

# EDUCATION

## CHAPTER 155

HOUSE BILL NO. 1233  
(Representatives Mutzenberger, Rydell)  
(Senators Lips, Heinrich)

### BISMARCK STATE COLLEGE LAND

AN ACT to authorize the state board of higher education to exchange certain state-owned land at Bismarck state college for certain property owned by Robert Asker.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. EXCHANGE OF LAND BY THE STATE BOARD OF HIGHER EDUCATION AND ROBERT ASKER AUTHORIZED.**

1. The state board of higher education may exchange title to the property described in this subsection for title to the property described in subsection 2 which is owned by Robert Asker: All that part of the southeast one-quarter of section thirty, township one hundred thirty-nine north, range eighty west, of the fifth principal meridian, Burleigh County, North Dakota that lies within the traverse beginning at the southeast corner of section thirty; thence south eighty-nine degrees twenty-five minutes forty-seven seconds west along the south line of section thirty a distance of nine hundred and twenty-four feet; thence north zero degrees fourteen minutes two seconds east a distance of one hundred eighty and two-hundredths feet to the point of beginning. From the point of beginning, the traverse continues north zero degrees fourteen minutes two seconds east, parallel with and nine hundred twenty-four feet west of the east line of section thirty a distance of five hundred sixty-six and thirty-hundredths feet to the south right-of-way line of interstate ninety-four; thence south sixty-four degrees thirty-nine minutes fifty-five seconds west along said right-of-way line a distance of nine hundred and twenty feet; thence south seventy-two degrees thirty-two minutes and eight seconds east a distance of five hundred eighty-four and fifteenth-hundredths feet; thence north eighty-nine degrees twenty-five minutes and forty-seven seconds east, parallel with and one hundred and eighty feet north of the south line of section thirty a distance of two hundred and seventy-two feet to the point of beginning. This tract contains five and ninety-six hundredths acres, more or less.
2. Title to the property described in this subsection and owned by Robert Asker may be accepted by the state board of higher education in exchange for title to the property described in subsection 1: The south one hundred and eighty feet of the east nine hundred and twenty-four feet of the south east one-quarter of the south east one-quarter of section thirty, township one hundred and thirty-nine north, range eighty west, of the fifth principal meridian, Burleigh County, North Dakota except the east two hundred and eight and seventy-one hundredths feet thereof. This tract contains two and ninety-six hundredths acres, more or less.

3. The exchange authorized by this Act is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
4. All legal documents required for the exchange authorized by this Act, including title opinions, must be reviewed as to form and legality by the attorney general.

Approved March 19, 1993  
Filed March 19, 1993

## CHAPTER 156

SENATE BILL NO. 2538  
(Senators Lips, Mushik)  
(Approved by the Delayed Bills Committee)

### **BISMARCK STATE COLLEGE PROPERTY EXCHANGE**

AN ACT to authorize the state board of education to exchange certain state-owned land at Bismarck state college for certain property owned by the Theodore Roosevelt Medora foundation; and to declare an emergency.

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

**SECTION 1. Exchange of land between state board of higher education and Medora foundation.**

1. The state board of higher education may exchange title to lots one and three, block one, Schafer heights addition to the city of Bismarck, North Dakota, containing one hundred fifty-four thousand two hundred forty-seven square feet, more or less, for title to the property described in subsection 2 which is owned by the Theodore Roosevelt Medora foundation.
2. The property described in this subsection and owned by the Theodore Roosevelt Medora foundation may be accepted by the state board of higher education in exchange for the property described in subsection 1:
  - a. All that part of lot one, block two, Schafer heights addition to the city of Bismarck, North Dakota described as follows: beginning at the southwest corner of lot one, block two, Schafer heights; thence bearing north seventeen degrees twelve minutes twenty-nine seconds west along the west line of lot one a distance of 476.19 feet to the northwest corner of lot one; thence bearing north eighty-nine degrees thirty-two minutes zero seconds east along the north line of lot one a distance of 59.76 feet; thence bearing south seventeen degrees fifty-three minutes forty-eight seconds east a distance of 477.95 feet to the south line of lot one, block two, Schafer heights; thence bearing south eighty-nine degrees thirty-two minutes zero seconds west along the south line of lot one a distance of 65.73 feet to the point of beginning. This described tract contains twenty-eight thousand six hundred nine square feet, more or less.
  - b. All that part of lot two, block two, Schafer heights addition to the city of Bismarck, North Dakota, described as follows: beginning at the southwest corner of lot two, block two, Schafer heights; thence bearing north seventeen degrees twelve minutes thirty-nine seconds west along the west line of lot two a distance of 139.93 feet to the northwest corner of lot two; thence bearing north eighty-nine degrees thirty-two minutes zero seconds east along the north line of lot two a distance of 65.73 feet; thence bearing south seventeen degrees fifty-three minutes forty-eight seconds east a distance of 140.45 feet to the south line of lot two, block two, Schafer heights; thence

bearing south eighty-nine degrees thirty-two minutes zero seconds west along the south line a distance of 67.49 feet to the point of beginning. This described tract contains eight thousand nine hundred twenty-four square feet, more or less.

- c. All that part of auditor's lot A of auditor's lot thirty in the northwest quarter of section thirty-two, township 139 north, range eighty west of the fifth principal meridian, Burleigh County, North Dakota, described as follows: beginning at the southwest corner of lot two, block two, Schafer heights addition to the city of Bismarck, North Dakota; thence bearing south eighty-nine degrees thirty-two minutes zero seconds west a distance of 221.21 feet; thence bearing north zero degrees twenty-eight minutes zero seconds west a distance of 134.00 feet to the north line of lot A; thence bearing north eighty-nine degrees thirty-two minutes zero seconds east along north line of lot A a distance of 180.90 feet to the northwest corner of lot two, block two, Schafer heights; thence bearing south seventeen degrees twelve minutes twenty-nine seconds east along the west line of lot two a distance of 139.93 feet to the point of beginning. This described tract contains twenty-six thousand nine hundred forty-one square feet, more or less.
  - d. All that part of auditor's lots F, G, H, and I of auditor's lot thirty in the northwest quarter of section thirty-two, township 139 north, range eighty west of the fifth principal meridian, Burleigh County, North Dakota described as follows: beginning at the southwest corner of lot one, block two, Schafer heights addition to the city of Bismarck, North Dakota; thence bearing south eighty-nine degrees thirty-two minutes zero seconds west along the south line of auditor's lots F, G, and H a distance of 180.90 feet; thence bearing north zero degrees twenty-eight minutes zero seconds west a distance of 456.00 feet to the north line of auditor's lot F; thence bearing north eighty-nine degrees thirty-two minutes zero seconds east along the north line of auditor's lot F a distance of 43.71 feet to the northwest corner of lot one, block two, Schafer heights; thence bearing south seventeen degrees twelve minutes thirty-nine seconds east along the west line of lot one, block two, Schafer heights, a distance of 476.19 feet to the point of beginning. This described tract contains fifty-one thousand two hundred sixteen square feet, more or less.
3. The exchange authorized by this Act is exempt from sections 54-01-05.2 and 54-01-05.5.
  4. The attorney general shall review as to form and legality all legal documents required for the exchange authorized by this Act, including title opinions.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 30, 1993  
Filed April 1, 1993

## CHAPTER 157

SENATE BILL NO. 2102  
(Education Committee)

(At the request of the Board of University and School Lands)

### UNIVERSITY AND SCHOOL LANDS INCOME

AN ACT to amend and reenact sections 15-03-05.1 and 15-03-05.2 of the North Dakota Century Code, relating to calculation and distribution to fund beneficiaries of income that has been earned by the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-03-05.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-03-05.1. Calculation of ~~investment fund~~ income.** At the end of each fiscal year, the board shall calculate the ~~investment~~ income earned by the permanent funds. ~~The investment income earned by the funds shall equal the amount of interest on debt securities and dividends on equity securities. If the sale of securities results in a net gain or loss during a fiscal year, the net gain or loss must be amortized to investment income in equal annual installments over a ten-year period. In lieu of amortizing any fiscal year net loss on the sale of securities, the board may recover such loss, in whole or in part, from past unamortized capital gains and future net realized capital gains. The net gain or loss realized on the sale of investment securities for the year must be amortized to fund income in equal annual installments over a ten-year period.~~

**SECTION 2. AMENDMENT.** Section 15-03-05.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-03-05.2. Distribution of ~~investment fund~~ income.** The board shall distribute only that portion of the ~~investment fund~~ income that is consistent with the long-term goals of preserving the purchasing power of the funds and maintaining income stability to the fund beneficiaries. ~~The investment income that is retained to preserve the purchasing power of the principal must be added to the principal permanent funds and remain inviolate. No investment income may be retained and added to the principal permanent funds if it would result in a decrease in distributions to the common schools or other fund beneficiaries from the amount distributed during the preceding year. Actual cash distributed during a fiscal year must be based on the estimated income of each fund. If the board's determination of the amount to be distributed for a fiscal year is different than the actual cash distributed, an adjustment must be made to the distributions during the following fiscal year. For the purpose of this section, any such adjustment must be considered part of the prior fiscal year's distribution.~~

Approved March 10, 1993  
Filed March 11, 1993

## CHAPTER 158

SENATE BILL NO. 2099  
(Education Committee)

(At the request of the Board of University and School Lands)

**UNIVERSITY AND SCHOOL LANDS SALES AND LEASES**

AN ACT to amend and reenact sections 15-04-10 and 15-06-26 of the North Dakota Century Code, relating to the place of sale or leasing of property owned by the board of university and school lands and appointment of a person to conduct the leasing of these properties.

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

**SECTION 1. AMENDMENT.** Section 15-04-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-04-10. Leasing to be by auction - Requirements governing.** The commissioner of university and school lands, or such other person ~~as may be~~ appointed by the ~~board of university and school lands~~ commissioner, shall conduct the leasing of the lands. The leasing must be at public auction, to the highest bidder, and must be held at the ~~courthouse or the place where terms of the district court are held~~ county seat. The auction must commence on the day and time specified in the advertisement for the leasing. Notice must be given when the land is offered for lease, that all bids are subject to approval by the board. In counties where a large number of tracts of land are to be leased, the land situated in certain townships may be designated in the advertisement to be leased on certain specified days, and in that case the lands must be leased or offered for lease on the days specified. If all designated lands are not offered for lease because of lack of time, the leasing of the lands unoffered may be adjourned until the following day or days when they must be the first lands offered for lease. Lands that have not been subdivided specially must be offered for lease in tracts of one-quarter section each, except as provided in section 15-08-25. Lands specially subdivided may be offered for lease in the smallest subdivision thereof. At the time of offering the lands for lease, the county auditor of the county shall act as clerk. Within five days after the completion of the auction the county auditor shall certify to the board of university and school lands a list of the lands leased, the price for which each tract was leased, the name of each lessee, and the initial amount of money paid by each lessee for rent.

**SECTION 2. AMENDMENT.** Section 15-06-26 of the North Dakota Century Code is amended and reenacted as follows:

**15-06-26. Manner of sale - Purchase price.** At the time appointed for the sale, the commissioner of university and school lands, ~~his~~ the commissioner's deputy, or any other person appointed by ~~him~~ the commissioner shall proceed to sell or offer for sale the land so advertised to be sold at public auction to the highest bidder. The sale shall be held at the ~~front door of the courthouse or of the place where the terms of the district court are held~~ county seat, in the county in which the land is situated. Lands that have not been subdivided specially shall be

offered in tracts of one quarter section, and those subdivided shall be sold in the smallest subdivision thereof. No tract shall be sold for less than the fair market value thereof or for less than ten dollars per acre [.40 hectare]. If the tract to be sold consists of grant lands once sold on contract and the contract has been canceled, and the lands form a single farm unit, the entire tract may be sold as a single tract and farm unit.

Approved March 10, 1993  
Filed March 11, 1993

## CHAPTER 159

HOUSE BILL NO. 1300  
(Representatives A. Olson, Hanson)  
(Senators Keller, Urlacher)

### LAND BOARD LEASE OIL ROYALTIES

AN ACT to amend and reenact section 15-05-10 of the North Dakota Century Code, relating to royalties from board of university and school lands oil and other mineral leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-05-10. Royalties from oil leases - Rents from other leases - Rules.** Oil leases ~~shall~~ must be made by the board of university and school lands at such annual minimum payments as ~~shall be~~ are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays ~~shall~~ must be made by the board in such annual payments as ~~shall be~~ are determined by the board. The board may adopt rules regarding annual payments and royalties under this section.

Approved April 14, 1993  
Filed April 15, 1993

## CHAPTER 160

SENATE BILL NO. 2103  
(Education Committee)

(At the request of the Board of University and School Lands)

### STATE LAND SALE TERMS

AN ACT to amend and reenact sections 15-06-27, 15-06-28, and 15-08-06 of the North Dakota Century Code, relating to cash sale of land by the board of university and school lands and the procedure for executing and delivering purchase agreements and contracts to the purchaser.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-06-27 of the North Dakota Century Code is amended and reenacted as follows:

**15-06-27. Terms of sale - Sale to highest bidder - Penalty for failure to make first payment.** The board of university and school lands may sell original grant land either for cash or under contract. The highest bidder for any tract of land offered for sale under this chapter shall be declared the purchaser thereof. ~~The~~ A purchaser under contract shall pay twenty percent of the purchase price at the time the contract is executed; thereafter annual payments shall be made of not less than six percent of the original purchase price. An amount equal to not less than three percent per annum of the unpaid principal shall be credited to interest and the balance shall be applied as payment on principal as credit on the purchase price. If the purchaser fails to pay the amount required to be paid at the time of sale, the commissioner or other person conducting the sale may reoffer the tract for sale immediately, but no bid shall be received from the person failing to pay as aforesaid. Any person refusing or neglecting to make such initial payment after purchase shall forfeit an amount equal to ten percent of the purchase price or final bid to be recovered for the benefit of the fund to which the land belongs by civil suit in the name of the state.

**SECTION 2. AMENDMENT.** Section 15-06-28 of the North Dakota Century Code is amended and reenacted as follows:

**15-06-28. Execution of contract - Failure.** Immediately upon the sale by the board of university and school lands, the purchaser shall execute a purchase agreement for a cash sale or a contract in duplicate in the form prescribed by the board. The failure of a purchaser to execute the a purchase agreement or a contract shall constitute a forfeiture of the payment made at or before the sale. When ~~the~~ a purchase agreement or contract is executed properly by the commissioner, the a copy marked "duplicate" shall be delivered to the purchaser. ~~Each contract executed shall have on the face a notation of the date of delivery of the duplicate to the purchaser.~~

**SECTION 3. AMENDMENT.** Section 15-08-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-08-06. Void sales - Surrender of contract - Refunding of money.** Any sale made by mistake, or not in accordance with law, or obtained by fraud shall be void, and the purchase agreement or contract of purchase issued thereon shall be of no effect. In such case, the holder of the purchase agreement or contract shall be required to surrender it to the board of university and school lands, and the board, except in case of fraud on the part of the purchaser, shall cause the money to be refunded to the holder of the void purchase agreement or contract.

Approved March 10, 1993  
Filed March 11, 1993

## CHAPTER 161

SENATE BILL NO. 2100

(Education Committee)

(At the request of the Board of University and School Lands)

### STATE PROPERTY CONVEYANCES

AN ACT to amend and reenact section 15-09-04 of the North Dakota Century Code, relating to the type of instrument used by the board of university and school lands to convey property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-09-04. Board to fix price for lands described in application - Conveyance.** If the board of university and school lands shall conclude at the hearing that the land described in the application is required for the purposes stated in such application, it shall fix a price, not less than the appraised valuation thereof, at which the conveyance of the entire tract of land will be made voluntarily. If the land described in the application is less than an entire tract, the board, in fixing the price at which such partial tract will be conveyed, shall take its value into consideration together with all detriment caused to the remaining portions of the tract by the conveyance of the partial tract. If the applicant shall agree to the price fixed by the board for the land described in the application and shall pay the full purchase price therefor, the board shall cause ~~a patent conveying~~ the tract to be ~~executed~~ conveyed to the applicant.

Approved March 10, 1993

Filed March 11, 1993

## CHAPTER 162

SENATE BILL NO. 2514  
(Senators Kelly, DeMers, Malewaja)  
(Representative St. Aubyn)

### BOARD OF HIGHER EDUCATION STUDENT MEMBER

AN ACT to amend and reenact section 15-10-02 of the North Dakota Century Code, relating to student membership on the state board of higher education.

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

**SECTION 1. AMENDMENT.** Section 15-10-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-10-02. Membership of state board of higher education - Qualifications of members - Advisory representatives.** The state board of higher education shall consist of seven members, all of whom shall be qualified electors and taxpayers of the state who shall have resided in this state for five years immediately preceding their respective appointments. The members of the board shall be appointed by the governor and confirmed by the senate. Nominations shall be made by the governor from a list of three names for each position to be filled on such board, such names to be selected by the unanimous action of the president of the North Dakota education association, the chief justice of the supreme court, and the superintendent of public instruction. There shall not be on said board at any one time more than one graduate of any one of the institutions under the jurisdiction of the board. No person employed by any institution under the control of the board shall serve as a member of the board, nor shall any employee of any such institution be eligible for membership on the board for a period of two years following the termination of employment. In addition to the regular board members, a nonvoting advisory representative from the North Dakota student association and one from the council of college faculties may attend and provide input at all board meetings. Each year the North Dakota student association executive board shall select one member to serve as its representative for a term of one year. The student advisory representative must be a resident of North Dakota and be a full-time student in good academic standing, enrolled in a minimum of six credits. The council of college faculties shall each year select one member to serve as its representative. The student advisory representative and the council of college faculties representative are entitled to receive necessary expenses for travel.

Approved March 25, 1993  
Filed March 26, 1993

## CHAPTER 163

SENATE BILL NO. 2379  
(Senators Goetz, Robinson)  
(Representatives Byerly, Gates)

### FACULTY ENGLISH PROFICIENCY

AN ACT to amend and reenact section 15-10-13.1 of the North Dakota Century Code, relating to English proficiency of graduate assistants at state institutions of higher education.

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

**SECTION 1. AMENDMENT.** Section 15-10-13.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-10-13.1. Faculty - English language proficiency.** Any professor, instructor, teacher, ~~or~~ assistant, or graduate assistant at a state institution of higher education must exhibit written and verbal proficiency in the English language. Any deficiency must be remedied by special training or coursework provided by the institution.

Approved April 15, 1993  
Filed April 15, 1993

## CHAPTER 164

SENATE BILL NO. 2089  
(Appropriations Committee)  
(At the request of the State Board of Higher Education)

### HIGHER EDUCATION INSTITUTION FINANCIAL STATEMENTS

AN ACT to amend and reenact section 15-10-14 of the North Dakota Century Code, relating to the time of making financial statements for institutions under the control of the state board of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-10-14 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-14. Accounts and records of institutions - Examination and audit.** The state board of higher education shall prescribe for all of the institutions under its control standard systems of accounts and records. The board shall require financial statements on a ~~monthly~~ quarterly basis from each institution, which shall be in such form as the board shall prescribe and the board shall have the authority to examine, review, and audit the books and records of the institutions under its control. Such institutions shall provide such financial information and such assistance in the conduct of the board's reviews and audits as the board may request.

Approved March 25, 1993  
Filed March 26, 1993

## CHAPTER 165

HOUSE BILL NO. 1066  
(Representatives Coats, R. Berg)

### TUITION WAIVERS

AN ACT to amend and reenact sections 15-10-18.3 and 15-10-18.5 of the North Dakota Century Code, relating to tuition waivers at state-supported institutions of higher education and state-supported technical or vocational schools.

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

**SECTION 1. AMENDMENT.** Section 15-10-18.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-10-18.3. Free tuition in North Dakota institutions of higher education.** Any dependent, as defined in section 15-10-18.2 upon being duly accepted for enrollment into any North Dakota state-supported institution of higher education or state-supported technical or vocational school, ~~may shall be granted a waiver of allowed to obtain a bachelor's degree or certificate of completion, for so long as the dependent is eligible, free of any tuition and fee charges, except those charged to retire outstanding bonds. The waiver must be based upon a showing of financial need, using the same criteria as that used to determine eligibility for federal financial aid under Title IV of the Higher Education Act of 1965, as amended. The waiver applies only to a;~~ provided, however, that the bachelor's degree or certificate of completion that is earned within a thirty-six-month or eight-semester period or its equivalent; and further provided that tuition and fee charges shall not include costs for aviation flight charges or expenses. Once a person qualifies as a dependent under sections 15-10-18.2 and 15-10-18.3, there shall be no removal from the benefits of this section due to such an occurrence as the return of the prisoner of war or person missing in action.

**SECTION 2. AMENDMENT.** Section 15-10-18.5 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-10-18.5. Free tuition in North Dakota institutions of higher education for survivor of firefighter or peace officer.** Should a firefighter or peace officer die as a direct result of injuries received while engaged in the performance of official duties under circumstances dangerous to human life, the survivor, upon being duly accepted for enrollment into any North Dakota state-supported institution of higher education or state-supported technical or vocational school, ~~may must be granted a waiver of allowed to obtain a bachelor's degree or certificate of completion, for so long as the dependent is eligible, free of any tuition and fee charges, except those charged to retire outstanding bonds. The waiver must be based upon a showing of financial need, using the same criteria as that used to determine eligibility for federal financial aid under Title IV of the Higher Education Act of 1965, as amended. The waiver applies only to a;~~ provided, however, that the bachelor's degree or certificate of completion that is earned within a thirty-six-month or eight-semester period or its equivalent; and further provided that tuition and fee charges may not include costs for aviation flight charges or expenses.

Approved March 12, 1993  
Filed March 12, 1993

## CHAPTER 166

SENATE BILL NO. 2262  
(Senators Nelson, Heinrich, Nalewaja)  
(Representatives Clayburgh, Howard, Soukup)

### RESIDENCY OF STUDENTS FOR TUITION PURPOSES

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to the definition of resident and nonresident students for purposes of tuition; and to repeal section 15-10-19 of the North Dakota Century Code, relating to the definition of nonresident students for purposes of tuition.

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

**SECTION 1.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

##### **Nonresident and resident student for tuition purposes defined.**

1. A "nonresident student" for tuition purposes means any student other than a resident student.
2. A "resident student" for tuition purposes means:
  - a. A person less than eighteen years of age whose guardian, custodial parent, or parents reside in this state and have resided in this state for twelve months immediately prior to the date of registration;
  - b. A person of age eighteen or over who resides in this state and has resided in this state after reaching age eighteen for twelve months immediately prior to the date of registration, provided the person is not a dependent of a parent who is not a resident of this state;
  - c. A person who graduated from a North Dakota high school within sixty-four months of registration;
  - d. A full-time active duty member of the armed forces assigned to a military installation in this state;
  - e. A spouse or dependent of a full-time active duty member of the armed forces assigned to a military installation in this state, a dependent of an instructor who lives and teaches in any institution of higher education in this state; and a spouse of any other resident for tuition purposes; and
  - f. Any other person who registers within sixty months after residing in this state for a period of at least thirty-six consecutive months.
3. A temporary absence from the state for vacation or other special or temporary purposes may not be considered an abandonment of residency in this state, provided a residence is maintained in this state during the

temporary absence. However, a student who leaves the state and resides in another state for a period of months is not considered a resident of this state during those months if the student does not maintain a place of residence in this state during the student's absence.

**SECTION 2. REPEAL.** Section 15-10-19 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved March 10, 1993  
Filed March 11, 1993

## CHAPTER 167

HOUSE BILL NO. 1313  
(Representatives Svedjan, Boucher, Brodshaug, Poolman, Stenehjem)  
(Senator DeMers)

### FETAL ALCOHOL SYNDROME CENTER

AN ACT to establish a fetal alcohol syndrome center, to require a prevalence study of fetal alcohol syndrome in the state, and to develop a fetal alcohol evaluation and treatment program at the medical center rehabilitation hospital at the university of North Dakota; and to provide an appropriation.

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

**SECTION 1. Fetal alcohol syndrome center established.** There is established in the department of neuroscience at the university of North Dakota school of medicine a fetal alcohol syndrome center. The state board of higher education shall appoint a person from the department of neuroscience as director of the fetal alcohol syndrome program and that person shall prepare an annual report on the status of fetal alcohol syndrome in North Dakota. The center shall develop prevention activities in groups that are at high risk for fetal alcohol syndrome. The center may enlist the aid of other agencies, persons, or organizations in its activities. The responsibilities of the program include:

1. To develop incidence and prevalence data on fetal alcohol syndrome in this state.
2. To conduct research on prevention and management of fetal alcohol syndrome and maternal alcohol ingestion during pregnancy.
3. To develop a center for the evaluation of children with fetal alcohol syndrome from this state in cooperation with the child evaluation and treatment program at the medical center rehabilitation hospital at the university of North Dakota and to operate followup clinics as funding allows.
4. To provide consultation and training across the state on fetal alcohol syndrome.
5. To conduct other activities as may be directed by a state fetal alcohol syndrome task force.

**SECTION 2. Fetal alcohol syndrome prevalence study.** The center shall coordinate a study of the prevalence of fetal alcohol syndrome in school-age children in this state. The study must review the prevalence of fetal alcohol syndrome in both rural and urban North Dakota communities, including North Dakota Indian reservations.

**SECTION 3. Evaluation of children with fetal alcohol syndrome.** The child evaluation and treatment program at the university of North Dakota medical center rehabilitation hospital shall develop a clinic to provide both initial diagnostic

assessment and reevaluation of children with fetal alcohol syndrome. The diagnostic assessment must include a comprehensive multidisciplinary assessment of psychological, speech and language, educational, occupational therapy, physical therapy, optometric, and audiological evaluations. Reevaluations must be individualized according to a child's needs. The center shall provide consultative services to schools, community agencies, and parents to assist in serving children diagnosed with fetal alcohol syndrome.

**SECTION 4. APPROPRIATION.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$40,750, or so much of that sum as may be necessary, to the department of human services for the purpose of effectuating sections 1 through 3 of this Act for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved April 9, 1993  
Filed April 9, 1993

# CHAPTER 168

SENATE BILL NO. 2072  
(Education Committee)

(At the request of the State Board of Vocational Education)

## POSTSECONDARY EDUCATION PROGRAMS

AN ACT to amend and reenact sections 15-20.4-02 and 15-20.4-04 of the North Dakota Century Code, relating to postsecondary educational institutions.

