has a written proxy from the representative authorizing that person to act and vote for the representative. The proxy must be a resident landowner of the county that the proxy is representing, but need not live adjacent to the Little Missouri River. The county members shall serve terms of office as follows: two members shall serve one-year terms, two members shall serve two-year terms, and two members shall serve three-year terms.

SECTION 38. AMENDMENT. Subsection 1 of section 61-33-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board consists of the manager of the Garrison Diversion Conservancy District, the state engineer, the commissioner of university and school lands, the director of the parks and ~~outdoor recreation sites division~~ department, the director of the game and fish department, and the state health officer, or their representative.

SECTION 39. REPEAL. Sections 55-08-01.4, 55-08-01.5, and 55-08-01.6 of the 1991 Supplement to the North Dakota Century Code are repealed.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 81

SENATE BILL NO. 2154
(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA MORTGAGE LOANS PURCHASE

AN ACT to create and enact a new subsection to section 6-09-15 of the North Dakota Century Code, relating to the purchase of mortgage loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-09-15 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Purchase mortgage loans on residential real property originated by financial institutions.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 82

HOUSE BILL NO. 1085
(Agriculture Committee)
(At the request of the Commissioner of Agriculture)

AGRICULTURAL MEDIATION SERVICE

AN ACT to amend and reenact section 6-09.10-03 of the North Dakota Century Code, relating to continuation of the agricultural mediation service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-03 of the 1991 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~~ chair, 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 to 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 disputes involving farmers and others, either of whom may request assistance. The board may charge the farmer and others a reasonable fee for any assistance provided, such funds to be used to continue the service until June 30, ~~1993~~ 1995. 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.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 83

SENATE BILL NO. 2153
(Agriculture Committee)
(At the request of the Bank of North Dakota)

FAMILY FARMER LOAN PARTICIPATION RATES

AN ACT to amend and reenact subsection 1 of section 6-09.11-03 of the North Dakota Century Code, relating to the interest rate on participation interests purchased by the Bank of North Dakota for loans to family farmers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-09.11-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 6-09.11-04. Interest charged on a participation interest purchased by the Bank under this section ~~may not exceed eight percent per annum for the first five years of the loan. For the remaining time period of the loan, interest charged by the Bank may not exceed one percent less than the Bank's base rate, as it may be established from time to time. For loans under this section, the Bank may not charge an interest rate exceeding eleven percent at any time during the course of the loan~~ may not be greater than one percent less than the Bank's base rate as in effect from time to time, and may float. However, the interest rate may not exceed eleven percent during the course of the loan. The Bank may charge for necessary and reasonable fees as determined by the industrial commission.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 84

HOUSE BILL NO. 1113
(Agriculture Committee)
(At the request of the Bank of North Dakota)

AGRICULTURE PACE PROGRAM

AN ACT to create and enact a new subsection to section 6-09.13-01 and a new subsection to section 6-09.13-02 of the North Dakota Century Code, relating to the definition of on-farm business and adoption of rules regarding buydown of interest rates on loans to on-farm businesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-09.13-01 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

"On-farm business" means any farm business located on a family farm. If a farmer can demonstrate compelling economic reasons for locating a business in a community adjacent to the family farm and financial assistance under this chapter will not give the farmer an unfair economic advantage over a similar non-farm business, the business may qualify as on-farm.

SECTION 2. A new subsection to section 6-09.13-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

The Bank shall adopt rules to implement this chapter.

Approved April 7, 1993
Filed April 8, 1993