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

**SECTION 1. AMENDMENT.** Section 15-20.4-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-20.4-02. Exemptions.** The following education and educational institutions are exempted from the provisions of this chapter:

- 1. Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade.
- 2. Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the board, solely for that organization's membership, or offered on a no-fee basis.
- 3. Education solely avocational or recreational in nature, as determined by the board, and institutions offering such education exclusively.
- 4. Certain education provided through short-term programs as determined by the board.
- 5. Education offered by charitable institutions, organizations, or agencies, so recognized by the board, provided the education is not advertised or promoted as leading toward educational credentials.
- ~~5-~~ 6. Postsecondary educational institutions established, operated, and governed by this state or its political subdivisions, as determined by the board and any educational consortium that includes one or more of the institutions.
- ~~6-~~ 7. Private four-year institutions chartered or incorporated and operating in the state prior to July 1, 1977, so long as the institutions retain accreditation by national or regional accrediting agencies recognized by the United States office of education.
- ~~7-~~ 8. Schools of barbering regulated under chapter 43-04.
- ~~8-~~ 9. Schools of cosmetology regulated under chapter 43-11.
- ~~9-~~ 10. Schools of nursing regulated under chapter 43-12.1.

- ~~10.~~ 11. Schools instructing on the manner of conducting games of chance which are regulated under chapter 53-06.1.
- ~~11.~~ 12. Schools instructing on the manner of conducting auction sales which are regulated under chapter 51-05.1.

**SECTION 2. AMENDMENT.** Section 15-20.4-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-20.4-04. Minimum standards.** All postsecondary educational institutions ~~shall~~ must be accredited by national or regional accrediting agencies recognized by the United States department of education. The board may additionally require such further evidence and make such further investigation as in its judgment may be necessary. Any postsecondary educational institution domiciled in this state seeking its first authorization to operate may be issued a provisional authorization to operate on an annual basis until the institution becomes eligible for accreditation by a recognized accrediting agency. Upon completion of the accreditation process, the institution shall submit evidence of accreditation, or a substantial good faith showing of progress toward such status. Only upon accreditation shall an institution become eligible for a regular authorization to operate. This section does not apply to nonacademic or nonprofessional postsecondary institutions domiciled in this state and enrolling a limited number of students as determined by the board.

Approved March 10, 1993  
Filed March 11, 1993

## CHAPTER 169

HOUSE BILL NO. 1343  
(Representatives Svedjan, Boucher)

### **MATERNAL AND CHILD HEALTH PROGRAMS**

AN ACT relating to the consolidation of maternal and child health programs.

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

**SECTION 1. CONSOLIDATION OF MATERNAL AND CHILD HEALTH PROGRAMS.** The state health officer, executive director of the department of human services, superintendent of public instruction, and any other head of a state agency administering a maternal or child health program, as determined by the state health officer, shall work together to consolidate all state-administered maternal and child health programs under a single agency. The agency heads working together under this Act shall determine which agency could most effectively and efficiently administer maternal and child health programs. The agency selected to administer the consolidated programs shall include in its budget estimate submitted to the office of the budget under North Dakota Century Code section 54-44.1-04, the estimate necessary for funding the consolidated maternal and child health programs for the 1995-97 biennium. The agency selected to administer the consolidated programs shall prepare any legislation necessary to effectuate the consolidation by August 1, 1994. That agency shall submit that legislation to the fifty-fourth legislative assembly.

Approved March 22, 1993  
Filed March 23, 1993

## CHAPTER 170

HOUSE BILL NO. 1467  
(Representatives Grosz, Freier, Wilkie)  
(Senators Kelsh, Urlacher)

### STUDENT PERFORMANCE AND SCHOOL DECISIONMAKING

AN ACT to amend and reenact sections 15-21-04.6 and 15-29-08.3 of the North Dakota Century Code, relating to student performance standards and assessment and school district policies and plans for participatory school decisionmaking.

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

**SECTION 1. AMENDMENT.** Section 15-21-04.6 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-21-04.6. Student performance standards and assessment - Preliminary activities - Continuing appropriation.**

1. The superintendent of public instruction, subject to the financial limitations imposed by subsection 2, shall conduct preliminary research and engage in other appropriate activities to prepare for the development of student performance standards and the assessment program to be implemented during the ~~1993-95~~ 1997-99 biennium.
2. The funding for the activities of the superintendent described in subsection 1 must be provided from contributions, gifts, or grants received from the federal government, private organizations, or other nonstate sources and may be used only for the specific purpose for which the funds were contributed. These funds are hereby appropriated to the superintendent for the purpose of implementing subsection 1. The superintendent is not required to implement subsection 1 if adequate funding does not become available pursuant to this subsection.

**SECTION 2. AMENDMENT.** Section 15-29-08.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-29-08.3. School district policy and plan for participatory school decisionmaking.**

1. By July 1, ~~1994~~ 1998, each school board of a public school district, including the Fargo school district, shall adopt a policy and plan for implementing participatory school decisionmaking in that school district, including a description of how teachers, parents, school administrators, and other school employees of a school are to be involved in the decisionmaking process. Each school board, prior to adopting the policy and plan, shall adopt a procedure whereby all interested persons are afforded a reasonable opportunity to submit their views concerning the content of the policy and plan, which views are not binding on the school board.

2. The superintendent of public instruction shall develop nonbinding guidelines to assist school boards in the development of policies and plans relating to participatory school decisionmaking, and make the guidelines available to nonpublic schools.
3. By July 1, ~~1994~~ 1998, each school board shall submit to the superintendent of public instruction a copy of the policy and plan for the school district. On July first of each even-numbered year thereafter, each school board shall submit to the superintendent a copy of a written evaluation of the policy and implementation plan and copies of any amendments to the policy and plan.
4. This section may not be construed to impair the rights, powers, or duties of local school districts and school boards in the management and control of local schools.

Approved April 21, 1993  
Filed April 22, 1993

## CHAPTER 171

SENATE BILL NO. 2418  
 (Senators DeMers, Lindgren)  
 (Representatives Rydell, Goffe)

### EDUCATION PRACTICES

AN ACT to amend and reenact sections 15-21-09, 15-36-01, 15-36-01.1, 15-36-08, 15-36-10, 15-36-11, 15-36-14.1, 15-36-15, 15-36-16, 15-36-17, 15-38-17, 15-38-18, 15-38-19, 15-47-28, 15-47-30, subdivision q of subsection 1 of section 28-32-01, and subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to teachers' certificates, the duties of the education standards practices board, and the duties of the administrator's professional practices board; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-21-09 of the North Dakota Century Code is amended and reenacted as follows:

**15-21-09. ~~Certification of teachers~~ - Standardization of schools - Textbooks - Examinations - Courses of study.** The superintendent of public instruction ~~shall have~~ has charge and supervision of the ~~certification of teachers~~, standardization of schools, uniformity of textbooks, examinations for eighth grade and high school pupils, and preparation of courses of study for the ~~several~~ classes of public schools.

**SECTION 2. AMENDMENT.** Section 15-36-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-36-01. Teachers' certificates - Criteria to be established.** The ~~superintendent of public instruction, after consulting with the teachers' professional practices commission, education standards and practices board~~ shall determine the criteria for teacher certification for school terms beginning on or after July 1, ~~1974~~ 1995. The ~~established~~ criteria shall be based upon standards which ~~shall~~ include considerations of character, adequate educational preparation, and general fitness to teach in the public schools of this state. After holding a public hearing ~~thereon~~, the ~~superintendent~~ board shall issue rules and ~~regulations~~ concerning the issuance of teachers' certificates, and ~~such~~ certificates shall be issued by ~~his~~ the board's office in accordance with ~~such~~ the rules and ~~regulations~~. However, any teacher who has graduated from college in an accredited teacher education program on or before September 1, 1980, shall not be required to earn any college credits in native American or other multicultural courses in order to be certified or recertified. Nothing in this section shall be interpreted to affect the validity of life certificates in existence on July 1, 1973, nor shall this section affect vocational education certificate qualifications as provided in chapter 15-20.1.

**SECTION 3. AMENDMENT.** Section 15-36-01.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-36-01.1. Teachers' certificates - Student transcript.** A student who has met all the criteria necessary to receive a teacher's certificate, but who has not graduated from a college or university, may request a copy of the student's completed transcript from the college or university the student attended. Within ten days of the request by the student, the college or university shall mail a copy of the transcript to the ~~superintendent of public instruction~~ educational standards and practices board showing that the student has met all the criteria necessary to receive a teacher's certificate except graduation. The transcript must indicate areas in which the student has a major or minor.

**SECTION 4. AMENDMENT.** Section 15-36-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-36-08. Fees for certificates.** The ~~superintendent of public instruction~~ education standards and practices board shall ~~require~~ determine a fee of ~~five~~ dollars for each certificate issued by this state, and no certificate shall be issued for a period of less than one school year. The ~~fees herein provided for~~ shall be deposited in the state treasury to the credit of the general fund of the state.

**SECTION 5. AMENDMENT.** Section 15-36-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-36-10. Teachers' certificates valid in county only when recorded in the office of the county superintendent of schools of such county.** Any certificate issued by the ~~superintendent of public instruction~~ education standards and practices board shall authorize the holder to teach in any county of the state when it is recorded in the office of the county superintendent of schools of such county. Teachers serving multidistrict or multicounty positions shall record the certificate only in the county containing the administrative unit. Nothing contained in this chapter affects the validity of any certificate lawfully issued prior to July 1, 1995.

**SECTION 6. AMENDMENT.** Section 15-36-11 of the North Dakota Century Code is amended and reenacted as follows:

**15-36-11. Certificate required.** No person who is not the holder of a valid teacher's certificate shall ~~may~~ be permitted or employed to teach in any of the public schools of the state, except that teachers unable to be certificated because they are not citizens of the United States or because they have not declared their intention to become citizens of the United States, but are otherwise qualified to teach in North Dakota, may be employed on a temporary basis if they are approved annually by the ~~superintendent of public instruction~~ education standards and practices board. The employment of ~~such~~ teachers in accordance with this section shall ~~may~~ not cause any foundation aid payments to be withheld from the school districts by whom they are employed.

**SECTION 7. AMENDMENT.** Section 15-36-14.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-36-14.1. State's attorney - Duty to notify the ~~superintendent of public instruction~~ educational standards and practices board and the administrator's professional practices board.** The state's attorney shall notify the ~~superintendent of public instruction~~ educational standards and practices board or the administrator's professional practices board in the case of a school administrator,

in writing, whenever a certificated teacher or administrator is convicted of a felony or a class A misdemeanor.

**SECTION 8. AMENDMENT.** Section 15-36-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-36-15. Revocation of teacher's certificates - Grounds - Effect.** The ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board in the case of a school administrator may suspend for a period of time, or revoke and annul any teacher's or administrator's certificate granted in this state upon any or all of the following grounds:

1. For any cause which would have authorized or required the ~~superintendent~~ education standards and practices board to refuse to grant the certificate if the facts were known at the time when the certificate was granted.
2. For incompetency, immorality, intemperance, or cruelty of the certificate holder.
3. The certificate holder has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in this or any other state, or before any federal court, of an offense determined by the ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board in the case of a school administrator to have a direct bearing upon a person's ability to serve the public as a teacher or administrator, or the ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
4. For the refusal by the certificate holder to perform the duties of a teacher or the general neglect of the work of the school.
5. For the breach, by the certificate holder, of a contract with any school district.
6. Serious violation or a series of violations of the professional codes and standards promulgated in accordance with law.

The revocation of a certificate shall terminate the employment of the ~~certificate holder of such certificate in~~ by the school in which the holder is employed when the certificate is revoked, but the holder must be paid to the time the notice of revocation was is received. Appeals from any order of revocation may be taken to the district court of Burleigh County as provided by chapter 28-32.

**SECTION 9. AMENDMENT.** Section 15-36-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-36-16. Proceedings to suspend, revoke, or annul certificate.** The ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board in the case of a school administrator, upon the receipt of a ~~formal~~ complaint ~~by the teachers' professional practices~~

~~commission alleging grounds to suspend for a period of time, revoke, or annul any person's teacher's certificate as set forth in subsections 1, 2, 4, 5, and 6 of section 15-36-15, and upon the determination that sufficient evidence exists to sustain the charges in the complaint, shall conduct proceedings in accordance with chapter 28-32. The superintendent of public instruction, upon receipt of a formal complaint which includes a certified copy of a criminal judgment alleging grounds for suspension or revocation of any person's teacher's certificate as set forth in subsection 3 of section 15-36-15, shall conduct proceedings in accordance with chapter 28-32. Upon the completion of such the proceedings, if the superintendent of public instruction shall find education standards and practices board or the administrator's professional practices board finds that grounds to annul, revoke, or suspend for a period of time do exist, the superintendent appropriate board shall issue an order in the manner provided in chapter 28-32 to annul, revoke, or suspend for a period of time the teacher's certificate of such person as provided in section 15-36-15.~~

**SECTION 10. AMENDMENT.** Section 15-36-17 of the North Dakota Century Code is amended and reenacted as follows:

**15-36-17. Notice to be given when teacher's certificate is revoked.** When a teacher's certificate is revoked, the ~~superintendent of public instruction education standards and practices board or the administrator's professional practices board~~ shall ~~cause notice to be sent immediately to notify~~ the clerk of the school board or the secretary of the board of education, as the case may be, of the district wherein the teacher is employed, and shall notify the teacher of the revocation through ~~such the~~ clerk. The ~~superintendent appropriate board~~ also shall notify each county superintendent of schools in the state and shall enter ~~his~~ an action in the case upon the records of ~~his the~~ superintendent's office. Upon receipt of ~~notice of revocation of his~~ being notified that the teacher's certificate ~~has been revoked~~, the teacher ~~or administrator~~ shall return the certificate to the ~~superintendent of public instruction appropriate board~~, and if the teacher ~~or administrator~~ neglects so to do, that the ~~superintendent board~~ may issue notice of the revocation by publication in the official newspaper of the county in which the teacher ~~or administrator~~ last was employed.

**SECTION 11. AMENDMENT.** Section 15-38-17 of the North Dakota Century Code is amended and reenacted as follows:

**15-38-17. ~~Teachers' professional practices commission~~ Education standards and practices board and administrator's professional practices board.** ~~The teachers' professional practices commission shall consist education standards and practices board consists of nine members. The governor shall appoint four classroom teachers from public schools, two one classroom teacher from a private school, one school board members member, two school administrators, and one member nominated by the state board of public school dean of a college of education. The superintendent of public instruction or the superintendent's designee shall serve as a nonvoting ex officio member. The administrator's professional practices board consists of five members from the education standards and practices board. The administrator's professional practices board includes the two school administrators who are members of the education standards and practices board, the one school board member who is a member of the education standards and practices board, and two teacher members who are members of and are selected by the education standards and practices board. The term of office of members of the commission education standards and practices board and the administrator's professional practices board~~

shall be three years commencing on ~~July~~ January first of the year of the appointment, ~~except that original appointments shall be for staggered terms of one, two, and three years in order that the terms of three members of the commission shall expire each year thereafter.~~ Vacancies shall be filled for an unexpired term in the same manner as original appointments. No person shall ~~may~~ serve for more than two consecutive terms as a member of the ~~commission~~ either board. For each classroom teacher vacancy on the education standards and practices board, the governor shall appoint the member from a list of three names provided by the North Dakota education association. For each administrator vacancy on either board, the governor shall appoint the member from a list of three names provided by the North Dakota council of school administrators. For each school board vacancy on the board, the governor shall appoint the member from a list of three names provided by the North Dakota school board association. For each college dean vacancy on the board, the governor shall appoint a member from a list of three names provided by the deans of colleges of education. Members of the current teachers' professional practices commission may serve out their remaining terms.

The commission education standards and practices board and the administrator's professional practices board shall each annually select a chairman and vice chairman, and the superintendent of public instruction or his designee executive director of the education standards and practices board or the executive director's designee shall serve as secretary. Meetings shall of either board must be held after ten days' notice to all members at the call of the chairman or upon request in writing of a majority of the commission either board. A majority shall constitute a quorum and a majority of such the quorum shall have authority to act upon any matter properly before the commission. It either board. Each board shall adopt its own rules of order and procedure not inconsistent with sections 15-38-16 through 15-38-19 and shall hold meetings pursuant to the provisions of sections 15-38-16 through 15-38-19.

The members of the commission each board shall receive twenty-five dollars for each day actually engaged in the service of the commission appropriate board and shall be paid actual and necessary traveling and other expenses at the same rate as for employees of the state. No member of the commission either board shall lose his the member's regular salary or the above compensation while serving on official business of the commission appropriate board. The superintendent of public instruction office of management and budget shall approve proper vouchers for such expenses.

**SECTION 12. AMENDMENT.** Section 15-38-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-38-18. Duties of commission and superintendent of public instruction the education standards and practices board. It is the duty of the commission board to supervise the certification of teachers, to set standards for and approve teacher preparation programs, to develop and revise, consistent with state law, professional codes or standards relating to ethics, conduct, and professional performance and practices and to provide recommendations for in-service education of persons engaged in the profession of teaching in the public schools. In the development of such professional codes and standards, the commission board shall solicit the assistance of members of the teaching profession and representatives of school administrators, school board members, teacher education professors, and other interested citizens. The commission shall recommend such professional codes and standards as it may approve to the superintendent of public instruction, who after a hearing thereon

~~may, consistent with state law, concur or veto and return to the commission for further study the revision of such codes and standards as the superintendent of public instruction deems proper and in the best interest of the public and the profession, and thereafter board shall adopt such approved or revised codes and standards as rules in accordance with chapter 28-32. The commission shall advise the superintendent of public instruction regarding rules and regulations and procedures to be followed related to the issuance of teachers' certificates. The board may enter into agreements with other states to acquire reciprocal approval of teacher preparation programs, apply for and receive federal or other funds on behalf of the state for purposes related to its duties, and to perform any other duty that relates to the improvement of instruction through teacher education, professional development, and continuing education programs. The board has the powers and privileges of a corporation, including the right to sue and be sued in its own name as the board. The venue of all actions in which the board is a party must be Burleigh County, North Dakota. The board shall appoint an executive director to serve at its discretion. The executive director shall perform the duties assigned by the board. The board shall authorize the employment of staff necessary for the sound and economic administration of its duties, responsibilities, and functions. The executive director shall hire the staff, subject to the approval of the board.~~

**SECTION 13. AMENDMENT.** Section 15-38-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-38-19. Complaints against teachers and school administrators.** ~~The commission education standards and practices board or the administrator's professional practices board shall accept and investigate complaints against any member of the teaching profession engaged in teaching or administration alleging a violation or violations of regulations rules promulgated in accordance with section 15-38-18 or alleging grounds as set forth in subsections 1, 2, 4, 5, and 6 of section 15-36-15. Such investigations may be made upon the commission's own motion. The complainant shall prepare and file a clear and concise complaint with the appropriate board. The complaint must contain a concise statement of the claims or charges upon which the complainant relies including references to the statute or rule allegedly violated. The complaint must include supporting affidavits. Upon the filing of the complaint with the appropriate board, that board shall serve a copy of the complaint and supporting affidavits upon the teacher or administrator personally or by certified mail. Within twenty days of the receipt of the complaint by the teacher or administrator, the teacher or administrator may file with the appropriate board a clear and concise answer to the complaint. The answer may include supporting affidavits. If the teacher or administrator fails to file an answer with the appropriate board, the allegations in the complaint will be deemed admitted and the appropriate board shall proceed to hold a hearing pursuant to section 15-36-16. If an answer is submitted by the teacher or administrator, the appropriate board shall hold a hearing for the purpose of reviewing and discussing the documentation submitted by the respective parties. No testimony by any witnesses may be permitted at this hearing. Following such investigation the hearing, the commission board may dismiss such a complaint as unfounded, issue a written warning and reprimand, or, following an opportunity for such teacher to informally appear before the commission, file a formal complaint with the superintendent of public instruction requesting the suspension for a period of time, revocation or annulment of the teacher's certificate of the teacher involved and stating the reasons therefor. The commission shall make the results of its investigation fully available to the superintendent of public instruction in such~~

~~eases. Upon receipt of such formal complaint, the superintendent of public instruction shall proceed as provided in sections 15-36-16 and 15-36-17 and in accordance with section 15-36-15 upon the determination that sufficient evidence exists to sustain the charges, order a hearing pursuant to section 15-36-16.~~

**SECTION 14. AMENDMENT.** Section 15-47-28 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-28. Suspension of teacher's certificate for breach of contract.** In the event of breach of contract on the part of a teacher or administrator, the ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board shall suspend ~~such a~~ teacher's certificate for a period not to exceed one year, during which time it shall be unlawful for such teacher or administrator to receive payment for teaching or administration in the public schools of North Dakota.

**SECTION 15. AMENDMENT.** Section 15-47-30 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-30. Suspension and revocation of teachers' certificates for wearing religious garb.** Any public school teacher or administrator who ~~shall violate any of~~ violates the provisions of section 15-47-29 shall have ~~his or her~~ the teacher's certificate suspended by the ~~state superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board for one year, and upon the conviction of ~~such the~~ teacher or administrator for a second such offense, ~~his or her~~ the teacher's certificate shall ~~must~~ be permanently revoked and annulled by the ~~state superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board as provided by law.

**SECTION 16. AMENDMENT.** Subdivision q of subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- q. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07, ~~rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18.~~

**SECTION 17. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, 12-55-01, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-26-01, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
  - a. The aeronautics commission.
  - b. The milk stabilization board.
  - c. The dairy promotion commission.
  - d. The state banking board.

- e. The state credit union board.
- f. The advisory board of directors to the Bank of North Dakota.
- g. The board of pardons.
- h. The state parole board.
- i. The state board of public school education.
- j. The ~~teachers' professional practices commission~~ education standards and practices board and the administrator's professional practices board.
- k. The board of trustees for the teachers' fund for retirement.
- l. The educational telecommunications council.
- m. The state game and fish advisory board.
- n. The health council.
- o. The air pollution control advisory council.
- p. The board of animal health.
- q. The administrative committee on veterans' affairs.
- r. The governor's council on human resources.
- s. The North Dakota council on the arts.
- t. The state historical board.
- u. The Yellowstone-Missouri-Fort Union commission.
- v. The state water commission.
- w. The state water pollution control board.

**SECTION 18. APPROPRIATION.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,500, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of funding teacher certification and all other duties of the education standards and practices board for the period beginning January 1, 1995, and ending June 30, 1995.

**SECTION 19. EFFECTIVE DATE.** Sections 11, 12, and 18 of this Act become effective on January 1, 1995, and sections 1 through 10 and 13 through 17 become effective on July 1, 1995.

Approved April 29, 1993  
Filed April 30, 1993

## CHAPTER 172

SENATE BILL NO. 2127  
(Education Committee)

(At the request of the State Board of Vocational Education)

### EDUCATION BOARD JOINT MEETINGS

AN ACT to amend and reenact section 15-21-18 of the North Dakota Century Code, relating to joint meetings between the state board of higher education and the state board of public school education.

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

**SECTION 1. AMENDMENT.** Section 15-21-18 of the North Dakota Century Code is amended and reenacted as follows:

**15-21-18.** Joint meetings of board of higher education, state board for vocational and technical education, and state board of public school education. The state board of higher education, and the members of the state board of public school for vocational and technical education in their capacity as both the state board for vocational and technical education and the state board of public school education, shall hold at least one joint meeting each year at the joint call of the director for vocational and technical education, the superintendent of public instruction, and the commissioner of higher education for the purpose of coordinating their programs and specifically considering matters in relation to teacher training, teaching standards, and teacher certification cooperating in any manner that accomplishes the objectives of the three boards involved.

Approved March 4, 1993  
Filed March 5, 1993

## CHAPTER 173

SENATE BILL NO. 2215  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### **SUPERINTENDENT RULEMAKING**

AN ACT to create and enact a new section to chapter 15-22 of the North Dakota Century Code, relating to the rulemaking authority of the superintendent of public instruction; and to amend and reenact section 15-22-25 and subdivision q of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to counties sharing a common county superintendent of schools and rulemaking authority.

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

**SECTION 1. AMENDMENT.** Section 15-22-25 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-22-25. Biennial plan required - Two or more counties may have a common county superintendent of schools - Appeals.**

1. The board of county commissioners of two or more counties may agree to jointly employ a county superintendent of schools to perform the functions of the office for the counties involved. Any county which has less than one thousand persons over five and under eighteen years of age, as determined by the superintendent of public instruction for the previous school year, must combine with another county or counties for the purpose of jointly employing a county superintendent of schools. The board of county commissioners of such a county shall develop a plan to cooperate with another county or counties to employ a county superintendent of schools. If the board of county commissioners of each county cannot agree to share a county superintendent of schools, the superintendent of public instruction may require a county to participate in a plan to jointly employ a county superintendent of schools. Any plan to share a county superintendent of schools must be approved by a majority of the presidents of the school boards of each county affected by the plan and must be confirmed by the superintendent of public instruction. If a majority of the presidents of the school boards in each county cannot agree to the plan, both the presidents of the school boards of the counties affected and the boards of county commissioners of the counties affected shall submit a plan to the superintendent of public instruction for resolution. The decision of the superintendent may be appealed as provided in subsection 3. The plan must describe the amount and quality of educational services to be provided to school districts in the counties by the county superintendent of schools. The plan must be reviewed, and amended if necessary, by the boards of county commissioners and submitted to the presidents of the school boards for approval and to the superintendent of public instruction for confirmation biennially. The superintendent of public instruction may exempt a county from jointly

employing a county superintendent of schools if the superintendent determines that, due to the geographic size of the county or the duties required of the county superintendent of schools in that county, sharing a county superintendent of schools would not be feasible. Each county jointly employing a county superintendent of schools must share the salary and other expenses attributable to the county superintendent of schools. ~~The costs must be apportioned among the counties sharing the county superintendent of schools based on the number of persons over five and under eighteen years of age in each county according to the approved biennial plan.~~

2. The board of county commissioners of any county that elects not to share a county superintendent of schools with another county, or that has been exempted from sharing a county superintendent of schools by the superintendent of public instruction, must submit a plan biennially to the school boards of the school districts located within the county. The plan must describe the amount and quality of educational services to be provided to school districts in the county by the county superintendent of schools. The plan is approved if a majority of the presidents of the school boards in the county approve the plan and the plan is confirmed by the superintendent of public instruction. If a majority of the presidents of the school boards in the county cannot agree to the plan, both the presidents of the school boards and the board of county commissioners shall submit a plan to the superintendent of public instruction for resolution. The decision of the superintendent of public instruction may be appealed as provided in subsection 3.
3. If the superintendent of public instruction does not confirm a plan that has been approved locally, the superintendent of public instruction shall submit the plan to the state board of public school education for final resolution. A majority of the presidents of the school boards in a county or a board of county commissioners aggrieved by a decision of the superintendent of public instruction may appeal the decision to the state board of public school education. A decision of or resolution by the state board of public school education under this section is final. The superintendent of public instruction may not serve on the board when the board is resolving disputes under this section.

**SECTION 2.** A new section to chapter 15-22 of the North Dakota Century Code is created and enacted as follows:

Superintendent may make rules. The superintendent of public instruction may adopt rules for implementing the purposes of this chapter.

<sup>1</sup> **SECTION 3. AMENDMENT.** Subdivision q of subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- q. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07, rules implementing chapter 15-22.

<sup>1</sup> NOTE: Subsection 1 of section 28-32-01 was also amended by House Bill Nos. 1047, 1193, 1264, 1336, and 1400 and Senate Bill No. 2228, chapters 135, 186, 328, 327, 80, and 236.

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rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18.

Approved March 22, 1993  
Filed March 23, 1993

## CHAPTER 174

SENATE BILL NO. 2186  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### SCHOOL DISTRICT REORGANIZATION

AN ACT to create and enact section 15-27.3-01.1 of the North Dakota Century Code, relating to the authority of school districts or parts of school districts to reorganize; to amend and reenact sections 15-27.1-06, 15-27.3-02, 15-27.3-05, subsection 2 of section 15-27.3-11, and section 15-27.3-16 of the North Dakota Century Code, relating to comprehensive county plans for the reorganization of school districts; and to repeal sections 15-27.3-01 and 15-27.3-03 of the North Dakota Century Code, relating to the submission to the state board of public school education of comprehensive county plans for the reorganization of school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-27.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.1-06. State board - Powers and duties.** The state board shall:

1. Aid county committees in carrying out their powers and duties under this chapter and chapters 15-27.2, 15-27.3, and 15-27.4 by furnishing them, with the assistance of the employed staff of the state committee, with other necessary clerical assistance, and with necessary plans of procedure, standards, data, maps, forms, and other materials and services.
2. ~~Receive, file, and examine plans and data for the reorganization of school districts submitted by county committees, and shall approve such plans and data when they are found by the state board to provide for a satisfactory school district system for the counties and the state and for an equitable adjustment of property, debts, and liabilities. Whenever a plan submitted by a county committee is found by the state board to be unsatisfactory, or whenever the terms of adjustment so submitted are found not to be fair and equitable, the state board shall so notify the county committee and upon request shall assist the county committee in the revision of the plan or terms of adjustment, which revision shall be completed by the county committee and resubmitted within ninety days after such notification.~~
3. ~~Appoint a county committee, in case no county committee is appointed, as required in section 15-27.1-03, or in case a committee so elected fails or refuses to submit plans, records, reports, and other data as provided for in this chapter.~~
4. ~~Transmit to the county superintendent of each county affected a copy of the plan for reorganization of school districts approved by the state board; a copy of approved terms of adjustment of property, debts, and~~

~~liabilities; a statement of the findings and conclusions of the state board respecting such approved plans and terms of adjustment; and copies of maps, reports, records, and all other pertinent material submitted to the state board by the county committee.~~

- 5- 3. Establish standards by the adoption of rules to govern the county committees and state board in the development and approval of ~~school district reorganization plans or~~ reorganization, annexation, and dissolution proposals. The standards must require any school district to be formed under any ~~plan or~~ proposal providing for the operation of a high school district to have sufficient tax base and fiscal capacity to clearly permit the district to offer the minimum curriculum prescribed by section 15-41-24 taught by teachers possessing the qualifications required by section 15-41-25. Exceptions to the standards may be allowed by a county committee or the state board only in extreme cases where because of sparsity of population or geographical barriers it is impossible to obtain compliance with them.

**SECTION 2.** Section 15-27.3-01.1 of the North Dakota Century Code is created and enacted as follows:

15-27.3-01.1. School district reorganization. School districts or parts of school districts may reorganize under this chapter.

**SECTION 3. AMENDMENT.** Section 15-27.3-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-02. Proposal involving territory in more than one county.** If the school districts involved in a reorganization proposal are situated in more than one county, a special committee composed of not fewer than three members of each of the county committees of the counties encompassing the major portion of each school district shall prepare a proposal for the reorganization of the school districts. The proposal must be submitted to each county committee for its approval. If the reorganization proposal is approved by a majority of the members of one of the two county committees, or the members of one or more of the special committees fail or refuse to meet with the committee or committees from other counties, the county superintendent of the county in which the largest number of pupils who would be affected by the proposed new district reside shall submit the reorganization proposal to the state board for approval or disapproval. Approval of the reorganization proposal by the state board has the same effect as approval by all the county committees. If the reorganization proposal fails to receive the approval of any county committee, it may not be presented to the state board for review. If the school districts are situated in more than one county but the major portions of both such school districts are situated in the same county, the county committee of that county shall consider the matter.

**SECTION 4. AMENDMENT.** Section 15-27.3-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-05. Public hearing on proposals for reorganization - Hearing testimony for adjusting.** The county committee shall hold a public hearing on the advisability of any reorganization proposal ~~by the committee for the reorganization of school districts.~~ Notice of hearings must be given by publishing a notice in the official county newspaper at least fourteen days prior to the date of each hearing.

If the county committee fails to call a hearing or to give the required public notice, a petition signed by twenty-five percent of the qualified electors in the area proposed to be included in the new school district and presented to the committee makes it mandatory for a hearing to be called. Notice of the hearing must be published within ten days after the petition has been filed, and must set forth the date selected for the hearing, which may not be more than twenty days after the date of publication. The county committee shall also hear at such time as may be fixed by it, testimony offered by any person or school district interested in any the reorganization proposal ~~of the county committee~~. The testimony and documentary evidence considered by the county committee must include any information regarding the following factors:

1. The value and amount of all school property of whatever nature involved in the proposed action.
2. The nature, amount, and value of all bonded, warrant, and other indebtedness of each school district affected by the proposed action, including all unexecuted obligations with separate consideration given to the amount of outstanding indebtedness incurred for current expenses, the amount incurred for permanent improvements, and the location of such improvements in order that an equitable adjustment of all property, debts, and liabilities among the districts involved be made.
3. The taxable valuation of the existing districts and the differences in such valuation which would accrue under a proposed reorganization.
4. The size, geographical features, and boundaries of the districts.
5. The number of pupils attending school and the population of the districts.
6. The location and condition of the districts' school buildings and their accessibility to affected pupils.
7. The location and condition of roads, highways, and natural barriers within the respective districts.
8. The school centers where children residing in the districts attend high school.
9. Conditions affecting the welfare of the teachers and pupils of the involved districts.
10. The boundaries of other governmental units and the location of private organizations in the territories of the respective districts.
11. The educational needs of local communities in the involved districts.
12. An objective in economizing in the use of transportation and administrative services.
13. Projected future use of existing satisfactory school buildings, sites, and playfields in the involved districts.
14. A reduction in disparities in per-pupil valuation between school districts and the objective of equalization of educational opportunities for pupils.

15. Any other relevant factors which, in the judgment of the county committee, are of importance.

Following the county committee's consideration of testimony and documentary evidence with respect to the factors listed in subsections 1 through 15, the committee shall make specific findings with reference to those factors to which testimony or documentary evidence was directed in proceedings before the committee.

The county committee shall keep a record of ~~all hearings~~ the hearing on the reorganization of school districts and of all findings and terms of adjustment of property, debts, and liabilities among the districts involved, and shall submit the same to the state board at the time of submitting ~~a plan as provided in subsection 2 of section 15-27.3-01~~ the reorganization proposal for state board approval. A subcommittee composed of not fewer than three members of a county committee, or three members of the county committee of each county concerned in case territory in two or more counties is involved, may hold any hearing that the county committee is required to hold.

**SECTION 5. AMENDMENT.** Subsection 2 of section 15-27.3-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. a. If the boundaries of the proposed new district, the terms of adjustment, or the proposed mill levy, as the case may be, as revised, are approved by the state board, notice thereof shall be transmitted to the county superintendent, ~~as provided for in section 15-27.1-06~~.
- b. Upon receipt of such notice the county superintendent shall call, in the manner and for the purpose specified in section 15-27.3-08, a special election of the voters residing within the revised boundaries of the proposed new district.

**SECTION 6. AMENDMENT.** Section 15-27.3-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-16. ~~Voluntary proposals~~ Proposals for the reorganization of school districts.** Proposals for the reorganization of school districts must be submitted by the county committee to the state board for final approval:

1. After a hearing on the reorganization proposal is held by the county committee; and
2. For approval before proposals are submitted to a vote of the electors.

~~Reorganization proposals may be approved by the county committee and approved by the state board, if in the judgment of the county committee and the state board, the proposals constitute an acceptable part of the comprehensive reorganization plan submitted pursuant to section 15-27.3-01 for the reorganization of the school districts of the county.~~

**SECTION 7. REPEAL.** Sections 15-27.3-01 and 15-27.3-03 of the 1991 Supplement to the North Dakota Century Code are repealed.

Approved March 22, 1993  
Filed March 23, 1993

## CHAPTER 175

SENATE BILL NO. 2185  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### SCHOOL DISTRICT WITHOUT SCHOOL

AN ACT to amend and reenact section 15-27.1-11 of the North Dakota Century Code, relating to the time within which a school district not operating a school must reorganize, annex, or dissolve.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-27.1-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.1-11. Reorganization, annexation, or dissolution of school district not operating a school - Transportation.** ~~Any school district in this state which is not operating either an approved elementary or high school within its boundaries on July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, and any school district that may cease to operate either an approved elementary or high school within its boundaries after July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall become, through the process of reorganization, annexation, or dissolution as provided by law, a part of a school district operating an approved elementary or high school. Any school district not operating either an approved elementary or high school within its boundaries on July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall complete reorganization with or annexation to an operating school district by July 1, 1989. Any school district that ceases to operate either an approved elementary or high school within its boundaries after July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall complete reorganization or annexation within two years from the date the school district ceased to operate either an approved elementary or high school. Any school district that, for a period of one year, does not operate either an elementary or high school, must become by the end of that year, through the process of reorganization, annexation, or dissolution, part of a school district operating an approved elementary or high school. Any student who resides within a school district which is annexed to or reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01, and which whose school district has been sending the students to a school district in a bordering state, county, or district, because of proximity or terrain, shall be permitted to attend or continue to attend school in the district in the bordering state, county, or district, subject to the provisions of section 15-40.2-09. The students in any residing within a school district that is attached by annexation, reorganization, or dissolution annexed to or reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01 must be provided transportation in the same manner transportation is provided to students in the school district the nonoperating district is attached to.~~

The county committee of the county encompassing the major portion of any school district affected by this section and ~~section 15-27.4-01~~, which school district does not reorganize or annex itself to an operating school district within the time limit prescribed in this section and ~~section 15-27.4-01~~, shall dissolve and attach the nonoperating school district to an operating school district in accordance with chapter 15-27.4. ~~This section does not apply to school districts established pursuant to chapter 15-27.5.~~

This section does not apply to school districts established pursuant to chapter 15-27.5.

Approved March 22, 1993  
Filed March 23, 1993

## CHAPTER 176

SENATE BILL NO. 2188  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### SCHOOL DISTRICT ANNEXATION PETITIONS

AN ACT to amend and reenact sections 15-27.2-01 and 15-27.2-02 of the North Dakota Century Code, relating to school district annexation petitions and requirements for an annexation involving an exchange of property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-27.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.2-01. Annexation of contiguous territory to school district - Petition.**

1. Territory contiguous to a public school district, whether in the same county or in another, may be annexed to the school district by the county committee after a public hearing upon written petition signed by two-thirds of the residents of the contiguous territory who are qualified electors in the contiguous territory. The county committee shall determine the sufficiency of the petition and the required number of electors necessary to constitute a two-thirds majority.
2. The annexation petition must:
  - a. Be obtained from the county superintendent;
  - b. Identify all of the land area to be annexed before it is circulated;
  - c. Be signed in the presence of the carrier of the petition; and
  - d. Be submitted to the county superintendent of the county in which the majority of land identified in the petition is located.
3. After the annexation petition is submitted to the county superintendent, names may be added to or removed from the petition until five p.m. on the day before the hearing before the county committee. A person who requests that person's name to be added to or removed from the petition must do so in person before the county superintendent.
4. This section does not apply to annexations involving an exchange of property pursuant to section 15-27.2-02.

**SECTION 2. AMENDMENT.** Section 15-27.2-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.2-02. Restricted changes in boundaries - Petition - Requirements - Appeal.** A resident or residents of a school district may request annexation of the property upon which his or their residence is situated to an adjacent school

district by a petition for an exchange of property between the district of residence and the adjacent district under the following conditions:

1. The signer of the petition must reside upon the property which is requested to be annexed to the adjacent district. If there are other residences in the area sought to be annexed, a resident representing each of those residences must also approve the exchange of property and sign the petition.
2. There is an agreement for the exchange of property between the petitioners and the owner of the property in the adjacent district which property is to be exchanged for the property ~~of~~ identified in the petitioner petition and the owner of the property in the adjoining district need not reside on the property exchanged in order to enter into the agreement.
3. The school boards of the districts involved approve the exchange of property.
4. The difference in taxable valuation of the property involved in the exchange does not exceed one thousand dollars.
5. The properties involved in the exchange must be contiguous to the school district to which each is sought to be annexed.

Except as provided in this section, the proceedings in this section are subject to the other provisions of this chapter applicable to annexation proceedings generally. Approval of the annexation petition by the county committee and the state board must contain a finding that the requirements in this section have been met. Any school board aggrieved by the decision of another school board not to approve the exchange of property may appeal the decision to the county committee and, if aggrieved by the decision of the county committee, may appeal the decision of the county committee to the state board.

Approved March 10, 1993  
Filed March 11, 1993

## CHAPTER 177

SENATE BILL NO. 2183  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### SCHOOL DISTRICT DISSOLUTION HEARING

AN ACT to amend and reenact subsection 8 of section 15-27.4-02 of the North Dakota Century Code, relating to the holding of a hearing by the state board under certain circumstances when a school district must be dissolved.

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

**SECTION 1. AMENDMENT.** Subsection 8 of section 15-27.4-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. If the county committees cannot agree upon an order attaching the territory to adjoining districts, the county superintendent of the county in which the majority of the district being dissolved is located shall submit the dissolution and attachment to the state board, and in such instance the state board shall, after holding a hearing such as the one described in subsections 1 and 2, dissolve and attach the district to be dissolved, or the unorganized territory, in the manner as will, in its judgment, provide the best educational opportunities for pupils of the public school system in the school districts and attached territories.

Approved March 10, 1993  
Filed March 11, 1993

## CHAPTER 178

HOUSE BILL NO. 1159  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### ANNEXED OR DISSOLVED SCHOOL DISTRICT FUNDS

AN ACT to amend and reenact subdivision a of subsection 6 of section 15-27.2-04 and section 15-27.4-03 of the North Dakota Century Code, relating to a credit to owners of property in annexed or dissolved school districts for an unobligated cash balance in excess of ten thousand dollars not designated for indebtedness.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 6 of section 15-27.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. If the annexation is approved by the state board, the county committee may cause a tax to be levied against each district affected in accordance with section 15-47-21 which will equalize the several interests fairly. The unobligated cash balance in excess of ten thousand dollars not designated for indebtedness is a credit for those who own property within the annexed school district against taxes levied by the receiving school district in the year or years following the annexation ~~depending on the average local effort~~ based on the previous five-year average of the total mills levied for education by the district being annexed, as calculated by the county ~~superintendent~~ auditor. If a school district is attached to more than one school district, the credit that those who own property within the attached school district receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to annexation.

**SECTION 2. AMENDMENT.** Section 15-27.4-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.4-03. Unobligated cash balance of dissolved school district - Tax credits.** The unobligated cash balance in excess of ten thousand dollars which is not designated for indebtedness of any school district dissolved after January 1, 1989, is a credit for those who own property within the dissolved school district against taxes levied by the school district the dissolved school district is attached to in the year or years following the dissolution ~~depending on the average local effort~~ based on the previous five-year average of the total mills levied for education by the district being annexed, as calculated by the county ~~superintendent~~ auditor. If a school district is dissolved and attached to more than one school district, the credit that those who own property within the attached school district

receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to dissolution.

Approved March 15, 1993  
Filed March 16, 1993

## CHAPTER 179

SENATE BILL NO. 2184  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

**SCHOOL DISTRICT REORGANIZATION  
AND RESTRUCTURING**

AN ACT to amend and reenact section 15-27.3-08, subsection 3 of section 15-27.3-11, and subsections 2 and 3 of section 15-27.6-10 of the North Dakota Century Code, relating to the manner of voting to approve a proposal for the reorganization of school districts and school district boundary restructuring; and to repeal section 15-27.3-09 of the North Dakota Century Code, relating to the voting of reorganized school districts as separate voting units when voting on a proposal for the reorganization of school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.3-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-08. Approved proposal received by county superintendent - Duty of superintendent to call special election - ~~Definition of voting units - Favorable results~~ Formation of new district.**

1. a. Upon receipt from the state board of an approved proposal for the reorganization of school districts, and approved terms of adjustment of property, debts, and liabilities among the districts involved, the county superintendent shall call a special election of the voters residing within the territory of the proposed new district.
  - b. The election must be held at the place or places in the territory which have been determined by the county superintendent to be convenient for the voters.
  - c. The special election must be held after July first and no later than December thirty-first of the year in which the approved proposal is received unless there are not sufficient business days left in that year to accomplish the required publication of notice, in which event the special election must be held the following year.
2. ~~a. In holding the election, all existing districts within the proposed new district containing one or more incorporated cities regardless of number or size vote as a single unit, and all existing districts within the proposed new district regardless of number or size which do not contain one or more incorporated cities vote as a single unit.~~
  - ~~b. For the purposes of this section, all districts containing incorporated cities are considered an incorporated area, and all districts which do not contain at least one incorporated city are considered an unincorporated area.~~

- 3- a. Notice of the election, stating the time and place of holding the election, must be published by the county superintendent in the official county newspaper at least fourteen days before the election.
- b. The election notices shall clearly state that the election has been called for the purpose of affording the voters an opportunity to approve or reject a proposal for the formation of a new school district and must also contain a description of the boundaries of the proposed new district, a statement, if any, of the terms of adjustment of property, debts, and liabilities applicable to the proposal, and the proposed tax levy.
- 4- 3. The county superintendent shall appoint judges and clerks of the elections and the election shall be held and conducted in the same manner and the polls shall open and close at the same time as specified for elections in public school districts.
- 5- 4. The result of the elections must be certified and delivered to the county superintendent within three days after the closing of the polls.
- 6- 5. If a majority of ~~all votes cast by the electors residing within the unincorporated area of a proposed new district and the majority of all votes cast by the electors within the incorporated area of a proposed new district~~ are both each school district vote in favor of the formation of the district, the county superintendent shall make the proper adjustment of the property, assets, debts, and liabilities as provided in the approved proposal and shall organize and establish such districts and in so doing shall perform all other necessary duties that are required by law to be performed by the county superintendent in connection with the organization and establishment of new school districts of any kind or type.

**SECTION 2. AMENDMENT.** Subsection 3 of section 15-27.3-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If a majority of ~~all votes cast by the electors residing within the unincorporated area of a proposed new district and a majority of all votes cast by electors within the incorporated area of the proposed new district~~ are both each school district vote in favor of the formation of the district, the county superintendent shall proceed to organize and establish the district and to perform the necessary duties related thereto in the same manner and to the same effect as is provided in section 15-27.3-08.

<sup>1</sup> **SECTION 3. AMENDMENT.** Subsections 2 and 3 of section 15-27.6-10 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. If a majority of electors residing within each school district vote in favor of the formation of the new district, the county superintendent

<sup>1</sup> NOTE: Section 15-27.6-10 was also amended by section 2 of House Bill No. 1413, chapter 184; by section 16 of House Bill No. 1003, chapter 3; and by section 6 of Senate Bill No. 2528, chapter 182.

shall make the proper adjustments and perform all necessary duties as provided in subsection 6 5 of section 15-27.3-08.

3. If fewer than all of the districts vote in favor of a new district, any contiguous districts voting in favor of the proposal shall form a new district if the new district would qualify to receive the payments provided for in section 15-27.6-11 and if approved by the state board. Any contiguous districts voting in favor of forming a new district, but that would not qualify for payments under section 15-27.6-11, may form a new district. To form a new district, the board members of the interim district board who represent the contiguous districts involved shall make a determination and adjustment of property, assets, debts, and liabilities of the districts as provided in section 15-27.3-04 and make a determination of tax levy as provided in section 15-27.3-06 and submit a new proposal to the state board for approval. If the state board approves the plan, the county superintendent shall make the proper adjustment of the property, assets, debts, and liabilities as provided in the proposal and organize and establish the districts and, in doing so, shall perform all other necessary duties as provided in subsection 6 5 of section 15-27.3-08.

**SECTION 4. REPEAL.** Section 15-27.3-09 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved April 7, 1993

Filed April 8, 1993

## CHAPTER 180

HOUSE BILL NO. 1184  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### TRANSPORTATION AID FOR FAMILY TRANSPORTATION

AN ACT to amend and reenact sections 15-27.3-10, 15-34.2-01, 15-34.2-03, 15-40.1-16, 15-40.1-16.1, and 15-47-02.1 of the North Dakota Century Code, relating to state aid and school district payments for family-type transportation; and to repeal sections 15-40.1-16.2 and 15-40.1-16.3 of the North Dakota Century Code, relating to state aid to school districts for family-type transportation.

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

**SECTION 1. AMENDMENT.** Section 15-27.3-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.3-10. Transportation required.** A reorganization proposal must provide for the transportation of students and must specify if family-type or public schoolbus-type of transportation shall be used, and if the proposal is approved by the voters of the new district, then the school board of the district shall provide adequate and practical transportation of the type specified, except that if family-type transportation is specified, the school board may later substitute public schoolbus-type transportation. A reorganized school district ~~is not bound by the schedule of payments or limitations provided in section 15-34.2-03,~~ and shall establish a schedule of transportation payments as is proper under the circumstances affecting that district, but the ~~newly established~~ schedule of payments may not be less than the ~~amounts specified in section 15-34.2-03~~ amount determined under subsection 2 of section 15-40.1-16 for state aid for family-type transportation.

**SECTION 2. AMENDMENT.** Section 15-34.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-34.2-01. Vehicular transportation or lodging may be furnished at option of school board.** The school board of any school district in the state, in its discretion, may furnish to each family living in the district:

1. Vehicular transportation; or
2. The equivalent of the payments ~~specified in~~ received from the state as determined under subsection 2 of section 15-34.2-03 ~~15-40.1-16,~~ in lodging at some other public school if the same is acceptable to the family.

The board shall not accord the benefits of either subsection 1 or subsection 2 to any family which is receiving payments under section 15-34.2-03. In the event any school board elects to furnish vehicular transportation by public conveyance, the distance that each student must reside from ~~his~~ the school in order to be entitled to such transportation may be determined by the school board in each district, but

all students in the district shall be treated on the same basis in accordance with such determination. The furnishing of benefits under this chapter may be extended to families living in the district for the purpose of transporting students to another school district or county agricultural and training school within the state, or another school district outside the state, if the attendance of such students in the other districts is in accordance with the provisions of this title governing the same.

**SECTION 3. AMENDMENT.** Section 15-34.2-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-34.2-03. Transportation - Payment optional with school board —Schedule.** The school board of any school district in the state may pay to each family living more than two miles [3.22 kilometers] from a school in the district which is taught the required length of time, a reasonable sum per day for each day's attendance of a student or students of such family, when transported by a member of the family or by a conveyance furnished or paid for by the family, or when the family has paid for lodging for the child, according to the distance between the home of the family and the school, ~~at the rate of twenty cents per day for each one-half mile [.80 kilometer] over two miles [3.22 kilometers].~~ Such distance must be measured by the route from the front door of the ~~nearest operating school attended~~ to the front door of the family's residence according to the most convenient public course of travel. ~~Payments for transportation shall not be limited to the amount set forth in this section where the student or students are required to be transported to another school because the school which they had been attending is closed.~~

**SECTION 4. AMENDMENT.** Section 15-40.1-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<sup>1</sup> **15-40.1-16. Aid for transportation.**

1. There shall be paid from state funds to each school district providing schoolbus transportation in contract schoolbuses or in district-owned and operated schoolbuses, and to school districts with students riding commercial buses to and from school within the incorporated limits of a city, the following amounts:

~~1-~~ a. For schoolbuses and school vehicles transporting pupils who live outside the incorporated limits of the city in which school the pupil is enrolled is located, a sum equal to twenty-five cents per mile [1.61 kilometers] during each year of the 1991-93 biennium for vehicles having a capacity of nine or fewer pupils and sixty-seven cents per mile [1.61 kilometers] for each year of the 1991-93 biennium for schoolbuses having a capacity of ten or more pupils. In addition, those school districts qualifying for payments for buses having a capacity of ten or more pupils are entitled to an amount equal to twenty-eight cents per day for each public school pupil living outside the city limits who is transported in such buses.

<sup>1</sup> NOTE: Section 15-40.1-16 was also amended by section 23 of House Bill No. 1003, chapter 3.

- 2- b. For pupils who ride schoolbuses or commercial buses to or from school and who live within the incorporated limits of the city in which the school the pupil is enrolled is located, a sum equal to seventeen and one-half cents per pupil per one-way trip. However, no payment shall be made under this ~~subsection~~ subdivision for a student who rode on a vehicle for which payments are claimed under ~~subsection 1~~ subdivision a.

The mileage payments provided for in this ~~section~~ subsection shall be made to each school district for transporting pupils to and from school. Such payments shall be made only to school districts operating schoolbuses in accordance with the laws of this state relating to standards for schoolbuses, and to the qualifications of schoolbus drivers. Certification as to the compliance with the laws of this state in regard to schoolbuses and their drivers shall be made in such manner and in such detail as the superintendent of public instruction may require at the time an application is made for payments provided under this ~~section~~ subsection.

2. For pupils transported by family transportation in accordance with section 15-34.2-03, the state shall reimburse school districts in an amount determined by using the rate of forty cents per day for each mile [1.61 kilometers] over two miles [3.22 kilometers] according to the distance between the student's home and the school. Such distance must be measured by the route from the front door of the school attended to the front door of the family's residence according to the most convenient public course of travel.
3. The superintendent of public instruction shall administer the reimbursement provided for and shall prepare all forms and statements that may be necessary for school district to apply for the same.

**SECTION 5. AMENDMENT.** Section 15-40.1-16.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**<sup>2</sup> 15-40.1-16.1. Transportation aid for certain vocational education and special education programs.** There must be paid from state funds to each school district an amount for transporting pupils to and from schools in other districts and to and from schools within school districts for vocational education courses offered through cooperative arrangements approved by the state board of vocational education. ~~Such~~ That amount must be the same amount for mileage and per day as is provided in subdivision a of subsection 1 of section 15-40.1-16. Payments must be made to school districts transporting pupils for special education programs approved by the superintendent of public instruction as follows:

1. School districts transporting nine or fewer pupils per vehicle are entitled to the payment provided in section 15-40.1-16 for vehicles having a capacity of nine or fewer pupils.

<sup>2</sup> NOTE: Section 15-40.1-16.1 was also amended by section 9 of House Bill No. 1156, chapter 62.

2. School districts transporting ten or more pupils per vehicle are entitled to the payment provided for in section 15-40.1-16 for schoolbuses having a capacity of ten or more pupils.

School districts entitled to transportation aid pursuant to this section ~~shall~~ must receive ~~such~~ aid for all miles [kilometers] traveled and for all pupils transported, regardless of whether ~~or not such~~ the pupils live within the incorporated limits of cities in which the schools in which they are enrolled are located. ~~Provided, however, that~~ However, no school district may receive more than one per-pupil payment for transportation regardless of the number of times any pupil is transported in any one day. Notwithstanding any other provisions of this section, the superintendent of public instruction shall, upon request, make the payments under this section ~~which~~ that are due to school districts participating in area vocational and technology centers or multidistrict special education programs, for the transportation of pupils in those centers and programs, directly to the respective area vocational and technology centers or multidistrict special education programs.

**SECTION 6. AMENDMENT.** Section 15-47-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-02.1. Discontinuance of schools by school board.** Any elementary or high school may be discontinued by action of the school board when proper and convenient school facilities for the pupils can be provided in some other public school. In determining what constitutes proper and convenient school facilities, the board shall consider the distance of each child from the nearest other school and all surrounding circumstances. The board may furnish transportation to the nearest school, or may pay ~~an extra allowance over and above the schedule of payments provided for a reasonable sum as indicated~~ in section 15-34.2-03 for transportation provided by the family, or may furnish the equivalent thereof in tuition or lodging at some other public school in the equivalent of the payments received from the state as determined under subsection 2 of section 15-40.1-16. In case of a dispute between a parent or guardian of a pupil of the school district and the board as to whether the board has furnished or arranged to furnish adequate facilities, the matter may be submitted by such parent or guardian to the board of arbitration consisting of the county superintendent of schools, one arbitrator named by the parent or guardian, and one arbitrator named by the board, and the determination of the arbitrators, after hearing, shall be binding.

**SECTION 7. REPEAL.** Sections 15-40.1-16.2 and 15-40.1-16.3 of the North Dakota Century Code are repealed.

Approved April 9, 1993  
Filed April 9, 1993

## CHAPTER 181

SENATE BILL NO. 2497  
(Senator Heinrich)  
(Representative Gates)

### SCHOOL DISTRICT DISSOLUTION

AN ACT to amend and reenact section 15-27.4-01 of the North Dakota Century Code, relating to the dissolution of public school districts.

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

**SECTION 1. AMENDMENT.** Section 15-27.4-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.4-01. Dissolution of public school districts - Responsibility of county committee - Duty of county superintendent.** The county committee shall ~~forthwith~~ schedule and provide notice of a public hearing to dissolve a school district and attach the territory to other school districts upon the following occurrences:

1. Receipt by the county committee of notice from the county superintendent that:
  - a. A school district can no longer levy sufficient taxes to carry on normal school operations;
  - b. A school district within the county has not operated a school as is required by section 15-27.1-11;
  - c. There exists territory not organized into a school district; ~~or~~
  - d. Any portion of a school district within the county has been severed from the district by the expansion and growth of a city and the severed portion is not contiguous with the district; or
  - e. The school district has determined that it is in the best interests of its students to dissolve and become attached to surrounding school districts.
2. When any portion of a school district has been left out of a school district reorganization, the county committee shall, within forty-five days after voter approval of the school district reorganization proposal, order a hearing pursuant to section 15-27.4-02 for the purpose of determining to which school district or districts the remaining territory should be attached.

After approval by the state board of the proposed dissolution, the county committee shall provide for the attachment of the territory of the dissolved district to one or more adjoining school districts effective July first next following the approval unless another effective date is provided for by the county committee. Qualified electors residing in the attached territory are entitled to vote and hold office in the school district to the same extent as all other qualified electors residing in

the district, and the territory is part of the school district as fully in every respect as if it had been included in the district when organized. This section does not prevent the district from providing for the education of the children to the extent that its current budget in the judgment of the school board will permit, or relieve the district from any existing responsibility for the education of children attending its schools before the effective date of the order. This section does not change the effect of any election held within the school district pursuant to chapter 15-48 before the effective date of the order.

Approved March 25, 1993

Filed March 26, 1993

## CHAPTER 182

SENATE BILL NO. 2528  
(Senators O'Connell, Evanson, Heinrich)  
(Representatives Ring, Porter)

### SCHOOL DISTRICT BOUNDARY CHANGES

AN ACT to create and enact sections 15-27.6-02.5, 15-27.6-06.5, and a new section to chapter 15-27.6 of the North Dakota Century Code, relating to school district boundary restructuring; and to amend and reenact section 15-27.6-01, subsection 7 of section 15-27.6-04, sections 15-27.6-05, 15-27.6-10, and 15-27.6-11 of the North Dakota Century Code, relating to school district boundary restructuring.

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

**SECTION 1. AMENDMENT.** Section 15-27.6-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-27.6-01. School district restructuring - Rules.** The superintendent of public instruction, with assistance from the state board of public school education, shall adopt rules under chapter 28-32 for the purpose of administering planning grants and supplemental payments to contiguous school districts or parts of school districts for the purposes of planning and implementing the restructuring of school district boundaries for the purpose of increasing the educational opportunities of students and the sharing of school administrators. The superintendent of public instruction, if requested, shall provide assistance to school districts in the development and implementation of a plan for the restructuring of contiguous school districts. The superintendent of public instruction may provide other services if requested by the school districts. ~~The plan and any subsequent amendments must be adopted by a majority vote of the membership of each of the participating school boards and the state board of public school education prior to becoming eligible to receive supplemental pupil payments.~~

**SECTION 2.** Section 15-27.6-02.5 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

15-27.6-02.5. Preliminary plan - One or more reorganized districts. The preliminary plan may contemplate the restructuring of the participating school districts into more than one reorganized district. However, each proposed reorganized district must meet the requirements of subdivision a of subsection 1 of section 15-27.6-11. If the preliminary plan contemplates the formation of more than one reorganized district, each proposed reorganized district shall form its own interim district board and shall proceed in accordance with this chapter.

**SECTION 3. AMENDMENT.** Subsection 7 of section 15-27.6-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Review the plan annually and ~~propose necessary amendments to submit~~ second-year and third-year plans to the state board for approval after the

~~plans are adopted by the member school districts and to the state board of public school education for adoption by a majority vote of each body.~~

**SECTION 4. AMENDMENT.** Section 15-27.6-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<sup>1</sup> **15-27.6-05. State aid - Planning grants - Supplemental pupil payments.**

1. Payments for approved planning grants must be made quarterly for a period not to exceed one year.
2. Each interim district board is entitled to receive state aid for a period not to exceed three years in ~~the an amount of from between~~ one hundred twenty-five ~~to and~~ one hundred sixty-five dollars for each full-time equivalent pupil in average daily membership the previous year in the participating school districts, except as provided in subsection 3. An interim district board's second-year and third-year plans must be approved by the state board before supplemental payments for those years may be received. The interim district board ~~shall have the option to~~ may receive the amount equivalent to its third-year payment over a two-year period. This extended payment request must be contained in the consortium's third-year cooperative plan. The superintendent of public instruction shall distribute the payments to the interim district boards in the same manner provided in section 15-40.1-05 for the distribution of payments to school districts. Prior to being entitled to the maximum payment under this subsection, a participating school district must have one or more administrators jointly assigned and the participating districts' plan must be ~~attempting attempt~~ to improve the quality of instruction as determined by the superintendent of public instruction.
3. If a participating group of school districts includes one or more districts having an average daily membership in excess of one thousand for the previous year, supplemental payments must be determined by this subsection. The number of students attending districts having average daily memberships of one thousand or less must be multiplied by an amount between one hundred twenty-five and one hundred sixty-five dollars. An additional fifteen percent of that total must be added for each participating school district having an average daily membership in excess of one thousand for the previous year.

**SECTION 5.** Section 15-27.6-06.5 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

**15-27.6-06.5. Formation of additional consortia.**

1. While receiving supplemental payments pursuant to section 15-27.6-05, participating school districts may depart from the existing consortium, form another interim board, and proceed as a separate consortium, provided:

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<sup>1</sup> NOTE: Section 15-27.6-05 was also amended by section 1 of House Bill No. 1413, chapter 184.

- a. The new consortium and the remaining consortium meet the requirements of subdivision a of subsection 1 of section 15-27.6-11;
  - b. All the school districts participating in the original consortium continue to follow the annual plan in effect at the time the determination is made to form a separate consortium; and
  - c. All the school boards participating in the original consortium agree to the separation.
2. For purposes of this chapter, a consortium that forms its own interim district board and separates from an original consortium is deemed to have formed at the time the interim board of the original consortium was formed.

**SECTION 6. AMENDMENT.** Section 15-27.6-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**<sup>2</sup> 15-27.6-10. Approved proposal received by county superintendent - Special election called - Formation of new district.**

1. Upon receipt from the state board of an approved proposal for the reorganization of school districts, the county superintendent, after consulting with the interim district board, shall call a special election as provided in section 15-27.3-08.
2. If a majority of electors residing within each school district vote in favor of the formation of the new district, the county superintendent shall make the proper adjustments and perform all necessary duties as provided in subsection 6 of section 15-27.3-08.
3. If fewer than all of the districts vote in favor of a new district, any contiguous districts voting in favor of the proposal shall form a new district ~~if the new district would qualify to receive the payments provided for in section 15-27.6-11 and if approved by the state board approves and:~~
  - a. There are three districts, at least one of which offers grades one through twelve, they have a minimum combined enrollment of six hundred students, and they cover a minimum combined area of seven hundred square miles [181299.168 hectares]; or
  - b. There are four or more districts, at least one of which offers grades one through twelve, and they have a minimum combined enrollment of six hundred students or they cover a minimum combined area of seven hundred square miles [181299.168 hectares].

Any contiguous districts ~~voting that vote~~ in favor of forming a new district, but that ~~would not qualify for payments under section 15-27.6-11~~ do not meet the requirements of either subdivision a or b of

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<sup>2</sup> NOTE: Section 15-27.6-10 was also amended by section 2 of House Bill No. 1413, chapter 184; by section 3 of Senate Bill No. 2184, chapter 179; and by section 16 of House Bill No. 1003, chapter 3.

this subsection, may form a new district. To form a new district, the board members of the interim district board who represent the contiguous districts involved shall make a determination and adjustment of property, assets, debts, and liabilities of the districts as provided in section 15-27.3-04 and make a determination of tax levy as provided in section 15-27.3-06, hold a hearing similar to the one described in section 15-27.6-07, and submit a new proposal to the state board for approval. No additional vote is required on the revised proposal including a proposal that becomes effective on July 1, 1993. However, the newly proposed mill levy may not exceed the number of mills voted on and approved under the original reorganization proposal by more than ten percent. If the state board approves the plan, the county superintendent shall make the proper adjustment of the property, assets, debts, and liabilities as provided in the proposal and organize and establish the districts and, in doing so, shall perform all other necessary duties as provided in subsection 6 of section 15-27.3-08.

4.
  - a. If fewer than all of the districts vote in favor of a new district and the contiguous districts voting in favor do not meet the requirements of subdivision a or b of subsection 3, all or some of the districts may choose to vote again on the same or on a revised reorganization proposal, provided the districts meet the requirements of subdivision a or b of subsection 3.
  - b. If the reorganization proposal is revised, the interim district board members representing the districts choosing to vote again shall hold another hearing and make findings as outlined in section 15-27.6-07. The interim district board members shall keep a record of the hearing and shall submit the record and the revised proposal, along with any other relevant information, to the state board for approval. If the state board approves the revised reorganization proposal, the county superintendent shall proceed pursuant to subsection 1 of this section.
  - c. The second special election must be held within one year after the initial special election.
5. If a school district does not vote in favor of forming a new school district, any part of that school district excluded from the reorganization proposal pursuant to section 15-27.6-07 may either proceed with annexation or remain a part of that school district.

**SECTION 7. AMENDMENT.** Section 15-27.6-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<sup>3</sup> **15-27.6-11. ~~Supplemental~~ Additional supplemental pupil payments.**

- 1- A newly formed district is eligible to receive the supplemental pupil payment provided for in section 15-27.6-05 for an additional period of two years following the effective date of the reorganization based on the number of full-time equivalent students in average daily membership during

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<sup>3</sup> NOTE: Section 15-27.6-11 was also amended by section 3 of House Bill No. 1413, chapter 184.

the year prior to the effective date of the reorganization if the newly formed district:

- a. ~~Encompasses at least seven hundred square miles [181299.168 hectares], enrolls at least six hundred students, and, prior to the reorganization, consisted of three contiguous school districts, each of which operated grades kindergarten through twelve programs or grades one through twelve programs;~~
  - b. ~~Prior to the reorganization, consisted of at least six contiguous school districts, four of which operated grades kindergarten through twelve programs or grades one through twelve programs; or~~
  - e. ~~Either enrolls a minimum of six hundred students or encompasses at least seven hundred square miles [181299.168 hectares], and, prior to the reorganization, consisted of four or five school districts, each of which operated grades kindergarten through twelve programs or grades one through twelve programs.~~
2. ~~Sections 15-27.3-12 through 15-27.3-15 and 15-27.3-17 through 15-27.3-21 apply to school district reorganizations under this chapter.~~
3. ~~A newly formed school district that was approved to receive a planning grant prior to July 17, 1991, is eligible to receive the additional supplemental pupil payments.~~
1. a. Meets the requirements of subdivision a or b of subsection 3 of section 15-27.6-10; or consists of three districts, at least one of which offers grades one through twelve, and has a minimum combined enrollment of six hundred students or covers a minimum combined area of seven hundred square miles [181299.168 hectares], and obtains approval of the state board; and
- b. Has adopted a policy that allows a student residing in the district to attend any school in the district; or
2. Received approval for a planning grant prior to July 17, 1991.

**SECTION 8.** A new section to chapter 15-27.6 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Application of sections. Sections 15-27.3-12 through 15-27.3-15 and sections 15-27.3-17 through 15-27.3-21 apply to school district reorganizations under this chapter.

Approved April 1, 1993  
 Filed April 1, 1993

## CHAPTER 183

SENATE BILL NO. 2519  
(Senators Kelsh, Evanson)  
(Representatives Gulleeson, Porter)

### TEACHER RECALL RIGHTS

AN ACT to create and enact two new sections to chapter 15-27.6 of the North Dakota Century Code, relating to employment recall rights of teachers whose contracts have not been renewed because of reorganizations.

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

**SECTION 1.** A new section to chapter 15-27.6 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this Act:

1. "Continuous service" means uninterrupted employment in a school district involved in a reorganization and includes leaves of absence, statutory leaves, military leaves, medical leaves of absence, and leaves for educational enhancement purposes.
2. "First preference" means priority and entitlement to employment, unless the school district by clear and convincing evidence shows a compelling reason why a teacher should not be so employed.
3. "Open teaching positions" means a full-time or part-time teaching position that is not filled by a certificated teacher and which is or will be maintained during any school year within the term of the teacher's recall rights.
4. "Qualified by certification" means a teacher is qualified pursuant to the laws of this state and the rules of the superintendent of public instruction to serve as a teacher in a particular class or subject area.

**SECTION 2.** A new section to chapter 15-27.6 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

**Recall rights - Consortia - Teacher contracts not renewed.**

1. When the contract of a teacher employed by a school district involved in reorganization pursuant to chapter 15-27.6 is not renewed under the provisions of subsection 5 of section 15-47-38 because of a reduction in force, the teacher is entitled to first preference for any open teaching positions in the reorganized school district for which the teacher is qualified by certification. The right of recall continues until July first of the year that is two years subsequent to the date of the nonrenewal. Among teachers who have recall rights and who are qualified by certification, the teacher with the longest continuous service within a school district involved in the reorganization is entitled to first

preference. In the event that teachers entitled to recall under this section have equal continuous service within a district involved in the reorganization, then the academic preparation beyond a bachelor's degree must be used to determine which teacher is entitled to first preference under this section.

2. The teacher may exercise rights under this section by providing the reorganized school district with a written demand for recall rights within thirty days of the current school district's written notice of nonrenewal. The teacher shall inform the reorganized school district of any changes in the teacher's address during the period of the teacher's recall rights. When an open position exists within the reorganized school district, the reorganized school district shall send written notice of the open position, including details of the position's requirements to all teachers who are qualified for the position by certification. A written notice must contain, in descending order of preference, the names of teachers entitled to recall rights. Any teacher who fails to accept recall rights in writing, within fourteen days after the teacher has received a letter by certified mail, is deemed to have waived recall rights against that position. The open position must be offered to the teacher who is entitled to preference under this section and who has accepted recall rights for the open position.
3. The recall rights of any teacher who accepts less than full-time employment in a reorganized school district continue for the time period contained in subsection 1 for consideration to fill any open position that offers compensation in excess of the teacher's compensation for less than full-time employment.

Approved April 7, 1993  
Filed April 8, 1993

## CHAPTER 184

HOUSE BILL NO. 1413  
(Representatives Dalrymple, Aarsvold, Gates)  
(Senators Freborg, Kelsh, O'Connell)

### SCHOOL DISTRICT CONSORTIA GRANTS

AN ACT to amend and reenact sections 15-27.6-05, 15-27.6-10, and 15-27.6-11 of the North Dakota Century Code, relating to planning grants and supplemental payments for school district consortia.

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

**SECTION 1. AMENDMENT.** Section 15-27.6-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<sup>1</sup> **15-27.6-05. State aid - Planning grants - Supplemental pupil payments.**

1. Payments for approved planning grants must be made quarterly for a period not to exceed one year.
2. ~~Each~~ The interim district board of a consortium implemented during 1990 or 1991 is entitled to receive state aid ~~for a period not to exceed three years~~ in the amount of ~~from one hundred twenty-five to one hundred sixty-five~~ five dollars ~~during each year of the 1993-95 biennium~~ for each full-time equivalent ~~pupil~~ student in average daily membership the previous year in the participating school districts. ~~The interim district board shall have the option to receive the amount equivalent to its third year payment over a two year period. This extended payment request must be contained in the consortium's third year cooperative plan.~~ The superintendent of public instruction shall distribute the payments to the interim district boards in the same manner provided in section 15-40.1-05 for the distribution of payments to school districts. Prior to being entitled to the ~~maximum~~ payment under this subsection, a participating school district must have one or more administrators jointly assigned and the participating districts' plan must be attempting to improve the quality of instruction as determined by the superintendent of public instruction.

**SECTION 2. AMENDMENT.** Section 15-27.6-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>1</sup> NOTE: Section 15-27.6-05 was also amended by section 4 of Senate Bill No. 2528, chapter 182.

<sup>2</sup> 15-27.6-10. Approved proposal received by county superintendent - Special election called - Formation of new district.

1. Upon receipt from the state board of an approved proposal for the reorganization of school districts, the county superintendent, after consulting with the interim district board, shall call a special election as provided in section 15-27.3-08.
2. If a majority of electors residing within each school district vote in favor of the formation of the new district, the county superintendent shall make the proper adjustments and perform all necessary duties as provided in subsection 6 of section 15-27.3-08.
3. If fewer than all of the districts vote in favor of a new district, any contiguous districts voting in favor of the proposal shall form a new district ~~if the new district would qualify to receive the payments provided for in section 15-27.6-11 and if approved by the state board approves and:~~
  - a. There are three districts, at least one of which offers grades one through twelve, they have a minimum combined enrollment of six hundred students, and they cover a minimum combined area of seven hundred square miles [181299.168 hectares]; or
  - b. There are four or more districts, at least one of which offers grades one through twelve, and they have a minimum combined enrollment of six hundred students or they cover a minimum combined area of seven hundred square miles [181299.168 hectares].

~~Any contiguous districts voting that vote in favor of forming a new district, but that would not qualify for payments under section 15-27.6-11 do not meet the requirements of either subdivision a or b of this subsection, may form a new district. To form a new district, the board members of the interim district board who represent the contiguous districts involved shall make a determination and adjustment of property, assets, debts, and liabilities of the districts as provided in section 15-27.3-04 and make a determination of tax levy as provided in section 15-27.3-06, hold a hearing similar to the one described in section 15-27.6-07, and submit a new proposal to the state board for approval. No additional vote is required on the revised proposal, including a proposal that becomes effective on July 1, 1993. However, the newly proposed mill levy may not exceed the general fund mill levy limitations provided in section 57-15-14 plus the additional levy authorized by Senate Bill No. 2024, as approved by the fifty-third legislative assembly. For purposes of determining the amount that can be levied under Senate Bill No. 2024, the amount levied in dollars in the base year is the amount proposed to be levied in dollars by the new district in its first year of operation. If the state board approves the plan, the county superintendent shall make the proper adjustment of the property, assets,~~

<sup>2</sup> NOTE: Section 15-27.6-10 was also amended by section 3 of Senate Bill No. 2184, chapter 179, by section 16 of House Bill No. 1003, chapter 3; and by section 6 of Senate Bill No. 2528, chapter 182.

debts, and liabilities as provided in the proposal and organize and establish the districts and, in doing so, shall perform all other necessary duties as provided in subsection 6 of section 15-27.3-08.

4. a. If fewer than all of the districts vote in favor of a new district and the contiguous districts voting in favor do not meet the requirements of subdivision a or b of subsection 3, all or some of the districts may choose to vote again on the same or on a revised reorganization proposal, provided the districts meet the requirements of subdivision a or b of subsection 3.
  - b. If the reorganization proposal is revised, the interim district board members representing the districts choosing to vote again shall hold another hearing and make findings as outlined in section 15-27.6-07. The interim district board members shall keep a record of the hearing and shall submit the record and the revised proposal, along with any other relevant information, to the state board for approval. If the state board approves the revised reorganization proposal, the county superintendent shall proceed pursuant to subsection 1 of this section.
  - c. The second special election must be held within one year after the initial special election.
5. If a school district does not vote in favor of forming a new school district, any part of that school district excluded from the reorganization proposal pursuant to section 15-27.6-07 may either proceed with annexation or remain a part of that school district.

**SECTION 3. AMENDMENT.** Section 15-27.6-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<sup>3</sup> 15-27.6-11. **Supplemental ~~pupil~~ student payments.**

1. A newly formed district is eligible to receive the supplemental pupil student payment of one hundred five dollars provided for in section 15-27.6-05 for ~~an additional period of two years~~ one year following the effective date of the reorganization based on the number of full-time equivalent students in average daily membership during the year prior to the effective date of the reorganization ~~if the newly formed district:~~
  - a. ~~Encompasses at least seven hundred square miles [181299.168 hectares], enrolls at least six hundred students, and, prior to the reorganization, consisted of three contiguous school districts, each of which operated grades kindergarten through twelve programs or grades one through twelve programs;~~
  - b. ~~Prior to the reorganization, consisted of at least six contiguous school districts, four of which operated grades kindergarten through twelve programs or grades one through twelve programs; or~~

<sup>3</sup> NOTE: Section 15-27.6-11 was also amended by section 7 of Senate Bill No. 2528, chapter 182.

- ~~e. Either enrolls a minimum of six hundred students or encompasses at least seven hundred square miles [181299.168 hectares], and, prior to the reorganization, consisted of four or five school districts, each of which operated grades kindergarten through twelve programs or grades one through twelve programs.~~
2. Sections 15-27.3-12 through 15-27.3-15 and 15-27.3-17 through 15-27.3-21 apply to school district reorganizations under this chapter.
- ~~3. A newly formed school district that was approved to receive a planning grant prior to July 17, 1991, is eligible to receive the additional supplemental pupil payments.~~

Approved April 30, 1993  
Filed May 3, 1993

## CHAPTER 185

SENATE BILL NO. 2313  
(Senators Holmberg, Yockim)

**SCHOOL BOARD TERMS AND CITY OFFICE NOMINATIONS**

AN ACT to amend and reenact subsection 2 of section 15-28-03, sections 40-21-07, and 61-24.5-07 of the North Dakota Century Code, relating to the terms of office of school board members and petitions for nomination to elective office in cities and of city directors of the southwest water authority.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 15-28-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The annual election provided for in this section may, upon resolution of the school board, be held in conjunction with the regularly scheduled city election, established by state law or established pursuant to the home rule powers of the city, held in a city located wholly or partially within that school district. The school board may enter into an agreement with the governing body of the city ~~commission or the city council~~ concerning the sharing of election personnel, the printing of election materials, the use of one set of pollbooks, and the apportioning of election expenses. If only one set of pollbooks is used, the pollbook must contain a reference indicating the voter's eligibility to vote in the city or school board election, or both. References in this chapter to the date of school board elections, insofar as they relate to a school board ~~which that~~ holds its elections in conjunction with a city, are deemed to mean or to refer to the date of the applicable city election. Such a school board has the further option to convert the terms of office of its members to four years rather than three years in order that school board elections like city elections may be held biennially rather than annually. A school board may convert the future terms of its members to four years by passing a resolution requiring ~~such a the~~ conversion. ~~Thereafter, following~~ Upon the expiration of the three-year term of each incumbent in office ~~as of~~ on the date of the passage of the resolution is passed, the term of office for that position on the board ~~must be~~ is four years, except that ~~as to any seat where such an~~ the resolution may provide that one of the positions being converted to a four-year term must first be converted to one two-year term before becoming a four-year term. If the resolution provides for one two-year term, that term must be chosen by lot. If the extension of the a term would result to four years results in the four-year term of office ending in an odd-numbered year, for which seat one additional and transitional term of three years must be provided before the term becomes a four-year term of office. Once the school board has accomplished the transition to biennial elections, references in this title to annual elections as they apply to the school board are deemed to mean biennial elections, and the election held pursuant to section 15-28-11 must be held in even-numbered years.



19\_\_, and I do hereby request that my name be printed upon the election ballot as provided by law, as a candidate for such office.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public, North Dakota

Upon receipt of the petition the city auditor shall without fee place the name of the aspirant on the election ballot as a candidate for the ~~aforsaid~~ office of director. The candidate or candidates, depending on whether one or two directors are being elected, receiving the highest number of votes are elected. The provisions of chapter 40-21 govern the election of directors from the city of Dickinson for the southwest water authority.

Approved April 7, 1993  
Filed April 8, 1993

## CHAPTER 186

HOUSE BILL NO. 1193  
(Education Committee)  
(At the request of the Office of Management and Budget)

### SCHOOL CONSTRUCTION FUNDING

AN ACT to require the superintendent of public instruction, with advice and assistance from the industrial commission, to administer the sale of all leases and contracts entered into before July 1, 1989, by the state board of public school education concerning the state school construction fund, and the deposit of proceeds in the general fund; to create and enact a new subsection to section 15-29-08 and two new sections to chapter 15-60 of the North Dakota Century Code, relating to the authority of school boards to purchase equipment or lease a telecommunication system, the authority of the board of university and school lands to make loans to school districts out of moneys in the coal development trust fund for school construction, and the authority of a school board to issue evidences of indebtedness to repay a loan from the board of university and school lands; to amend and reenact sections 15-35-01.1, 15-60-01, subsection 7 of section 21-03-07, subsection 1 of section 28-32-01, subsection 1 of section 57-15-16, and subsection 1 of section 57-62-02 of the North Dakota Century Code, relating to approval by the superintendent of public instruction of certain school district construction projects, the state school construction fund, the issuance of general obligation bonds for certain projects, exceptions to the Administrative Agencies Practice Act, the use of moneys in the school building fund for the payment of bonds, and authorizing loans to be made from moneys in the coal development trust fund to school districts for school construction; and to repeal sections 15-21-20, 15-60-03, 15-60-06, 15-60-07, and 15-60-08 of the North Dakota Century Code, relating to the creation of and use of moneys in the state school construction fund.

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

SECTION 1. Superintendent of public instruction required to sell state school construction fund leases - Assistance by the industrial commission. The industrial commission shall review and appraise the value of all contracts and leases in the possession of the superintendent of public instruction which were entered into before July 1, 1989, by the state board of public school education concerning the state school construction fund provided for by chapter 15-60. After the review and appraisal, the industrial commission, on behalf of the superintendent of public instruction, shall structure the leases and contracts for sale. Before January 1, 1994, the superintendent of public instruction shall sell all such leases. All proceeds from the sale of the leases and contracts must be paid over by the superintendent of public instruction to the state treasurer for deposit in the general fund.

SECTION 2. A new subsection to section 15-29-08 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

To purchase equipment or lease a telecommunication system or network, or to participate with other school districts or other entities in the purchase of equipment or lease of a telecommunication system or network.

**SECTION 3. AMENDMENT.** Section 15-35-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-35-01.1. Approval required for certain school district construction projects.**

1. Notwithstanding the powers and duties of school boards of public school districts otherwise provided by law, all construction, purchase, repair, improvement, renovation, or modernization of any school building or facility within a school district estimated by the school boards to cost in excess of twenty-five thousand dollars shall may not be commenced unless approved by the superintendent of public instruction. The superintendent of public instruction shall not approve such school building project unless he shall find that the building will be fully or substantially usable by any reorganized school district which in his judgment is likely to be created and which would encompass all or a major portion of the school district applying for approval of the building project. No such construction, purchase, repair, improvement, renovation, or modernization of any school building or facility may be approved unless the school district proposing the project demonstrates the need and the educational utility of the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education. In the event of disagreement between the superintendent of public instruction and the school board applying for approval of a construction project under this section, such the school board shall have the right to may appeal such the application to the state board of public school education and the decision of the state board approving or disapproving such the application shall be is final.
2. If a school district intends to apply for a loan from the board of university and school lands pursuant to chapter 15-60, the school district must demonstrate fiscal need and capacity to repay the loan under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the board of university and school lands.
3. For purposes of this section, "facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the school district.

**SECTION 4. AMENDMENT.** Section 15-60-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-60-01. Definitions.** As used ~~or referred to~~ in this chapter, unless the context clearly indicates otherwise requires:

1. "Bank" means the Bank of North Dakota.
2. "Board" means the state board of public university and school education lands.

- 2- 3. "Construction" means ~~aquisition and~~ purchase, lease, or construction, and the term "to construct" means to ~~acquire and to~~ purchase, lease, or construct in such manner as may be deemed desirable.
3. "~~Department~~" means ~~the department of public instruction.~~
4. "Fund" means ~~the state school construction coal development trust fund created by this chapter section 21 of article X of the Constitution of North Dakota and section 57-62-02.~~
5. "Improvement" means extension, enlargement, ~~and or~~ improvement, and the term "to improve" means to extend, to enlarge, ~~and or~~ to improve in such manner as may be deemed desirable.
6. "Project" means any structure, or facility, or undertaking including a technological undertaking which the board is that a school district is authorized to construct or improve, under this chapter section 15-35-01.1 and which is estimated to cost in excess of fifty thousand dollars.
7. "Superintendent" means the superintendent of public instruction.

SECTION 5. A new section to chapter 15-60 of the North Dakota Century Code is created and enacted as follows:

Loans.

1. The board may make loans for purposes described in this chapter to school districts from moneys deposited in the coal development trust fund established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02. The board shall consider an application for a loan in the order of its approval by the superintendent under subsection 2 of section 15-35-01.1. The outstanding principal balance of loans made from the fund under this chapter may not exceed twenty-five million dollars.
2. An application for a loan must be approved by the superintendent pursuant to section 15-35-01.1 before the application may be submitted to the board. The application must contain information deemed necessary by the superintendent, including a discussion of alternative sources or methods for financing the construction or improvement, and must be considered in the order of its approval under subsection 1 of section 15-35-01.1. If the superintendent approves the loan, the superintendent may also determine the loan amount and a percent of interest to be paid on the loan. In determining the amount of a loan, the superintendent shall take into account the cost of the project and the fiscal capacity of the school district. To be eligible for a loan, the school district must have an existing indebtedness equal to at least fifteen percent of the school district's taxable valuation. The interest on a loan may not exceed the rate of two percent below the net interest rate on comparable tax-exempt obligations as determined on the date the application is approved by the superintendent pursuant to section 15-35-01.1, provided the interest rate may not exceed six percent.
3. Loan applications approved by the board must be forwarded to the Bank. The Bank shall assist the board by preparing and approving the loan

documents, handling the loan closing, and servicing the loan. The Bank shall receive payments of principal and interest from the school districts, and shall remit payments of principal to the board for redeposit in the fund. The interest must be used and deposited in accordance with section 21 of article X of the Constitution of North Dakota.

**SECTION 6.** A new section to chapter 15-60 of the North Dakota Century Code is created and enacted as follows:

School board may issue evidences of indebtedness. The school board of a school district may issue and sell evidences of indebtedness pursuant to chapter 21-03 to finance the construction or improvement of a project approved under this chapter. The principal amount of the loan and the evidences of indebtedness to repay the loan may not exceed the lesser of thirty percent of the taxable valuation of the school district or five million dollars. Evidences of indebtedness issued pursuant to this chapter constitute a general obligation of the school district.

**SECTION 7. AMENDMENT.** Subsection 7 of section 21-03-07 of the North Dakota Century Code is amended and reenacted as follows:

7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 15-51-11, 15-51-13, or 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings; ~~provided, that the~~ or for the construction or improvement of a project pursuant to chapter 15-60. The initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper of the school district, and any owner of taxable property within the school district may, within sixty days after publication, file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property ~~which~~ that is the subject of the protest. If the governing body finds ~~such~~ the protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

<sup>1</sup> **SECTION 8. AMENDMENT.** Subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an

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<sup>1</sup> NOTE: Subsection 1 of section 28-32-01 was also amended by House Bill Nos. 1047, 1264, 1336, and 1400 and Senate Bill Nos. 2215 and 2228, chapters 135, 328, 327, 80, 173, and 236.

administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational telecommunications council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.
- m. The department of corrections and rehabilitation.
- n. The board of pardons.
- o. The parks and tourism department.
- p. The parole board.
- q. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07, rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18.
- ~~r. The state board of public school education while administering the state school construction fund.~~
- ~~s. The state fair association.~~
- ~~t.~~ s. The state toxicologist.

- ~~tt~~ t. The board of university and school lands except with respect to activities under chapter 47-30.1.
- ~~vv~~ u. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- ~~ww~~ v. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

**SECTION 9. AMENDMENT.** Subsection 1 of section 57-15-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The governing body of any school district shall levy taxes annually for a school building fund, not in excess of twenty mills, which levy ~~shall be~~ is in addition to and not restricted by the levy limitations prescribed by law, when authorized to do so by sixty percent of the qualified electors voting upon the question at a regular or special election in any school district. The governing body of ~~such the~~ the school district may create ~~such the~~ the building fund by appropriating and setting up in its budget for ~~such an~~ an amount not in excess of twenty percent of the current annual appropriation for all other purposes combined, exclusive of appropriations to pay interest and principal of the bonded debt, and not in excess of the limitations prescribed by law. ~~in all cases where if~~ if a portion or all of the proceeds of ~~such the~~ the levy have been allocated by contract to the payment of rentals upon contracts with the state board of public school education as administrator of the state school construction fund, ~~such the~~ the levy ~~shall must~~ must be made annually by the governing body of the school district until the full amount of all such obligations is fully paid. Any portion of a levy for a school building fund which has not been allocated by contract with the state board of public school education must be allocated by the governing body pursuant to section 57-15-17. Upon the completion of all payments to the state school construction fund, ~~such or upon payment and cancellation or defeasance of the bonds, the~~ the levy may be discontinued at the discretion of the governing body of the school district, or upon petition of twenty percent of the qualified electors who voted in the last school election, the question of discontinuance of the levy ~~shall must~~ must be submitted to the qualified electors of the school district at any regular or special election and, upon a favorable vote of sixty percent of the qualified electors voting, ~~such the~~ the levy ~~shall must~~ must be discontinued. Any school district, executing a contract or lease with the state board of public school education or issuing general obligation bonds, which contract or lease or bond issue requires the maintenance of the levy provided in this section, shall immediately file a certified copy of such the contract or, lease, or bond issue with the county auditor or auditors of the county or counties in which such the school district is located. The county auditor or auditors shall register such the contract or, lease, or bond issue in the bond register in substantially the manner provided in section 21-03-23. Upon the filing of such the contract or, lease, or bond issue with the county auditor or auditors, the school district shall be without power to may not ~~shall be without power to may not~~ may not discontinue ~~such the~~ the levy and ~~such the~~ the levy ~~shall must~~ must automatically be included in the tax levy of ~~such the~~ the school district from year to year by the county auditor or

auditors until a sufficient sum of money has been collected to pay to the state treasurer for the retirement of all obligations of ~~such~~ the school district with the state board of public school education or to pay to the custodian of the bond sinking fund all amounts due or to become due on the bonds.

**SECTION 10. AMENDMENT.** Subsection 1 of section 57-62-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Fifteen percent must be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be deposited in the trust fund created pursuant to this subsection. The fund must be held in trust and administered by the board of university and school lands for loans to coal impacted counties, cities, and school districts as provided in section 57-62-03, and for loans to school districts pursuant to chapter 15-60. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the state's general fund. Loan principal payments must be redeposited in the trust fund. ~~Such~~ The trust fund must be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter and chapter 15-60.

<sup>2</sup> **SECTION 11. REPEAL.** Section 15-21-20 of the North Dakota Century Code and sections 15-60-03, 15-60-06, 15-60-07, and 15-60-08 of the 1991 Supplement to the North Dakota Century Code are repealed.

Approved April 7, 1993  
Filed April 8, 1993

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<sup>2</sup> NOTE: Section 15-60-08 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 187

HOUSE BILL NO. 1474  
(Representatives Wardner, Monson)  
(Senator O'Connell)

SCHOOL DISTRICT INVESTIGATION RECORDS

AN ACT to amend and reenact section 15-29-10 of the North Dakota Century Code, relating to school district records and complaints against school district employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-29-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-29-10. District records open to examination - Records as evidence - Investigation - Exemption. The Except as otherwise provided by law, the records, vouchers, and papers of the district are open to examination by any taxpayer of the district. These records, or a transcript thereof certified by the business manager, must be received in all courts as prima facie evidence of the facts therein set forth. Any record, document, or paper generated or produced as a result of an administrative investigation of a complaint concerning a school district employee, by a parent, student, or other person, is confidential and exempt from this section and is not subject to section 44-04-18, until the investigation is complete. The time period for investigating such a complaint and determining the disciplinary action, if any, to be taken may not exceed sixty days from the date the complaint is received.

Approved April 9, 1993  
Filed April 9, 1993

## CHAPTER 188

SENATE BILL NO. 2216  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### HOME-BASED INSTRUCTION

AN ACT to create and enact a new section to chapter 15-34.1 of the North Dakota Century Code, relating to definitions; to amend and reenact section 1 of chapter 181 of the 1991 Session Laws of North Dakota, section 10 of chapter 2 and sections 4 and 7 of chapter 198 of the 1989 Session Laws of North Dakota, relating to home-based instruction of students; to repeal section 9 of chapter 198 of the 1989 Session Laws of North Dakota, relating to the expiration date for statutes on home-based instruction of students; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 15-34.1 of the North Dakota Century Code is created and enacted as follows:

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

1. "Home-based instruction" means an educational program for students based in the child's home and supervised by the child's parent or parents wherein a resident of North Dakota may legally fulfill the compulsory instruction requirements of section 15-34.1-01.
2. "Nonpublic school" means an educational institution which students attend in lieu of public school attendance wherein a resident of North Dakota may legally fulfill the compulsory instruction requirements of section 15-34.1-01.
3. "Parent" includes a legal guardian.
4. "School" means a public school supported, in whole or in part, by state funds wherein a resident of North Dakota may legally fulfill the compulsory instruction requirements of section 15-34.1-01.

**SECTION 2. AMENDMENT.** Section 4 of chapter 198 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

Home-based instruction. Home-based instruction is an educational program for students based in the child's home and supervised by the child's parent or parents. A parent who provides home-based instruction may only invoke the home-based instruction exception to compulsory attendance. A parent is qualified to supervise a program of home-based instruction if the parent is certified ~~or certifiable~~ to teach in North Dakota; has a high school education or has received a general educational development certificate and is ~~supervised~~ monitored by a ~~certificated certified~~ teacher employed either by the public school district in which the parent resides or, if requested by the parent, by a state approved private or parochial

school; or has passed met or exceeded the cut-off score of the national teacher exam given in North Dakota, or in any other state if North Dakota does not offer such a test. Home-based instruction must include those subjects required to be taught in accordance with sections 15-38-07, 15-41-06, and 15-41-24 and must be provided for at least four hours per day for a minimum of one hundred seventy-five days per year. Every parent supervising home-based instruction shall maintain an annual record of courses taken by the child and the child's academic progress assessments, including any standardized achievement test results. A parent shall furnish these records to any school to which the child may transfer upon request of the superintendent or other administrator of that public school district. A parent intending to supervise home-based instruction for the parent's child shall file an annual statement with the superintendent of the public school district in which the child resides. If the school district does not employ a local school superintendent, the statement must be filed with the county superintendent of schools for the county of the child's residence. The statement must be filed at least thirty days prior to the beginning of the school semester for which the parent requests an exemption except when residency of the child is not established by that date. If residency has not been established, the statement must be filed within thirty days of the establishment of residency within the district. The statement must include:

1. The names and addresses of the parent who will supervise and the child who will receive home-based instruction;
2. The date of birth and grade level of each child;
3. The intention of the parent to supervise home-based instruction;
4. The qualifications of the parent who will supervise the home-based instruction;
5. A list of courses or extracurricular activities in which the child intends to participate in the public school district; ~~and~~
6. Proof of an immunization record as it relates to section 23-07-16;
7. Proof of identity as it relates to section 54-23.2-04.2; and
8. An oath or affirmation that the parent will comply with all provisions of this chapter.

**SECTION 3. AMENDMENT.** Section 1 of chapter 181 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

**Students receiving home-based instruction - Quality assurance.** In order to meet the state's compelling interest in assuring that citizens of the state receive a quality education, the following minimum indices of quality education are established:

1. A standardized achievement test used by the public school in the school district in which the child resides parent resides or, if requested by the parent, a standardized achievement test used by a state-approved ~~private or parochial~~ nonpublic school must be given annually to each child receiving home-based instruction starting with grade three and annually thereafter. The test must be given in the child's learning

environment or the public school and must be administered by a certified teacher ~~employed by the public school district in which the parent resides or, if requested by the parent, employed by a state approved private or parochial school.~~ The cost of such testing must be borne by the local school district in which the child parent resides if the test is administered by a certified teacher employed by a public school district or by the parent of the child if the test is administered by a certified teacher not employed by a ~~state approved private or parochial public school.~~ Results of such testing must be provided to filed with the local public school superintendent. If the child parent resides in a school district which does not employ a local school superintendent, the results must be filed with the county superintendent of schools for the county of the child's parent's residence.

2. If the child's basic composite score on a standardized achievement test falls below the thirtieth percentile nationally, the child must be professionally evaluated for a potential learning problem. If the multidisciplinary assessment team evaluation determines that the child is not handicapped according to the eligibility criteria of the department of public instruction and the child does not require specially designed instruction according to rules adopted by the department of public instruction, the parent providing instruction may continue to provide home-based instruction, upon filing with the superintendent of public instruction a statement, from an appropriately licensed professional, that the child is currently making reasonable academic progress when the learning abilities of the child are taken into consideration. If such statement is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03. If the evaluation of the multidisciplinary assessment team determines that the child is handicapped, but not developmentally disabled, according to the eligibility criteria of the department of public instruction, and the student requires specially designed instruction due to the handicap and that this instruction cannot be provided without special education and related services, the parent providing instruction may continue to provide home-based instruction, upon filing with the superintendent of public instruction an individualized education program plan, formulated within rules adopted by the department of public instruction, indicating that the child's needs for special education are being appropriately addressed by persons qualified to provide special education or related services. If such a plan is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03.
3. Any ~~certificated~~ certified teacher supervising monitoring home-based instruction shall spend a minimum average of one hour per week in contact with the first student and in conjunction with the parent. With two or more children under supervision, the teacher shall monitor a minimum additional one-half hour per month for each child under the teacher's supervision who is receiving home-based instruction. The teacher shall evaluate the student's progress and report the student's progress at least twice annually to the local public school superintendent. If the school district does not employ a local school superintendent, the report must be filed with the county superintendent of schools for the county of the child's residence.

4. If the local superintendent of public schools or the county superintendent of schools in those school districts that do not employ a local superintendent determines that the child is not making reasonable academic progress consistent with the child's age or stage of development, the parent of the child must be notified of the conclusion reached and the basis for the conclusion. Upon receipt of that notice, the parent shall make a good faith effort to remedy any deficiency. The appropriate official shall report the failure on the part of a parent to make a good faith effort to the state's attorney pursuant to section 15-34.1-04 as a violation of this chapter. The superintendent of public instruction shall adopt rules to assist local superintendents of schools, county superintendents of schools, and the licensed professionals referred to in subsection 2, in determining whether a child is making reasonable academic progress.

**SECTION 4. AMENDMENT.** Section 10 of chapter 2 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

**State aid.** For purposes of allocating foundation aid and other state assistance to local school districts, a student receiving home-based instruction is deemed enrolled in the school district in which the student resides if the student is supervised monitored by a certificated teacher employed by the public school district in which the parent resides. A school district is entitled to one-half of the per-pupil payment provided in section 15-40.1-06 times the appropriate factor in section 15-40.1-07 or 15-40.1-08 for each such student. When a student is supervised through home-based instruction and is enrolled in classes in the public school, proportionate payments must be made as provided in sections 15-40.1-07 and 15-40.1-08. The total amount may not exceed the equivalent of one full foundation aid payment.

**SECTION 5. AMENDMENT.** Section 7 of chapter 198 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

~~Supervision Monitoring or administration by a state-approved private or parochial school certified teacher.~~ Any certified teacher employed by a ~~state approved private or parochial school~~ who supervises monitors home-based instruction or who administers a standardized achievement test to children receiving home-based instruction must notify the child's public school district of residence that the teacher is providing such supervision monitoring or administration. The parent of any student receiving home-based instruction that is supervised monitored by or taking a test administered by a certified teacher not employed by a ~~state approved private or parochial~~ public school is responsible for any costs charged by the ~~state approved private or parochial school~~ for such supervision monitoring or test administration.

**SECTION 6. REPEAL.** Section 9 of chapter 198 of the 1989 Session Laws of North Dakota is repealed.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 12, 1993  
Filed April 12, 1993

## CHAPTER 189

HOUSE BILL NO. 1089  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### SCHOOLBUS DRIVER QUALIFICATIONS

AN ACT to amend and reenact section 15-34.2-14 of the North Dakota Century Code, relating to the qualifications of a schoolbus driver.

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

**SECTION 1. AMENDMENT.** Section 15-34.2-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-34.2-14. Qualifications, character, and age of schoolbus and school vehicle drivers.** The driver of a schoolbus or a school vehicle must be in good physical and mental health, able-bodied, free from communicable diseases, and must have normal use of both hands, both feet, both eyes, and both ears. It is the duty of school boards to annually designate reputable physicians licensed health care professionals, as defined by department of transportation standards, to examine each driver annually. Every two years, each driver shall present a physician's medical certificate of physical fitness and a medical card, as required by the United States department of transportation, to the employing school board before a contract is signed. Such driver must possess a good moral character, must be at least twenty-one years of age, and must have a North Dakota driver's license. However, the school board may lower the minimum age of a driver below twenty-one. The school board may, at its discretion, require drug or alcohol testing. This section does not prohibit regular members of the faculty of an elementary or high school from operating vehicles for the purpose of transporting students to regular or special events related to the educational programs in which the students are enrolled.

Approved April 14, 1993  
Filed April 15, 1993

## CHAPTER 190

HOUSE BILL NO. 1319  
(Representative Gates)

### TEACHER CERTIFICATES AND SCHOOL PROVISIONS

AN ACT to repeal sections 15-36-10, 15-38-05, and 15-47-02 of the North Dakota Century Code, relating to the recording of teacher certificates in the office of the county superintendents of schools, the annual observance of Temperance Day by the public schools, and state institutions of higher education constituting part of the state's free public school system.

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

**SECTION 1. REPEAL.** Section 15-38-05 of the North Dakota Century Code and sections 15-36-10 and 15-47-02 of the 1991 Supplement to the North Dakota Century Code are repealed.

Approved March 19, 1993  
Filed March 19, 1993

## CHAPTER 191

HOUSE BILL NO. 1074  
 (Government and Veterans Affairs Committee)  
 (At the request of the Teachers' Fund for Retirement)

### TFRR ADDITIONAL CREDIT AND PARTICIPATION

AN ACT to amend and reenact subsections 6 and 10 of section 15-39.1-04 and section 15-39.1-24 of the North Dakota Century Code, relating to definitions and purchase of additional credit under the teachers' fund for retirement; and to repeal section 15-39.1-09.1 of the North Dakota Century Code, relating to participation of nonpublic schoolteachers in the teachers' fund for retirement.

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

**SECTION 1. AMENDMENT.** Subsections 6 and 10 of section 15-39.1-04 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

6. "Interest", as applied to member assessments ~~or~~ is an annual rate of six percent compounded monthly and as applied to the repurchase of credit for withdrawn years, ~~is six percent compounded annually.~~
10. "State institution" includes ~~all state colleges and universities, the school of forestry, the school of science,~~ the school for the blind, the school for the deaf, the developmental center at Grafton, and the North Dakota industrial school.

**SECTION 2. AMENDMENT.** Section 15-39.1-24 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-24. Purchase of additional credit.** Prior to retirement a teacher may purchase additional credit for use toward retirement in the following instances and manner:

1. Any teacher may purchase service credit for years of teaching service at an out-of-state school or educational institution supported by public taxation out of North Dakota. However, a teacher must complete five years of creditable service in this state before the teacher is eligible to purchase the first five years of service credit for out-of-state teaching under this subsection. The teacher may purchase any part of the remaining years of service credit for out-of-state teaching with each year of service credit conditional upon the teacher completing one additional year of creditable service in this state following the out-of-state teaching. The years of out-of-state teaching service do not qualify for credit in this state if the years claimed also qualify for retirement benefits from an out-of-state retirement system.
2. Any teacher who has received an honorable discharge from military service of the United States of America may receive credit for no more than four years of active service, upon filing application and proof with the board

and subject to the terms of this chapter upon teaching one year in North Dakota subsequent to military service. Members qualified to receive military credit under the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2021 et seq.] shall only pay member assessments plus interest pursuant to rules adopted by the board. For those individuals becoming eligible to receive military credit under the Veterans' Reemployment Rights Act after June 30, 1991, the employer shall pay the required employer contribution for military service.

3. A teacher who attends a college, university, or other recognized school for two consecutive semesters or three consecutive quarters, other than summer sessions, for the purpose of improving the teacher's qualifications in the teaching profession is entitled to have such periods while in attendance at that college, university, or school credited, not to exceed three years of teaching service, under this chapter. To be eligible for purchasing credit under this subsection, the teacher must have taught at least one full school year in North Dakota immediately preceding entrance into the college, university, or school, or, immediately following such training, the teacher must have taught not less than one full school year in a public school or state institution of this state.
4. ~~Any teacher, after acquiring one year of service credit in the fund, may elect to purchase no more than ten years' service credit in accordance with this chapter, for years of service as a nonpublic schoolteacher, prior to July 1, 1971. For the purposes of this subsection, "nonpublic schoolteacher" means "lay faculty" as defined by subdivision k of subsection 1 of former section 15-39-01.~~
- 5- A teacher may purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while holding eligible employment under this chapter. Service credit for a legislative session must be purchased within one year after the adjournment of that legislative session. As an alternative to a teacher purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement by which payment for service credit for time spent during each legislative session by the teacher serving as a member of the legislative assembly is made pursuant to section 15-39.1-09. The agreement must provide that contributions made pursuant to section 15-39.1-09 are calculated based on the teacher's annual salary without reduction for a leave of absence taken by the teacher during the legislative session.
- 6- 5. A teacher may purchase credit for service as an administrator or teacher in the field of education if employed by an agency of the United States government teaching school age children. The maximum service that may be purchased under this subsection is ten years.
- 7- 6. Except as provided in subsections 2 and 5 4, the amount of additional service eligible to be purchased under this section must be credited to the teacher when the teacher has made the required payment. In all cases, the purchase cost must be on an actuarial equivalent basis.

**SECTION 3. REPEAL.** Section 15-39.1-09.1 of the North Dakota Century Code is repealed.

Approved March 16, 1993  
Filed March 16, 1993

## CHAPTER 192

HOUSE BILL NO. 1069  
 (Government and Veterans Affairs Committee)  
 (At the request of the Teachers' Fund for Retirement)

### TEACHERS' FUND FOR RETIREMENT BENEFITS

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to postretirement benefit adjustments under the teachers' fund for retirement; to amend and reenact section 15-39.1-10 and subsection 2 of section 15-39.1-18 of the North Dakota Century Code, relating to computation of benefits and disability retirements under the teachers' fund for retirement; and to provide for application of this Act.

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

**SECTION 1. AMENDMENT.** Section 15-39.1-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### 15-39.1-10. Eligibility for benefits.

1. The following members are eligible to receive monthly lifetime retirement benefits under this section:
  - a. All members who have completed five years of teaching credit and who have attained the age of sixty-five years.
  - b. All members who have completed five years of teaching credit and who have a combined total of years of service credit, of which one year was completed after July 1, 1979, and years of age which equals eighty-five.
2. The amount of retirement benefits is one and ~~thirty-nine~~ fifty-five hundredths percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service under the fund.
3. Notwithstanding any other provision of this section, no ~~full-time~~ member who retired ~~in 1971~~ on July 1, 1993, or after ~~such year,~~ and is eligible to receive ~~or who is receiving~~ benefits under former chapter 15-39, chapter 15-39.1, or section 15-39.2-02, ~~shall~~ may receive benefits which are less than:
  - a. ~~Six Ten~~ Ten dollars per month per year of teaching to twenty-five years.
  - b. ~~Seven Fifteen~~ Fifteen dollars and ~~fifty cents~~ per month per year of teaching over twenty-five years.

~~Teachers, superintendents, assistant superintendents, principals, assistant principals, special teachers, supervisors of instruction and other supervisors, presidents, deans, school librarians, and registrars employed by any state institution under the supervision and control of the board of higher education shall not be eligible for the minimum benefits provided by this subsection.~~

- ~~4. The greater benefit available from this chapter as it existed on July 1, 1977, and July 1, 1979, shall be available to any member who had rights vested in the chapter on June 30, 1979.~~

**SECTION 2.** A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Postretirement adjustments. An individual who on June 30, 1993, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive three dollars per month multiplied by the individual's number of years of credited service for individuals who retired before 1980, two dollars and fifty cents per month multiplied by the individual's number of years of credited service for individuals who retired after 1979 and before 1984, or one dollar per month multiplied by the individual's number of years of credited service for individuals who retired after 1983 and who retire before July 1, 1993, or an increase of ten percent in the individual's currently payable annuity, whichever is greater. The minimum monthly increase under this section is five dollars and the maximum monthly increase under this section is one hundred dollars.

**SECTION 3. AMENDMENT.** Subsection 2 of section 15-39.1-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The amount of the disability annuity is the greater of ~~twenty percent of the last annual salary, or~~ the amount computed by the retirement formula in section 15-39.1-10 without consideration of age ~~or the amount computed by that formula without consideration of age but assuming the member had twenty years of credited service.~~ A member determined eligible for a disability annuity under this section may elect to receive an annuity under any of the options allowed in section 15-39.1-16.

**SECTION 4. APPLICATION OF ACT.** Sections 1 and 3 of this Act apply only to individuals who begin receiving monthly benefits from the fund under chapter 15-39.1 after June 30, 1993, and applies to those benefits payable after June 30, 1993. Section 2 of this Act applies to benefits payable after June 30, 1993.

Approved March 16, 1993  
Filed March 16, 1993

## CHAPTER 193

SENATE BILL NO. 2036  
(Legislative Council)  
(Interim Education Committee)

## FOUNDATION AID DEDUCTIONS

AN ACT to amend and reenact subsection 3 of section 15-40.1-06 of the North Dakota Century Code, relating to the calculation of educational support per pupil.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>1</sup> SECTION 1. AMENDMENT. Subsection 3 of section 15-40.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. In determining the amount of ~~payment~~ payments due school districts for per-pupil aid and transportation aid under this section, the amount of per-pupil aid and transportation aid for which a school district is eligible must be added together, and from that total, the following amounts must be subtracted from the amount of such aid:
  - a. The product of ~~twenty one mills for the 1989-90 school year and twenty-two mills for each year thereafter~~ times the latest available net assessed and equalized valuation of property of the school district.
  - b. The amount that the unobligated general fund balance of a school ~~district's interim fund~~ district on the preceding June thirtieth is in excess of the amount authorized by section 57-15-27 three-fourths of the actual expenditures, plus an additional twenty thousand dollars.

Approved April 7, 1993  
Filed April 8, 1993

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<sup>1</sup> NOTE: Section 15-40.1-06 was also amended by section 19 of House No. 1003, chapter 3.

## CHAPTER 194

HOUSE BILL NO. 1158  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### FOUNDATION AID FOR OUT-OF-STATE STUDENT

AN ACT to amend and reenact sections 15-40.1-07, 15-40.1-08, 15-40.2-09, and 15-40.2-10 of the North Dakota Century Code, relating to payment of foundation aid for North Dakota students attending out-of-state schools; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-40.1-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<sup>1</sup> **15-40.1-07. High school per-pupil payments - Amount - Proportionate payments.** Payments must be made each year from state funds to each school district operating a high school and to each school district contracting to educate high school pupils in a federal school, subject to adjustment as provided in section 15-40.1-09, as follows:

1. For each high school district having under seventy-five pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.635 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.625 times the number of high school pupils in grades nine through twelve registered in that school district, times the educational support per pupil as provided in section 15-40.1-06.
2. For each high school district having seventy-five or more, but less than one hundred fifty pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.35 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.335 times the number of high school pupils in grades nine through twelve registered in that school district times the educational support per pupil as provided in section 15-40.1-06.
3. For each high school district having one hundred fifty or more, but less than five hundred fifty pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.28 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.24 times the number of high school pupils in grades nine through twelve registered in that school district times the educational support per pupil as provided in section 15-40.1-06.

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<sup>1</sup> NOTE: Section 15-40.1-07 was also amended by section 20 of House Bill No. 1003, chapter 3.

4. For each high school district having a total high school enrollment of five hundred fifty or more pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.17 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.14 times the number of high school pupils in grades nine through twelve registered in that school district times the educational support per pupil as provided in section 15-40.1-06.
5. For high schools having an approved alternative education program, the amount of money resulting from multiplying the factor in:
  - a. Subsection 1 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has less than seventy-five pupils in average daily membership.
  - b. Subsection 2 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has seventy-five or more, but less than one hundred fifty pupils in average daily membership.
  - c. Subsection 3 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has one hundred fifty or more, but less than five hundred fifty pupils in average daily membership.
  - d. Subsection 4 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has five hundred fifty or more pupils in average daily membership.

Every high school district must receive at least as much in total payments as it would have received if it had the highest number of pupils in the next lower category. Such payments may not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments must be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district must be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments must be made to the public school district in which such student is enrolled for specific courses. School districts offering high school summer school programs are eligible for proportionate payments provided each course offered in such programs satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction. The superintendent may adopt rules regarding

eligibility for school districts to receive proportionate payments for such summer education programs.

Districts that did not maintain high schools during the year of 1964-1965 are not eligible for payments unless they have a minimum enrollment of twenty-five pupils if four years of high school work are offered, a minimum enrollment of twenty pupils if three years of high school work are offered, a minimum enrollment of fifteen pupils if two years of high school work are offered, and a minimum enrollment of ten pupils if one year of high school work is offered. ~~Payments pursuant to this chapter to school districts in bordering states must be made after subtracting the amounts provided for in subsection 3 of section 15-40.1-06 in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.~~

**SECTION 2. AMENDMENT.** Section 15-40.1-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**<sup>2</sup> 15-40.1-08. Elementary per-pupil payments - Amount.** Payments must be made from state funds to each school district operating an elementary school and to each school district contracting to educate elementary pupils in a federal school, employing teachers holding valid certificates or permits in accordance with section 15-47-46 and chapter 15-36, adjusted as provided in section 15-40.1-09, as follows:

1. For each one-room rural school, the amount of money resulting from multiplying the factor 1.29 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.28 times the number of pupils in that school in grades one through eight in average daily membership, up to a maximum of sixteen pupils, times the educational support per pupil as provided in section 15-40.1-06. There must be paid .9 times each additional pupil in its school in grades one through eight in average daily membership times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than twenty pupils in average daily membership. If the one-room rural school is located in a school district with another elementary school, the weighting factor for the pupils in grades one through six must be based on the average daily membership in the district in grades one through six as provided in subsections 2 through 4. If the one-room rural school is located in a school district with another school that has pupils in grade seven or eight, the weighting factor for the pupils in grades seven and eight must be the same as that provided for in subsection 5.
2. For each elementary school in school districts having under one hundred pupils in average daily membership in grades one through six, the amount of money resulting from multiplying the factor 1.045 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.09 times the number of pupils in that school in grades one through six in average daily membership in each classroom or for each teacher, up to a maximum of twenty pupils per classroom or per teacher, times the educational support

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<sup>2</sup> NOTE: Section 15-40.1-08 was also amended by section 21 of House Bill No. 1003, chapter 3, and by section 1 of Senate Bill No. 2178, chapter 195.

per pupil as provided in section 15-40.1-06. There must be paid .9 times each additional pupil in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher.

3. For each elementary school in school districts having one hundred or more pupils in average daily membership in grades one through six, and provided the districts in which such schools are located have an average daily membership of less than one thousand elementary pupils in grades one through six, the amount of money resulting from multiplying the factor .9025 for the 1989-90 school year and, beginning July 1, 1990, the factor .905 times the number of pupils in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
4. For each elementary school in school districts having an average daily membership of one thousand or more elementary pupils in grades one through six, the amount of money resulting from multiplying the factor .95 times the number of pupils in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
5. For each of the above classes of elementary schools, except for one-room rural schools that are not located in a district with another school that has pupils in grade seven or eight, there must be paid to each school the amount of money resulting from multiplying the factor 1.005 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.01 times the number of pupils in that school in grades seven and eight in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
6. For each elementary school having pupils under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, the amount of money resulting from multiplying the factor .75 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.01 times the number of special education pupils in that school under the compulsory age for school attendance in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06.
7. For each elementary school providing a kindergarten that is established according to provisions of section 15-45-01, ~~and for each out-of-state kindergarten program, approved by the state superintendent and utilized by North Dakota school districts bordering other states,~~ the amount of money resulting from multiplying the factor .50 times the number of pupils in

that school in average daily membership in each classroom or for each teacher times the educational support per-pupil payment ~~for that elementary school as determined provided~~ under this section 15-40.1-06, except that no payment may be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher. The full per-pupil payment shall be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period shall receive a proportionately smaller per-pupil payment.

Every school district must receive at least as much in total payments for elementary pupils as it would have received if it had the highest number of pupils in the next lower category. ~~Payments pursuant to this chapter to school districts in bordering states must be made after subtracting the amounts provided for in subsection 3 of section 15-40.1-06 in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.~~

**SECTION 3. AMENDMENT.** Section 15-40.2-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<sup>3</sup> **15-40.2-09. Attendance in public schools or institutions of bordering states, when permitted - Continuation of attendance when district annexed or reorganized.** Students may attend a school in a bordering state under the following circumstances:

1. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state, and the school board of the school district within which such student resides may contract with the bordering state for the education of such student.
2. A student who resides within a school district which is annexed to or reorganized with another district or districts, and who attended a school district in a bordering state during the ~~immediately preceding~~ 1990-91 school year, shall be permitted to attend or continue attending school in the district in the bordering state.

If the school board of the district in which the student resides denies a request for attendance in another state, an appeal may be made to the three-member committee referred to in section 15-40.2-05. The decision of the committee may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision shall be final. ~~In the event that the district does not comply with a decision requiring that tuition charges be paid, state payments shall be withheld as provided in section 15-40.2-05.~~

~~Payments must be made to the school district or institution in the bordering state for state foundation aid for students attending out of state schools under a reciprocal agreement based on actual enrollment for that year. Payments will be~~

<sup>3</sup> NOTE: Section 15-40.2-09 was also amended by section 5 of House Bill No. 1045, chapter 45, and by section 1 of Senate Bill No. 2490, chapter 199.

~~determined as provided in section 15-40.1-07 or 15-40.1-08 based on the weighting factor of the student's district or residence. The remainder of the pupil's tuition as determined under section 15-40.2-10 shall be paid by the district of the pupil's residence. Foundation aid payments for students attending out-of-state schools must be made to the district of residence. However, the district of the student's residence is entitled to reduce the tuition payment to an out-of-state school by an amount commensurate with the tuition costs the district would be entitled to as compensation for a student from the out-of-state district enrolled in its school. Transportation payments for students attending school in a bordering state must be determined as provided in section 15-40.1-16.~~

This section shall not be construed to require the district of residence to provide ~~pupil student~~ transportation, or payments in lieu thereof, for ~~pupils for whom the payment of tuition has been approved~~ students attending out-of-state schools.

**SECTION 4. AMENDMENT.** Section 15-40.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-10. Reciprocal master agreements for ~~pupil student~~ attendance in other states - School district agreements.** The superintendent of public instruction shall enter into reciprocal master agreements with the appropriate state educational agencies or officers of bordering states in regard to the cost of educating elementary and high school ~~pupils~~ students in the public schools or institutions in such bordering states. ~~Such reciprocal agreements shall provide for payment on a per pupil basis from the state foundation aid program for pupils from this state attending schools in bordering states in a sum equal to payments received by the district of the pupil's residence from the state foundation aid program. The superintendent of public instruction, by certificate to the office of management and budget shall authorize payments from the appropriation for state payments to school districts pursuant to chapter 15-40.1 for the attendance of pupils in bordering states, and the office of management and budget, within the limits of legislative appropriations, shall make such payments. The balance of the tuition payment by the pupil's district of residence shall not exceed the amount established by reciprocal agreement less the amount paid from the state foundation aid program to the school district or institution in the bordering state. A school district may, upon notification to the superintendent of public instruction, enter into an agreement with a school district in a bordering state for the education of elementary and high school students. The agreement, which replaces the provisions of the master reciprocal agreement, may provide for the payment of tuition at an amount agreed upon by the school district of residence and the school district of the bordering state. However, the tuition may not exceed the amount established under the reciprocal master agreement, nor may it be less than the per student foundation aid plus tuition apportionment in the student's school district of residence. For purposes of foundation aid, a student attending school in a bordering state under such an agreement is deemed to be in attendance in the student's school district of residence. The student's school district of residence is liable to the school district in the bordering state for payments as provided in the agreement.~~

**SECTION 5. EFFECTIVE DATE.** Section 4 of this Act becomes effective on July 1, 1994.

Approved April 21, 1993  
Filed April 22, 1993

# CHAPTER 195

SENATE BILL NO. 2178

(Education Committee)

(At the request of the Superintendent of Public Instruction)

## KINDERGARTEN PER-PUPIL SUPPORT

AN ACT to amend and reenact subsection 7 of section 15-40.1-08 of the North Dakota Century Code, relating to educational support payments for approved kindergarten programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>1</sup> SECTION 1. AMENDMENT. Subsection 7 of section 15-40.1-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 7. For each elementary school providing a kindergarten that is established according to provisions of section 15-45-01, and for each out-of-state kindergarten program, approved by the state superintendent and utilized by North Dakota school districts bordering other states, the amount of money resulting from multiplying the factor .50 times the number of pupils in that school in average daily membership in each classroom or for each teacher times the educational support per-pupil payment ~~for that elementary school as determined under this section as provided in section 15-40.1-06~~, except that no payment may be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher. The full per-pupil payment shall be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period shall receive a proportionately smaller per-pupil payment.

Approved March 10, 1993

Filed March 11, 1993

<sup>1</sup> NOTE: Section 15-40.1-08 was also amended by section 21 of House Bill No. 1003, chapter 3, and by section 2 of House Bill No. 1158, chapter 194.

## CHAPTER 196

SENATE BILL NO. 2187  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### NONRESIDENT STUDENT ADMISSION

AN ACT to amend and reenact sections 15-40.2-01, 15-40.2-02, and 15-40.2-04 of the North Dakota Century Code, relating to when school districts may admit nonresident students without the payment of tuition from the district of residence.

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

**SECTION 1. AMENDMENT.** Section 15-40.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-01. Transfer of pupils to other districts or institutions - Tuition agreements.**

1. The school board of any district may send kindergarten, elementary, or high school pupils into another school district or to an accredited institution of another state when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so, and in such instances the board may pay the tuition of such pupils to the district or institution to which they are sent. The school board may arrange, and when petitioned to do so by a majority of qualified electors of the district, shall arrange with the school boards of other districts or with the institutions, to send pupils to such other districts or institutions who can be taught conveniently therein, and for the payment of their tuition and for furnishing and paying for their transportation to and from such other schools or institutions.
2. When a school district ceases to provide educational services to an entire grade level, the students in that grade level may attend school at a public school of their choice, outside their district of residence without going through the procedures outlined in section 15-40.2-05. The school district of residence shall either pay tuition or seek a tuition waiver from the admitting school district.

**SECTION 2. AMENDMENT.** Section 15-40.2-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-02. Receiving of pupils by admitting districts.** Any school district shall admit kindergarten, elementary, and high school pupils from other districts to its schools when it can be done without injuring or overcrowding such schools and after the board of the sending district and the board of the admitting district have entered into an agreement governing the attendance of such pupils as may be enrolled or when tuition will be paid by a parent or guardian in the manner provided for in this chapter or when a grade level is no longer being taught by the sending district as indicated in subsection 2 of section 15-40.2-01.

**SECTION 3. AMENDMENT.** Section 15-40.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- <sup>1</sup> **15-40.2-04. Nonresident tuition payments mandatory - Payments are exclusive.**
1. Any school district that admits nonresident pupils to its schools, as provided by this chapter, shall charge tuition for such pupils except ~~that school districts have the option of charging tuition for nonresident pupils enrolled in an approved alternative education program as provided in subsection 3.~~ The whole amount of the tuition must be paid by the district from which the pupil is admitted, in accordance with section 15-40.2-03, or by the pupil's parent or guardian, in accordance with section 15-40.2-06. Except as otherwise provided, any school district that fails to sign a tuition agreement and fails to charge and collect tuition for nonresident students shall forfeit foundation payments for those nonresident students for whom tuition is not paid.
  2. School districts have the option of charging tuition for nonresident pupils enrolled in an approved alternative education program. If no tuition is charged, no written agreement between the school districts is necessary.
  3. A school district may accept a nonresident student without a charge and collection of tuition if a:
    - a. A written agreement for nonpayment of tuition is made between the sending and receiving districts. No written agreement is necessary if the nonresident;
    - b. The student is enrolled in an approved alternative education program for which no tuition is charged pursuant to subsection 2; or
    - c. The student's school district of residence has ceased to provide educational services to the student's grade level as described in subsection 2 of section 15-40.2-01.
  4. No school district may charge or collect from any nonresident pupil, parent or guardian of a nonresident pupil, or the district of the pupil's residence, any registration, textbook, or laboratory fee, or any other fee or charge which is not charged to or for all resident pupils.

Approved March 22, 1993  
Filed March 23, 1993

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<sup>1</sup> NOTE: Section 15-40.2-04 was also amended by section 25 of House Bill No. 1003, chapter 3.

## CHAPTER 197

HOUSE BILL NO. 1291  
 (Representatives Aarsvold, Kaldor, Monson, Porter, Wardner)  
 (Senator Kelsh)

### TUITION FOR PUPILS IN OTHER DISTRICTS

AN ACT to amend and reenact section 15-40.2-03 of the North Dakota Century Code, relating to the tuition calculations for school districts educating pupils in other districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-40.2-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-03. Tuition payments.** Except as provided in section 15-40.2-04, school districts educating pupils in other school districts shall pay the full cost of education incurred by the receiving district. ~~Such~~ The costs must be determined on the basis of the district's full-time equivalent average daily membership and must include annual expenditures from the general fund and annual educational expenditures from all special funds; provided, that only those expenditures permitted in determining the educational cost per pupil in section 15-40.1-06 may be included in determining average the receiving district's current operating expenses. To ~~such average the district's~~ current operating expense ~~in the county~~ for kindergarten, elementary, or high school students, as the case may be, except special education students where a fair rental charge for each student for capital outlay must be determined by the department of public instruction, must be added the statewide total of all school districts' annual expenditures from sinking and interest funds, plus the statewide total of all school districts' annual tax receipts to the building funds, including any amounts expended from school districts' general funds for capital outlay, divided by the average daily membership of the state. From this amount, the following must be deducted for each individual pupil:

1. Such payments as are received for that pupil from state payments received by the admitting district, less the average amount per North Dakota resident pupil enrolled in the school district realized from the amounts provided for in subsection 3 of section 15-40.1-06; and
2. A credit applied for any school taxes paid to the admitting district by the parent or guardian of the admitted pupil.

The amount remaining is the tuition charge for the individual pupil, and must be paid under this chapter.

~~The amount calculated for kindergarten students must be one-half of the amount calculated for elementary students.~~

If the district of residence and the parent or guardian are both paying tuition, the credit allowed under this section for taxes paid to the admitting

district by the parent or guardian must be credited to the district of residence and the parent or guardian in proportion to the amount of tuition paid by each.

Nothing contained in this chapter affects the right of a school district to charge and collect such tuition as may be fixed by agreement from pupils who are not residents of this state, in accordance with section 15-40.2-10.

Approved April 2, 1993  
Filed April 2, 1993

## CHAPTER 198

HOUSE BILL NO. 1120  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### CHILD PLACEMENT TUITION RESPONSIBILITY

AN ACT to amend and reenact section 15-40.2-08 of the North Dakota Century Code, relating to determination of the school district liable for tuition in cases of child placements for purposes other than education; and to repeal section 15-40.2-08.1 of the North Dakota Century Code, relating to placement of handicapped students for reasons other than education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-40.2-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-40.2-08. Residency determination and the payment of tuition in cases of ~~foster-care~~ child placements for purposes other than education.**

1. For purposes of applying this chapter, the school district in which a child resides must be construed to be the district of residence of such child:
  - a. ~~At the time any court order or an order of a state court, tribal court, or juvenile supervisor shall have been issued requiring~~ requires such child to stay for any prescribed period at a state-licensed foster home, or ~~home maintained by any nonprofit corporation, or any referrals made from a state-operated institution~~ state-licensed child care home or facility;
  - b. At the time of any placement for any prescribed period of time by a county or state social service agency with the consent of the parent or guardian at a state-licensed foster home ~~or home maintained by any nonprofit corporation, or state-licensed child care home or facility;~~
  - c. At the time of a placement to or from a state-operated institution;  
or
  - d. At the time of any voluntary admission to a state-licensed child care home or agency facility or state-operated institution.
2. The district of residence shall be liable for ~~tuition~~:
  - a. Tuition upon claim of the admitting district; ~~provided, that both the district of residence and the admitting district be notified of the placement, admission, or court order at the time the same is ordered. Notification must be made by the placement agency.~~

- b. Tutoring services upon claim of the admitting facility, provided that the tutoring services are delivered by a certified and qualified teacher according to rules established by the superintendent of public instruction.
3. Where the guardian, parent, or parents of the child were residents of the district at the time of placement under subdivisions a through e d of subsection 1, but such guardian, parent, or both parents have subsequently moved to another school district within North Dakota, then the tuition due the admitting district must be paid by the district of residence of the guardian, parent, or parents. If the child does not have a guardian, parent, or parents have moved to another state residing in North Dakota, or if parental rights have been terminated, then the tuition due the admitting district must be paid by the state from funds appropriated by the legislative assembly for the foundation aid program.
4. In the event of a voluntary admission to any state-licensed child care home or agency facility or state-operated institution, the determination of tuition may be subject to an appeal filed with the county superintendent of schools. The Within fifteen days, the three-member committee referred to in section 15-40.2-05, shall within fifteen days consult with the school boards of the districts concerned and with the parent or guardian of the pupil concerned and render a decision in regard to the tuition charges.
5. These provisions of section 15-40.2-05 relating to multicounty districts, notification of unpaid tuition, and withholding of state payments apply to this section. If the district of residence does not pay the required tuition, the admitting district or facility shall notify the superintendent of public instruction, and upon verification that such tuition payments are in fact due and are unpaid, an amount equal to the unpaid tuition must be withheld from payments for foundation aid to the district of residence of the pupil until the tuition due has been fully paid.
6. An amount equal to the state average per-pupil elementary or high school costs, depending on the educational level of the student, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per-pupil cost incurred by the admitting district or facility. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state from funds appropriated for special education in the case of a student with disabilities, or from funds appropriated for foundation aid in all other cases.
7. a. The placement agency shall provide written notice by registered mail of a placement made under court order or in an emergency to the superintendent of the district of residence and the superintendent of the admitting district within five working days after the placement.
- b. Except as provided in subdivision a, the placement agency shall provide written notice by registered mail of a placement to the superintendent of the district of residence and the superintendent of the admitting district at least ten working days before the placement.

c. The placement agency shall afford the district of residence reasonable opportunity to participate in permanency planning for the child.

**SECTION 2. REPEAL.** Section 15-40.2-08.1 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved April 20, 1993  
Filed April 20, 1993

## CHAPTER 199

SENATE BILL NO. 2490  
(Senator Mutch)

### OUT-OF-STATE SCHOOL ATTENDANCE

AN ACT to amend and reenact section 15-40.2-09 of the North Dakota Century Code, relating to the attendance of students in public schools or institutions of bordering states.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-40.2-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<sup>1</sup> **15-40.2-09. Attendance in public schools or institutions of bordering states, when permitted - Continuation of attendance when district annexed or reorganized.** Students may attend a school in a bordering state under the following circumstances:

1. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state, and the school board of the school district within which such student resides may contract with the bordering state for the education of such student.
2. A student who resides within a school district which is annexed to or reorganized with another district or districts, and who attended a school district in a bordering state during the ~~immediately preceding~~ 1990-91 school year, shall be permitted to attend or continue attending school in the district in the bordering state.
3. A student who resides within a school district that is annexed to or reorganized with another district or districts, and whose sibling attended an out-of-state school during the 1990-91 school year, shall be permitted to attend school in the district the sibling attends in the bordering state.

If the school board of the district in which the student resides denies a request for attendance in another state, an appeal may be made to the three-member committee referred to in section 15-40.2-05. The decision of the committee may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision shall be final. ~~In the event that the district does not comply with a decision requiring that tuition charges be paid, state payments shall be withheld as provided in section 15-40.2-05.~~

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<sup>1</sup> NOTE: Section 15-40.2-09 was also amended by section 5 of House Bill No. 1045, chapter 45, and by section 3 of House Bill No. 1158, chapter 194.

~~Payments must be made to the school district or institution in the bordering state for state foundation aid for students attending out of state schools under a reciprocal agreement based on actual enrollment for that year. Payments will be determined as provided in section 15-40.1-07 or 15-40.1-08 based on the weighting factor of the student's district or residence. The remainder of the pupil's tuition as determined under section 15-40.2-10 shall be paid by the district of the pupil's residence. Foundation aid payments for students attending out-of-state schools must be made to the district of residence. However, the district of residence is entitled to reduce the tuition payment to an out-of-state school by an amount commensurate with the tuition cost the district would be entitled to receive as compensation for a student from the out-of-state district enrolled in its school. Transportation payments for students attending school in a bordering state must be determined as provided in section 15-40.1-16.~~

This section shall not be construed to require the district of residence to provide ~~pupil~~ student transportation, or payments in lieu thereof, for ~~pupils~~ students for whom the payment of tuition has been approved.

Approved April 21, 1993

Filed April 22, 1993

## CHAPTER 200

HOUSE BILL NO. 1438  
(Representatives Huether, Boucher, Dalrymple, Gates, Goffe,  
Wardner)

### SCHOOL OPEN ENROLLMENT

AN ACT to establish a statewide open enrollment program allowing elementary and high school students to attend school in a district other than their school district of residence.

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

**SECTION 1. Open enrollment - Procedure.** A student's parent or legal guardian who wishes to enroll the student in a North Dakota school district other than the student's district of residence shall, not later than January first of the school year preceding the year of enrollment, apply to the school board of the student's district of residence, on forms provided by the superintendent of public instruction, for approval to enroll the student in a district other than the student's district of residence. By February first of the school year preceding the year of enrollment, the school board of the district of residence shall act on the application, notify the parent or legal guardian of the board's decision within five days, and if the application is approved, immediately transmit the application to the admitting district. By March first, the board of the admitting district shall approve or disapprove the application. The board of the admitting district shall notify the board of the district of residence and the student's parent or legal guardian within five days regarding its decision. Notice of intent to enroll in the admitting district obligates the student to attend the admitting district during the following school year, unless the school boards of the resident and the admitting districts agree in writing to allow the student to transfer back to the resident district, or the student's parents or guardians change residence to another district. All applications must be reviewed in the order that they are received. A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. A child placed at a group or residential care facility or a residential treatment center in accordance with section 15-40.2-08 is not eligible for open enrollment under this section.

**SECTION 2. Grounds for disapproval - Exception.** Except as provided in section 4 of this Act, the board of the district of residence may deny an application under section 1 of this Act only if the application will result in a reduction of the number of students enrolled in the district by more than twenty percent of the average daily membership the previous school year. However, if denying an application would result in the enrollment of children from the same nuclear family in different school districts, the school board of the district of residence may not deny the application. A student attending school in another district and having tuition paid as provided for in section 15-40.2-06 during the 1993-94 school year may enroll in a school district other than the student's school district of residence under the provisions of this Act, without being considered a

student in average daily membership the previous year in the student's school district of residence.

**SECTION 3. Enrollment - Foundation aid - Tuition apportionment.** Once enrolled in the admitting district, the student remains enrolled in the admitting district until the student graduates, moves, the student's parent or legal guardian applies for enrollment in another school district, or the student's parent or legal guardian notifies the student's school district of residence that the student will attend school in the school district of residence the following year. Payment for foundation aid shall be made in accordance with chapter 15-40.1. For purposes of tuition apportionment payments, a student whose application is approved under this section is considered a resident of the admitting district. Except as specifically provided in this Act, the provisions of chapter 15-40.2 do not apply to students involved in open enrollment.

**SECTION 4. Enrollment - Students with disabilities - Additional costs.** If an application under section 1 of this Act is approved for a student with a disability, the school board of the district of residence shall pay to the admitting district the costs incurred by the admitting district in providing education and related services to the student with a disability up to a maximum each school year of two and one-half times the state average per student elementary or high school cost, depending on the student's enrollment level. The state is liable for any costs in excess of this amount.

**SECTION 5. Open enrollment - Transportation.** The district of residence of a student participating in open enrollment under this Act has no obligation to provide transportation. However, the district of residence may enter into a transportation arrangement with the admitting district as provided in section 15-34.2-02.

**SECTION 6. Local school boards - Standards.** Each school board shall adopt standards for the acceptance and rejection of applications for open enrollment as provided in section 1 of this Act. The standards may include the capacity of a program, class, grade level, or school building. The standards may not include previous academic achievement, participation in extracurricular activities, disabilities, English language proficiency, or previous disciplinary proceedings. The school board of the admitting district may determine that the district may not accept applications for open enrollment under this Act. A school district participating in an open enrollment program may not give or offer to give a student remuneration, or directly or indirectly exert influence upon the student or the student's family, in order to encourage participation in the open enrollment program for the purpose of having the student participate in varsity athletic activities. However, any student who participated in varsity athletic activities during the 1992-93 school year, at a school in a district other than the student's district of residence or at a school outside the boundary within which the student would normally attend school may continue to participate in varsity athletics at that school for the duration of the student's high school career.

Approved April 9, 1993  
Filed April 9, 1993

## CHAPTER 201

SENATE BILL NO. 2361  
(Senator Grindberg)  
(Representatives A. Carlson, Austin)

### ELECTION OFFICERS AND BALLOTS

AN ACT to amend and reenact sections 15-47-06, 16.1-05-01, 16.1-05-02, 16.1-05-03, 16.1-05-04, 16.1-05-05, 16.1-06-04, 16.1-06-16, 16.1-06-18, 16.1-06-21, 16.1-07-06, 16.1-07-08, 16.1-07-09, 16.1-07-10, 16.1-11-22, 16.1-11-24, 16.1-11-31, 16.1-13-22, 16.1-15-02.1, and 16.1-15-08 of the North Dakota Century Code, relating to election officers and election ballots; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 15-47-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-47-06. Election procedure in all school districts - Canvass of boards - Tie vote - Absent voters - Recounts.** An election in a public school district, except as otherwise provided in this title, must be conducted and the votes must be canvassed in the manner provided by the laws of this state for the election of county officers. Immediately after the polls are closed, the judges shall count and canvass the votes for each office and within ~~twenty-four~~ forty-eight hours after the polls are closed, the returns must be signed by the judges and clerks of the election and filed with the business manager of the school district. If the election results in a tie, the business manager of the district immediately, and in writing, shall notify the candidates between whom the tie exists, and within three days after the election, and at a time agreed upon by the candidates, the election must be decided in the presence of the judges and clerks of election in a manner agreed upon by the candidates. A record of the proceedings must be made in the records of the business manager of the district. The school board shall canvass all election returns and shall declare the result of any election within three days of the election, and in the case of a tie, within three days of the breaking of the tie pursuant to this section. The result of the election must be entered upon the records of the board. The person receiving the highest number of votes for each office in the district must be declared elected. Absent voters' ballots must be available in any school district election in accordance with chapter 16.1-07. Section 16.1-16-01 applies to public school district elections, except the members of the school board not subject to a recount and not disqualified under subdivision c of subsection 2 of section 16.1-05-02 shall perform the duties of the recount board, the school district business manager shall perform the duties of the county auditor, the school board takes the place of the county canvassing board, and all expenses of the recount must be paid as provided in section 15-28-10.

**SECTION 2. AMENDMENT.** Section 16.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-01. Election officers.** At each primary, general, and special statewide or legislative district election, and at county elections, each polling place ~~shall~~ must have an election board in attendance. The election board ~~shall~~ must consist of an election inspector and at least two election judges.

1. The election inspector ~~shall~~ must be selected in the following manner:
  - a. In all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and ~~shall~~ fill all vacancies occurring in those offices.
  - b. In all other precincts, the county auditor, with the approval of the majority of the board of county commissioners, shall appoint the election inspectors and ~~shall~~ fill all vacancies occurring in those offices. The selection must be made on the basis of the inspector's knowledge of the election procedure.
  - c. The election inspector shall serve ~~a term of two years until a successor is named~~. If an inspector fails to appear for any training session without excuse, the office is deemed vacant and the auditor shall appoint an individual to fill the vacancy shall be filled for that election by the auditor. Prior to the next election, the appropriate appointing body or county auditor shall fill the vacancy for the remainder of the term.

Except in the case of special elections, all appointments required to be made under this section ~~shall~~ must be made at least twenty-one days preceding an election.

2. The election judges for each precinct are the precinct committeemen receiving the largest number of votes at the precinct caucus at which they were elected, and representing the two parties that cast the largest and next largest number of votes in the state at the last general election. If for any reason a precinct committeeman does not wish to serve as an election judge, the committeeman district party chairman for that committeeman's party shall appoint from the committeeman's precinct a member of the committeeman's party to serve as election judge. ~~If the appointment is not made, the position must be filled by appointment by the district party chairman.~~ Each election judge must be given a certificate of appointment signed by the chairman of the district committee of the judge's party. In voting precincts or districts in which over one thousand votes are cast in any election, the county auditor may request each district party chairman to appoint an additional election judge. The district ~~committee~~ party chairman shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges at least twenty-one days before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the judge judges. If at any time before or during an election, it shall be made to appear to an election inspector, by the affidavit of two or more qualified electors of the precinct, that ~~either of the~~ any election judges judge or any poll clerk is disqualified under this chapter, the inspector shall remove that judge or clerk at once and shall fill the vacancy by

appointing a qualified person of the same political party as that of the judge or clerk removed. If the disqualified judge or clerk had taken the oath of office as prescribed in this chapter, the inspector shall place the oath or affidavit before the state's attorney of the county.

3. Poll clerks shall ~~must~~ be appointed by the ~~election judges~~ district party chairmen. Each ~~election judge~~ district party chairman may appoint one poll clerk. However, in voting precincts or districts in which over three hundred votes are cast in any election, ~~election judges~~ the district party chairmen may each appoint ~~one additional poll clerk~~ clerks as determined by the county auditor. The appointment of poll clerks by the ~~election judges~~ district party chairmen must be made on the basis of the prospective clerks' knowledge of the election procedure and ability to write legibly. ~~All election precincts that use voting machines as authorized in chapter 16.1-06 may, in addition to all other authorized poll clerks, have as many as two additional poll clerks appointed by each election judge. The additional poll clerks shall be appointed on the same basis as other poll clerks.~~

**SECTION 3. AMENDMENT.** Section 16.1-05-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-02. Qualifications of members of the board of election - Oath of office.**

1. Every member of the election board and each poll clerk must be a qualified elector of the precinct in which ~~he~~ the person is assigned to work and must be eligible to vote at the polling place to which ~~he~~ the person is assigned.
2. No person may serve as a member of the election board or as a poll clerk who:
  - a. Has anything of value bet or wagered on the result of an election.
  - b. Is a candidate in the election at which ~~he~~ the person is serving.
  - c. Is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate in the election at which ~~he~~ the person is serving.
3. Prior to assuming their duties, all members of the election board and the poll clerks severally shall take and subscribe an oath in substantially the following form:

I do solemnly swear (or affirm as the case may be), that I will perform the duties of inspector, judge, or clerk (as the case may be) according to law and to the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

Such ~~The~~ oath may be taken before any officer authorized by law to administer oaths, and in case no such officer is present at the opening of the polls, the inspector or election judges shall administer the oath to

each other and to the poll clerks. The person administering the oath shall cause an entry thereof to be made and subscribed by ~~him~~ that person and prefixed to ~~the~~ each pollbook.

4. A person serving as a member of the election board shall, prior to each election, attend a period of instruction conducted by the county auditor or his designated representative, provided that such period of instruction has been conducted since the appointment of the election judges or election inspector.
5. If any member of the election board fails to appear at the hour appointed for the opening of the polls, the remainder of the board shall select a person to serve in the absent person's place. In filling a vacancy in the office of election judge or clerk, the remainder of the board shall select a person of the absent person's political party if such a person is reasonably available. The office of election inspector may be filled by any qualified person without regard to political affiliation. If no members of the election board appear at the hour appointed for opening the polls, the qualified electors present shall orally elect a board as nearly as possible in conformity with the provisions of this section. ~~If any poll clerk fails to appear at the opening of the polls, the election judge who appointed the absent clerk may appoint a person from the same political party to fill the vacancy.~~

**SECTION 4. AMENDMENT.** Section 16.1-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-03. Secretary of state and county auditors to distribute election information - County auditor to provide instruction.**

1. Not less than thirty days before any primary, general, or special election, the secretary of state shall provide an instruction manual approved by the attorney general, which in layman's terms presents in detail the responsibilities of each election official. The secretary of state shall forward sufficient copies of this manual to each county auditor who shall distribute ~~them~~ the manuals to each member of all the election boards in the county.
2. ~~Not more than twenty days, but at~~ At least three days before each primary, and general, or special statewide or legislative district election, each county auditor or the auditor's designated representative shall conduct one or, at the auditor's option, two training sessions on election laws and election procedures for election officials in the county and may conduct training sessions at least three days before any special statewide or legislative district election. The session or sessions must be conducted at such place or places throughout the county as the county auditor determines to be necessary. Attendance at the session is mandatory for members of the election board and for poll clerks unless the board of county commissioners ~~of the county~~ determines that the poll clerks in that county may not attend. The county auditor shall notify the members of the election boards, poll clerks if applicable, and the state's attorney of the time and place of the session. The state's attorney shall attend all sessions to give advice on election laws. The county auditor shall invite the district chairman in that county representing any

political party casting at least five percent of the total votes cast for governor at the last election to attend the session at the chairman's own expense. On the date of such course or courses, the county auditor may deliver to all election inspectors at such meeting the official ballots, ~~suitable manila envelopes,~~ and all other materials as provided in chapter 16.1-06. Except as otherwise provided in this section, each person attending the course or courses must be compensated as provided in section 16.1-05-05.

3. An election official, at the option of the county auditor, may be required to attend only two training sessions on election laws within a twelve-month period. If an election official has attended a training session within the six months preceding an election, the election official must be compensated at the pay appropriate for those having attended a training session, as provided in section 16.1-05-05, for that election.

**SECTION 5. AMENDMENT.** Section 16.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-04. Duties of the members of the election board during polling hours.**

1. The election inspector shall supervise the conduct of the election to ensure all election officials are properly performing their duties at the polling place. The election inspector shall assign duties so as to equally and fairly include both parties represented on the election board.
2. The election inspector shall assign ministerial duties to poll clerks, who shall carry out the ministerial duties assigned by the election inspector.
3. The election inspector shall assign ~~two~~ the poll clerks, ~~one~~ an equal number from each political party represented on the election board, to perform the function of maintaining the pollbooks. The ~~two~~ designated poll clerks shall ~~each maintain a pollbook~~ the pollbooks. Each pollbook must contain the name and address of each person voting at the precinct, and must be arranged in the form and manner prescribed by the secretary of state.
4. The members of the election board shall challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector.
5. Each member of the election board shall remain on the premises of the polling place during the time the polls are open to prevent the occurrence of fraud, deceit, or other irregularity in the conduct of the election.
6. All members of the election board shall distribute ballots and other election materials to electors. ~~Both~~ An election judges judge from each party represented on the election board shall ~~together~~ give any assistance requested by electors in marking ballots or operating voting machines. The election officers shall instruct voters on how to open and close voting machines and how to move the levers to cast and change votes.
7. Each member of the election board shall maintain order in the polling place.

8. All members of the election board at each precinct using an electronic voting system shall, before the polls are open, verify that each voting device in that precinct contains a ballot label that correctly lists the names of the candidates legally on the ballot for that precinct and verify that the booklets are all identical in arrangement.

**SECTION 6. AMENDMENT.** Section 16.1-05-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-05. Compensation of election officers - Commissioner of labor to certify minimum wage applicable to election officials - Secretary of state to certify amount to county auditors.** The state commissioner of labor, thirty days before each statewide primary, general, or special election, shall determine the state minimum wage applicable to election inspectors, election judges, poll clerks, or any other private individual who performs duties in the election process, and shall certify the amounts to the secretary of state. The secretary of state shall then certify the amounts to the county auditors. ~~As required by this title, the~~ ~~The~~ county auditors shall pay at least the amounts so determined to the relevant election officials. Members of the election board and poll clerks who attend the training sessions provided by section 16.1-05-03 must be paid at least the wage determined by the state commissioner of labor for the hours in attendance in the session in addition to necessary expenses and mileage; ~~however, for poll clerks, and for judges the combined wages for the training sessions and election may not exceed sixty dollars or any greater amount as determined by the board of county commissioners.~~ State, county, or other election officials who are required to incur expenses while performing duties in the election process may be reimbursed only for their actual and necessary expenses and mileage in the performance of those duties, in accordance with sections 54-06-09, 44-08-04, and 11-10-15. Other persons performing election duties must also be paid for expenses and mileage in like manner and amounts. Members of election boards who attend the training sessions provided by section 16.1-05-03 must be paid at least twenty-five percent more than the minimum wage determined in this section, during the time spent in the performance of their election duties.

**SECTION 7. AMENDMENT.** Section 16.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-04. Form and quality of ballots generally.** All official ballots prepared under ~~the provisions of~~ this title for use in precincts in which voting machines or electronic voting systems are not used must:

1. Be a specific color, and the secretary of state shall prescribe a different color for each separate type of ballot used.
2. Be printed on uniform quality paper in an ink color suitable to make the ballot clearly legible.
3. Be of sufficient length to contain the names of all candidates to be voted for at ~~such~~ that election.
4. Have the language "Vote for no more than \_\_\_\_\_ name (or names) only" placed immediately under the name of each office.
5. Have printed thereon "Place a crossmark (X) by the name of the person for whom you wish to vote. To vote for a person whose name is not printed on

the ballot write or paste that person's name in the blank space provided for that purpose."

6. Leave sufficient space for each office to write or paste a name, or names, as the case may be, in lieu of those printed on the ballot.
7. Provide a space enclosed in a square in which the voter may designate by a cross or other mark ~~his~~ the voter's choice for each candidate opposite the name of ~~such that~~ candidate, and ~~such the~~ space must precede or follow the candidate's name on the same line in a uniform manner.
8. Provide a space enclosed in a rectangle and have printed next to the rectangle the following language: "All ballots, other than those used to vote absentee, must first be stamped and initialed by appropriate election officials in order to be counted." If a stamp with an inkpad is not required under section 16.1-06-18, the language next to the rectangle must be: "All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted."

Any precinct ~~which that~~ uses an electronic counting machine may require the use of a particular writing instrument to mark the ballot so the ballots may be properly counted.

In precincts in which electronic voting systems purchased after June 30, 1985, are used, the ballot card must contain the names of all candidates, the contents of measures as required by section 16.1-06-09, and the statements of questions to be submitted to the voters. The ballot card must otherwise be arranged in a manner and form approximating as far as possible the requirements of this section.

In precincts in which voting machines or electronic voting systems purchased before July 1, 1985, are used, the list of officers and candidates and the statements of measures and questions to be submitted to the voters must be arranged in a manner and form approximating the requirements of this section. In precincts in which electronic voting systems are used, the requirements of subsection 8 must be met for the ballot card and ballot envelope.

**SECTION 8. AMENDMENT.** Section 16.1-06-16 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-16. County auditor to provide and distribute ballots - Other election supplies delivered at same time.** For each election precinct in the county, the county auditor shall provide the number of ballots the auditor determines to be necessary. Each county auditor shall:

1. Have the ballots printed at least fifteen days ~~prior to~~ before the election, and the ~~same~~ ballots may be inspected by any person at the auditor's office.
2. Deliver to the inspector in each precinct at least three days but not more than fifteen days ~~prior to~~ before the election the number of ballots ~~and blank forms of~~, pollbooks, blanks for election returns with the proper captions if ballots are to be hand counted, forms of oaths and certificates, and tally sheets necessary to carry out ~~the provisions of~~ this title, and other election supplies as the county auditor determines necessary.

**SECTION 9. AMENDMENT.** Section 16.1-06-18 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-18. Delivery of ballots and manila wrappers - Official stamp delivered.** At the meeting provided for in section 16.1-05-03, the county auditors shall deliver, or cause to be delivered, by mail or other reliable method, to the inspector of elections in each precinct the official ballots, if available, ~~together with suitable manila wrappers. Such.~~ The ballots and manila wrappers must be delivered in sealed packages marked plainly on the outside designating the number of ballots enclosed and the precinct for which ~~they~~ the ballots are intended. The county auditor ~~also~~ shall deliver or cause to be delivered to ~~such~~ the inspector, or if that is impracticable, to one of the election judges of ~~such~~ the precinct, a stamp with an ~~and~~ inkpad for the purpose of stamping each ballot with the words "official ballot" and the name or number of the precinct, the name of the county, the date of the election, and providing for a blank line preceded by the word "initials" for the purpose of providing a space where the judge or inspector shall ~~place his initials. He also initial the ballot.~~ The stamp and inkpad are not required if that information is preprinted on the ballot. The county auditor shall deliver or cause to be delivered a manila wrapper and a suitable seal for the purpose of wrapping and sealing the stamp and inkpad at the close of the voting but prior to before the counting of the ballots. He if a stamp is required. The county auditor also shall deliver or cause to be delivered a suitable seal, which has the name of the county inscribed thereon, for the purpose of sealing the wrapper containing the ballots as provided in section 16.1-15-08.

**SECTION 10. AMENDMENT.** Section 16.1-06-21 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-21. Pollbooks delivered by county auditor - Contents - Inspector of elections to deliver.** The county auditor ~~of each county~~ shall see that two copies of the new pollbook are delivered to the election inspector in each election precinct in the county. ~~Each~~ The following information must be provided to the inspector, and may be contained in each new pollbook must contain:

1. A copy of the law prescribing the qualifications of electors.
2. A copy of the provisions of this title relating to the duties of inspectors, judges, and clerks of election.
3. A statement of the penalties imposed for offenses against the election laws.
4. Blanks for all entries required to be made therein in the pollbook, or a preprinted listing of previous voters and blanks for the entry of new voters.

The election inspector shall deliver the pollbooks, or cause ~~them~~ the pollbooks to be delivered, to the clerks of election in ~~his~~ the inspector's precinct on election day ~~prior to before~~ the opening of the polls.

**SECTION 11. AMENDMENT.** Section 16.1-07-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-06. Application form.**

- 1. Application for an absent voter's ballot must be made on a blank furnished by the proper officer of the county, city, or school district of which the applicant is an elector, or on any blank containing the required following information and in substantially the following form:

I, \_\_\_\_\_, a duly qualified elector of the township of \_\_\_\_\_, or of the \_\_\_\_\_ precinct of the \_\_\_\_\_ ward and residing at \_\_\_\_\_ in the city of \_\_\_\_\_ of the county of \_\_\_\_\_ of the state of North Dakota, to my best knowledge and belief entitled to vote in such precinct at the next election, hereby make application for an official absent voter's ballot to be voted by me at such election. I understand that it is a criminal offense to make a false statement in order to obtain an absentee ballot.

I have resided in my precinct for at least thirty days.

My phone number is \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(signature of applicant)

\_\_\_\_\_  
(mailing address)

- a. The applicant's name.
- b. The applicant's voting address.
- c. The applicant's mailing address.
- d. The applicant's current home telephone number.
- e. The election for which the ballot is being requested.
- f. The applicant's reason for voting absentee as specified in section 16.1-07-01.
- g. The date of the request.
- h. An affirmation that the applicant has resided in the precinct for at least thirty days.
- i. The applicant's signature.

- 2. A qualified elector ~~who is~~ absent from the state is not required to file an application for an absent voter's ballot for a ~~primary or general~~ any statewide election if either of the following apply:

- a. The elector is a member, or spouse or dependent of a member, of the United States armed forces or merchant marine.
- b. The elector is a United States citizen living outside the United States.

If the qualified elector furnishes the county auditor with a current mailing address and the elector's local residence or precinct, the county auditor shall mail to the qualified elector a ballot with a return

envelope and instructions for voting. ~~The county auditor may maintain a list of the qualified electors receiving a ballot for the primary election and may mail those electors a ballot for the next general any statewide election in that calendar year.~~

SECTION 12. AMENDMENT. Section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-08. Delivering ballots - Envelope accompanying - Statement on envelope - Inability of elector to sign name.**

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor ~~of the city~~, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements ~~hereinafter~~ set forth for signature by mark. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.
2. If there is more than one ballot to be voted by an elector of ~~such the~~ precinct, one of each kind ~~shall~~ must be included and an envelope ~~shall~~ must be enclosed with ~~such the~~ ballot or ballots. ~~Such~~ The front of the envelope shall must bear ~~upon the front thereof~~ the name, official title, and post-office address of the officer supplying the voter with the ballot, and upon the other side a printed statement in substantially the following form:

State of \_\_\_\_\_ )  
 ) ss.  
 County of \_\_\_\_\_ )

I, \_\_\_\_\_, under penalty of possible criminal prosecution for making a false statement, do solemnly swear that I am a resident of the township of \_\_\_\_\_, or of the \_\_\_\_\_ precinct of the \_\_\_\_\_ ward in the city of \_\_\_\_\_, residing at \_\_\_\_\_ in said county, county of \_\_\_\_\_ and state of North Dakota, and entitled to vote in such precinct at the next election; that I expect to be absent from the ~~said county precinct~~ of my residence on the day of ~~holding such the~~ election or that by reason of physical disability I am unable to attend at the polling place for ~~such the~~ election, and that I will have no opportunity to vote in person on that day.

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If ~~such the~~ absent voter is unable to sign ~~his~~ the voter's name, ~~he the~~ voter shall ~~make his~~ mark (X) that statement in the presence of a disinterested person. ~~Such The~~ disinterested person shall print the name of the person marking ~~his~~ the X below the X, and shall sign ~~his~~ that person's own name following the printed name with the notation "witness to ~~his~~ the mark".

**SECTION 13. AMENDMENT.** Section 16.1-07-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-09. Canvassing of mailed absent voters' ballots received late.** In the case of congressional, state, county, city, or school district elections, if an envelope postmarked ~~prior to by the United States postal service or other mail delivery system~~ before the date of election and containing an absent voter's ballot is received by the officer too late to be forwarded to the proper voting precinct in time to be tabulated, the same ballot must be tallied by the canvassing board of the county, the governing body of the city, or the school board of the school district, as the case may be, at ~~such the~~ the time as the returns are canvassed. Any envelope without a postmark by the United States postal service or other mail delivery system or with an illegible postmark and containing an absentee voter's ballot must be received by mail by the proper officer within ~~twenty-four forty-eight~~ hours after the closing of the polls on election day ~~in order~~ to be canvassed and counted. An absent voter may personally deliver the absent voter's ballot to the appropriate officer's office at any time ~~prior to four~~ before five p.m. on the day before the election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer forwarding ~~such the~~ the ballot shall print the date and hour of receipt on the envelope. Upon receipt, the canvassing board shall first determine that the elector was qualified to vote in that precinct and that the elector did not previously vote in that precinct on the date of the election before allowing ~~such the~~ the ballot to be tallied.

**SECTION 14. AMENDMENT.** Section 16.1-07-10 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-10. Care and custody of ballot.** Upon receipt of an envelope containing the absent voter's ballot, the proper officer ~~forthwith~~ immediately shall ~~enclose the same unopened, together with~~ attach the written application of ~~such the~~ the absent voter, ~~in a larger envelope which must be~~ and file the ballot with other absentee ballots from the same precinct. ~~Before delivering the absentee ballots to the precinct, the proper officer shall package the ballots in a manner so the ballots are sealed securely and.~~ The package must be endorsed with the name of the proper voting precinct, the name and official title of the officer, and the words "This envelope package contains an absent voter's ballot and must be opened only on election day at the polls while the same polls are open." ~~Such The~~ the officer shall keep the envelope package safely in ~~his~~ the officer's office until it is delivered by ~~him~~ the officer as provided in this chapter.

**SECTION 15. AMENDMENT.** Section 16.1-11-22 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-22. Primary election ballot - Form - Voters to vote for candidates of only one party.** At the primary election there may be only one ballot for all parties or principles. The ballot must be in the following form:

1. The ballot must be entitled the "consolidated primary election ballot", and the title must be printed at both ends of the ballot so there is an upright title no matter which way the ballot is held.
2. Each party or principle having candidates at the primary election ~~shall~~ must have a separate column on the ballot; the columns must be separated by a solid six-point rule.
3. At the head of each column must be printed the name of the political party or principle which it represents.
4. In each column below the party or principle title must be printed: "You may vote for the candidates of only one party at the primary election. If you vote for candidates of more than one party, your ballot will be rejected."
5. Immediately below the warning against voting for candidates of more than one party must be printed: "Put a crossmark (X) opposite the name of the candidate for whom you wish to vote. To vote for a person whose name is not printed on the ballot write or paste that person's name in the blank space provided for that purpose."
6. The offices specified in section 16.1-11-26 must be arranged in each column with the name of each office in the center of each party column at the head of the names of the aspirants for the office.
7. Immediately under the name of each office must be printed: "Vote for no more than \_\_\_\_\_ name (or names) ~~only~~."
8. At the side of the name of each aspirant and in a column must be printed a square or other figure for making a crossmark or other mark. No squares or other figures may be printed at the head of the ballot.
9. The political party or principle which cast the largest vote for governor at the most recent primary election at which the office of governor was voted upon ~~shall~~ must have the left-hand column, and the party or principle casting the next largest vote ~~shall~~ must have the next column, and so on.

The judges and the inspector of elections shall inform each elector at the primary, before voting, that if he ~~is~~ the voter votes for candidates of more than one party ~~his~~ the voter's ballot will be rejected.

**SECTION 16. AMENDMENT.** Section 16.1-11-24 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-24. No-party primary ballot - Contents.** There must be a separate ballot at all primary elections which must be entitled "no-party primary ballot". The names of aspirants for nomination to each office must be arranged on the no-party primary ballot in separate groups in their order. In precincts in which voting machines are used, the list of offices and candidates must be entitled "no-party primary ballot" in a manner to indicate clearly the separation of the no-party list of offices and candidates from the party list of offices and candidates. The names of all candidates for any of the offices mentioned in section 16.1-11-08 must be placed ~~thereon~~ on the ballot without party designation.

Immediately under the name of each office must be placed the language, "Vote for no more than \_\_\_\_\_ name (or names) ~~only~~." The number inserted must be the number to be elected to the office at the next succeeding general election.

**SECTION 17. AMENDMENT.** Section 16.1-11-31 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-31. Tally books or sheets provided for election precincts - Form and contents.** Two tally books or two sets of tally sheets must be provided for each voting precinct not using electronic ballot counters. The books or sheets must contain a column for each political party or principle having candidates to be voted for at the voting precinct. Two tally books or two sets of tally sheets for candidates on the no-party ballot must be provided for each voting precinct. The books or sheets must be furnished by the county auditor at the same time and in the same manner as the pollbooks and ballots are furnished. The names of the candidates must be placed on the tally books or sheets in the order in which they appear on the official sample ballot, and, as appropriate, must have the proper party or no-party designation at the head thereof.

**SECTION 18. AMENDMENT.** Section 16.1-13-22 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-13-22. Delivering ballot to elector - Stamping.** The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot or ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot is not stamped and initialed by an election official it will be invalidated and to protect the elector's right to vote the elector should verify that the ballot has been stamped and initialed.

1. The ballot is considered stamped if it is either stamped with a stamp and an inkpadd or has the stamped information preprinted on the ballot, as provided in section 16.1-06-18.
2. When an electronic voting system is used, the inspector or judge delivering the ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot stub is detached by anyone except an election inspector or judge, the ballot card and ballot envelope may not be deposited in the ballot box, but must be marked spoiled and placed with the other spoiled ballots.
3. At primary elections, the inspector or judge shall also inform each elector that if the elector splits the ballot or votes for candidates of more than one party the elector's ballot will be rejected.
4. Before delivering any ballot to an elector, the inspector or judge shall stamp once in the rectangle provided on the ballot or ballot card and ballot envelope, if required under subsection 1, the designation "official ballot" and the other words provided for in section 16.1-06-18, and also shall ~~write his or her initials thereon~~ initial the ballot. Failure to stamp and initial a ballot or ballot card in the proper place does not invalidate ~~such the~~ ballot or ballot card, but a complete failure to stamp and initial a ballot or ballot card does invalidate the ballot or ballot card. Failure to stamp and initial a ballot envelope in the proper place on the ballot envelope does not invalidate the ballot envelope, but complete failure to stamp and initial a ballot envelope that

has been used to write in a vote does invalidate the ballot envelope and the vote found thereon.

**SECTION 19. AMENDMENT.** Section 16.1-15-02.1 of the North Dakota Century Code is amended and reenacted as follows:

<sup>1</sup> **16.1-15-02.1. Alternative method for canvassing election for counties using electronic voting systems or electronic counting machines - County ~~canvassing resolution~~ board.** At the option of the county auditor in any county using electronic voting systems or electronic counting machines, the county ~~canvassing resolution~~ board, in lieu of the election boards, shall canvass the votes for those precincts using either device. The county auditor shall select the county resolution board, which must consist of one independent representative and an equal number of representatives from each political party represented on the election board. The board shall canvass the votes in the same manner as required for the election boards insofar as those provisions of law are applicable. The auditor shall notify the county ~~canvassing resolution~~ board of this duty not less than one week ~~prior to~~ before the election. This procedure is in addition to the canvass of returns that the county canvassing board must perform as provided in this chapter.

**SECTION 20. AMENDMENT.** Section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-08. Wrapping and returning of ballots to ~~county judge or magistrate clerk of the district court.~~** After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the ~~inspector and election judges~~ election board shall cause the ballots of each kind cast at the election to be ~~smoothly spread upon~~ placed in a suitable wrapper of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded to form a complete wrapper for the ballots. The ballots and wrappers must then be ~~folded tightly together and the wrapper must be pasted or glued securely tightly secured~~ at the outer end to completely envelop and hold the ballots together. Ballots which that are void must be wrapped secured in a separate wrapper and must be marked "void". Ballots which that are spoiled must be separately wrapped secured and marked "spoiled". In ~~folded and~~ sealing ballots, the various classes of ballots must be kept separate. ~~The judges shall fold all ballots counted by them, except those which are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper. Each wrapper must be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and together with the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned either in person or by mail to the county judge or to the magistrate for the county appointed and assigned under section 27-07-1-07 clerk of the district court. Ballots used with any electronic voting system or counted by an electronic counting machine must be wrapped, sealed, and returned as provided in this section.~~

<sup>1</sup> NOTE: Section 16.1-15-02.1 was also amended by section 2 of House Bill No. 1457, chapter 210.

**SECTION 21. AMENDMENT.** Section 16.1-15-08 of the North Dakota Century Code, as amended by section 54 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

<sup>2</sup> **16.1-15-08. Wrapping and returning of ballots to ~~district judge or magistrate clerk of the district court.~~** After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the ~~inspector and election judges~~ **election board** shall cause the ballots of each kind cast at the election to be ~~smoothly spread upon~~ **placed** in a suitable wrapper of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded to form a complete wrapper for the ballots. The ballots and wrappers must then be ~~folded tightly together and the wrapper must be pasted or glued securely tightly secured~~ at the outer end to completely envelop and hold the ballots together. Ballots which ~~that~~ are void must be ~~wrapped~~ **secured** in a separate wrapper and must be marked "void". Ballots which ~~that~~ are spoiled must be separately ~~wrapped~~ **secured** and marked "spoiled". In ~~folded and sealing~~ ballots, the various classes of ballots must be kept separate. ~~The judges shall fold all ballots counted by them, except those which are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper. Each wrapper must be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and together with the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned either in person or by mail to a district judge serving the county or to a magistrate appointed by the presiding judge of the judicial district~~ **the clerk of the district court.** Ballots used with any electronic voting system or counted by an electronic counting machine must be ~~wrapped, sealed, and returned as provided in this section.~~

**SECTION 22. EFFECTIVE AND EXPIRATION DATES.** If section 54 of chapter 326 of the 1991 Session Laws of North Dakota becomes effective, section 20 of this Act is effective until January 2, 1995, and after January 1, 1995, is ineffective, and section 21 of this Act becomes effective on January 2, 1995. If section 54 of chapter 326 of the 1991 Session Laws of North Dakota does not become effective, section 21 of this Act does not become effective.

Approved April 12, 1993  
Filed April 12, 1993

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<sup>2</sup> NOTE: Section 16.1-15-08 was also amended by section 4 of House Bill No. 1105, chapter 142.

## CHAPTER 202

HOUSE BILL NO. 1235  
 (Representatives Drovdal, Kempenich, Byerly)  
 (Senators Bowman, Kelsch)

### SCHOOL CONTRACT BIDS

AN ACT to amend and reenact section 15-47-15 of the North Dakota Century Code, relating to the acceptance of bids for school contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-47-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-47-15. School contracts - Advertisement for bids - Publication - Exceptions - Penalty.** ~~No~~ Except as provided in this section, a school board may not enter into a contract involving the expenditure of an aggregate amount greater than eight thousand dollars, except as hereinafter set forth, may be entered into by any school district of any kind or class except upon sealed proposals and to the lowest responsible bidder after unless the school board has given ten days' notice by at least one publication in the official newspaper of the school district, received sealed bids, and accepted the bid of the lowest responsible bidder who in the opinion of the school board will best serve the interests of the school district. The provisions of this section do not apply to ~~any of the following classes of contracts for:~~

1. ~~For personal~~ Personal services of employees of the district.
2. ~~For school~~ School text or reference books.
3. ~~For any article which is~~ Articles not for sale sold on the open market.
4. ~~For any patented~~ Patented, copyrighted, or exclusively sold device devices or feature features required to match articles already in use.
5. ~~For any patented~~ Patented, copyrighted, or exclusively sold article of articles so distinctive a nature that only one make of the article brand can be purchased.
6. ~~Any building contract~~ Building.
7. ~~For school~~ School transportation services or fuel for vehicles the purchase of which is made by direct negotiation with a contractor using the procedure described in accordance with section 15-34.2-07.1.
8. ~~For The purchase of heating fuel which is purchased under a directly negotiated contract provided~~ made by direct negotiation with a contractor using the procedure described in section 15-34.2-07.1 ~~for transportation and vehicle fuel is followed.~~

Such exceptions must be strictly construed. ~~Every~~ Any member of a school board who participates in a violation of this section is guilty of a class B misdemeanor.

Approved March 19, 1993  
Filed March 19, 1993

## CHAPTER 203

SENATE BILL NO. 2461  
(Senators Jerome, Evanson)

### SCHOOL SUPERINTENDENT RENEWAL

AN ACT to create and enact a new section to chapter 15-47 of the North Dakota Century Code, relating to nonrenewal of superintendents' contracts; and to amend and reenact section 15-47-26 and subsections 2 and 5 of section 15-47-38 of the North Dakota Century Code, relating to the definition of a teacher and nonrenewal or discharge of a teacher.

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

**SECTION 1. AMENDMENT.** Section 15-47-26 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-47-26. "Teacher" defined.** The term "teacher", as used in ~~sections 15-47-27 and section~~ section 15-47-28, ~~must be construed to include~~ includes all teachers, principals, and superintendents in all public school districts within this state, and all persons employed in teaching in any state institution, except institutions of higher education. The term "teacher", as used in ~~section sections 15-47-27 and 15-47-38, must be construed to include~~ includes all teachers, ~~and principals, superintendents,~~ assistant superintendents, and ~~chief administrators of multidistrict special education units and area vocational and technology centers in all public school districts within this state, and~~ all persons employed in teaching in any state institution, except institutions of higher education. For purposes of the sections above referenced, the term "teacher" does not include teachers who are replacing teachers on leave of absence or sabbatical leave or, for purposes of nonrenewal, teachers who are in their first year of teaching and teachers who are employed after January first as to that school year. A teacher hired after January first has all the rights provided in section 15-47-27.1 except that only one evaluation is required during that school year.

**SECTION 2. AMENDMENT.** Subsections 2 and 5 of section 15-47-38 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. The school board of any school district contemplating discharging a teacher for cause prior to the expiration of the term of the teacher's contract shall notify the teacher in writing of that fact at least ten days prior to the date of contemplated discharge. The teacher must be informed in writing of the time and place for a special meeting of the school board to be held on the question of the teacher's discharge prior to a final decision on the matter. The teacher must also be informed in writing of the teacher's right to demand a specification of the reasons for discharge, which must, upon receipt of the demand of the teacher, be furnished not less than five days prior to the meeting to be held on the question of the teacher's discharge. The reasons must be sufficient to justify the contemplated action of the board and may not be frivolous or arbitrary. At the meeting with the board, if the teacher has informed the

board in writing at least two days prior thereto that the teacher will contest the charges brought against the teacher, the board must sustain the charges with evidence produced at the hearing with witnesses who are subject to cross-examination by the teacher or the teacher's representative. A witness, if a minor, must be accompanied by a parent or parents, legal guardian, or legal counsel, if requested by the minor or the minor's parents. The teacher may then produce witnesses as may be necessary to refute the charges, which witnesses are subject to cross-examination. All procedures relative to evidence, subpoena of witnesses, oaths, record of testimony, decision, rehearing, appeals, certification of record, scope and procedure for appeals, appeals to the supreme court, and other administrative procedures must be conducted in accordance with chapter 28-32. The meeting must be an executive session of the board unless both the school board and the teacher requesting the meeting shall agree that it is to be open to other persons or the public. The teacher may be represented at the meeting by two representatives of the teacher's own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and, ~~unless the subject of the contemplated discharge,~~ the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. If the teacher so requests, the board must grant a continuance of not to exceed seven days unless good cause is otherwise shown. No cause of action for libel or slander may be brought for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section.

5. The school board of any school district contemplating not renewing a teacher's contract, as provided in section 15-47-27, shall notify the teacher in writing of such contemplated nonrenewal no later than April fifteenth. The teacher must be informed in writing of the time, which may not be later than April twenty-first, and place of a special school board meeting for the purpose of discussing and acting upon such contemplated nonrenewal. The teacher must also be informed in writing of the reasons for nonrenewal. The reasons given by the school board for its decision not to renew a teacher's contract must be drawn from specific and documented findings arising from formal reviews conducted by the board with respect to the teacher's overall performance. Each district shall have an established system through which written evaluations are prepared for every teacher employed by the district as provided in section 15-47-27. The reasons given by the board for not renewing a teacher's contract must be sufficient to justify the contemplated action of the board and may not be frivolous or arbitrary but must be related to the ability, competence, or qualifications of the teacher or the necessities of the district such as lack of funds calling for a reduction in the staff. At the meeting with the board the teacher may then produce such evidence as may be necessary to evaluate the reasons for nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The administrator shall substantiate the reasons with written or oral evidence presented at the meeting, unless the administrator is the subject of the contemplated nonrenewal, in which case the board shall substantiate the reasons with written or oral evidence presented at the meeting. All

witnesses are subject to questioning for the purposes of clarification. At the meeting, the board shall discuss the evidence presented. If the reasons for nonrenewal have not been substantiated, the nonrenewal proceedings will be dismissed. The meeting must be an executive session of the board unless both the school board and the teacher agree that it is to be open to other persons or the public. The teacher may be represented at the meeting by any two representatives of the teacher's own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and, ~~unless the subject of the contemplated nonrenewal,~~ the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. At the meeting, if the teacher so requests, the teacher must be granted a continuance of not to exceed seven days. No claim for relief for libel or slander lies for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section. The determination not to renew a contract if made in good faith is final and binding on all parties. Final notice of the determination not to renew a contract must be given in writing by May first as provided in section 15-47-27.

**SECTION 3.** A new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Evaluation, renewal, or discharge of superintendents of school districts.

1. The term "superintendent" as used in this section includes district superintendents of schools and chief administrators of multidistrict special education units and multidistrict vocational education centers.
2. At least once before December fifteenth, the school board of each school district shall conduct a formative evaluation of the performance of the superintendent employed by the district. The board shall also conduct a formal and written evaluation of the performance of the superintendent by March fifteenth and provide a copy to the superintendent. The written evaluation of a superintendent's performance must include recommendations with respect to all subject areas within which the school board considers the performance to be unsatisfactory. The school board must provide in reasonable detail the basis for its assessment of the unsatisfactory performance.
3. The superintendent, upon receipt of an evaluation, may respond in writing to the substance and content of the evaluation, and the response must become a permanent attachment to the superintendent's personnel file. The school board shall meet with the superintendent to discuss the evaluation.
4. Throughout the term of a contract between a school district and a superintendent, the superintendent is subject to discharge for good and just causes as described in subsection 3 of section 15-47-38. However, the school board may not arbitrarily or capriciously require the superintendent's dismissal.

5. If a school district governing body intends to discharge a superintendent, the superintendent must be served with a detailed and written description of the reasons given by the school board for the proposed dismissal. Following service of the written description, the superintendent must be granted a hearing before the governing body for which reasonable advance notice is required. If a superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation must be incurred by the superintendent.
6. The superintendent may produce necessary witnesses to refute charges made by the board against the superintendent or reasons given by the board for its proposal to discharge the superintendent. The witnesses are subject to cross-examination.
7. All procedures relative to evidence, subpoena of witnesses, oaths, records of testimony, decisions, rehearings, appeals, certification of records, scope and procedures for appeals, and appeals to the supreme court must be conducted in accordance with the provisions of chapter 28-32. The meeting must be conducted in an executive session of the board, unless both the school board and the superintendent agree that the meeting be open to the public.
8. The superintendent may be represented at the meeting by two persons chosen by the superintendent. The superintendent's spouse or one other family member, may also attend the meeting.
9. In addition to board members and the business manager of the school district, the school board may be represented by two persons chosen by the school board.
10. If the superintendent requests, the superintendent must be granted a continuance by the board not to exceed seven days, unless good cause for a longer continuance is shown.
11. No claim for relief for libel or slander may accrue from any statement expressed orally or in writing at an executive session of the school board held for the purposes provided in this section.
12. A school board dismissing a superintendent for cause shall report the dismissal to the teachers' professional practices commission. The school board by unanimous vote may suspend the superintendent from regular duty if such action is deemed desirable during the dismissal process. If the superintendent is dismissed, the board may determine the superintendent's salary or compensation as of the date of suspension. If the final decision is favorable to the superintendent, there may be no abatement of salary or compensation.
13. The school board of a school district contemplating the contract nonrenewal of a superintendent who has been employed in the school district as a superintendent for at least two consecutive years, shall notify the superintendent in writing of the contemplated nonrenewal no later than April fifteenth. The school board shall inform the superintendent in writing of the time, which may not be later than April twenty-first, and the place of a special school board meeting for the purpose of discussing and acting upon the contemplated nonrenewal. The

school board shall inform the superintendent in writing of the reasons for nonrenewal. The reasons may not be frivolous or arbitrary, must be related to the ability, competence, or qualifications of the superintendent, must be sufficient to justify the contemplated action of the board, and must be drawn from specific and documented findings arising from the formal and written evaluations of the superintendent's performance as required in subsection 2 of this section, except when the nonrenewal results from a necessary reduction in staff. At the board meeting, the superintendent may produce evidence necessary to evaluate the reasons for nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The school board shall substantiate the reasons or cause the reasons to be substantiated with written or oral evidence presented at the meeting. All witnesses are subject to questioning for purposes of clarification. The superintendent may be represented at the meeting by two persons chosen by the superintendent. The superintendent's spouse or one other family member may also attend the meeting. If the superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation must be incurred by the superintendent. In addition to the board members and the business manager of the school district, the school board may be represented by two persons chosen by the board. If the superintendent requests, the board shall grant the superintendent a continuance not to exceed seven days. No claim for relief for libel or slander accrues from any statement expressed orally or in writing at an executive session of the school board held for the purposes provided in this section. The school board shall give the superintendent final notice of the determination not to renew a contract by May first.

14. If a school district fails to provide notification to a superintendent in writing between March first and April fifteenth of each year that the school board intends to contemplate the nonrenewal of the superintendent's contract, and the superintendent has not resigned in writing before June first, the district and the superintendent are deemed to have renewed the contract for a period of one year extending from the termination date set forth in the existing contract. If a school district provides notification to a superintendent who has not been employed in that school district as a superintendent for at least two years in writing before May first of its intent not to renew the superintendent's contract, the school board shall meet with the superintendent to convey the reason or reasons for the nonrenewal if the superintendent requests such a meeting.

Approved March 22, 1993  
Filed March 23, 1993

## CHAPTER 204

HOUSE BILL NO. 1475  
(Representatives Wardner, Gorder, Kerzman)  
(Senator Marks)

### **ABORTION REFERRAL AND BIRTH CONTROL**

AN ACT relating to abortion referrals and the distribution of birth control devices.

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

**SECTION 1. Abortion referrals.** No person while acting in an official capacity as an employee or agent of a public school district may refer a student to another person, agency, or entity for the purpose of obtaining an abortion. This provision does not extend to private communications between the employee or agent and a child of the employee or agent.

**SECTION 2. Distribution of birth control devices - Restrictions.** No person while acting in an official capacity as an employee or agent of a public school district may distribute birth control devices to a student. This section does not apply to the distribution of a birth control device by an employee or agent to a child of that employee or agent.

Approved April 9, 1993  
Filed April 9, 1993

## CHAPTER 205

HOUSE BILL NO. 1183  
(Education Committee)

(At the request of the Superintendent of Public Instruction)

### CHILDREN WITH DISABILITIES EDUCATION

AN ACT to amend and reenact sections 15-59-01, 15-59-02.1, 15-59-04, 15-59-04.1, 15-59-05, 15-59-05.2, 15-59-06, 15-59-06.2, 15-59-07, 15-59-07.2, 15-59-10, 15-59.3-01, 15-59.3-02, 15-59.3-03, 15-59.3-04, 15-59.3-05, 15-59.3-06, and 15-59.3-07 of the North Dakota Century Code, relating to special education and boarding home care for children with disabilities.

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

**SECTION 1. AMENDMENT.** Section 15-59-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### 15-59-01. Definitions. As used in this chapter:

1. ~~"Exceptional child" means a natural person who has reached the age of three years by midnight August thirty first and has not reached the age of twenty one years by midnight August thirty first, who, because of mental, physical, emotional, or learning characteristics, requires special education services. This may include a handicapped child or a gifted child.~~
2. ~~"Gifted child "Child who is gifted" means a gifted and talented child identified by professional, qualified persons, who, by virtue of outstanding abilities, is capable of high performance and who requires differentiated educational programs and services beyond those normally provided by the regular school program in order to realize his or her contribution to self and society.~~
3. ~~"Handicapped child" means a child who is mentally retarded, hard of hearing, deaf, deaf blind, speech or language impaired, visually handicapped, seriously emotionally disturbed, specific learning disabled, orthopedically impaired, otherwise health impaired, autistic, or traumatic brain injured who by reason thereof requires special education and related services or who has been excused from attending or participating in special education pursuant to subsection 4 of section 15-34.1-03.~~
2. "Child with disabilities" means a child who has reached the third birthday, and has not reached the age of twenty-one years by midnight of August thirty-first, who because of mental, physical, emotional, or learning characteristics requires regular or special education and related aids and services designed to meet individual education needs. This includes children who are mentally retarded, hard of hearing, deaf, deaf-blind, speech or language impaired, visually impaired, seriously emotionally disturbed, specific learning disabled, orthopedically impaired, otherwise health impaired, autistic, or traumatic brain injured.

- 4- 3. "Learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written languages, and which may be manifested in disorders of listening, thinking, talking, reading, writing, spelling, or arithmetic. The term "learning disability" includes, but is not limited to, such conditions as perceptual ~~handicaps~~ impairments, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, but does not include learning problems due primarily to visual, hearing or motor handicaps, mental retardation, emotional disturbance, or environmental disadvantage.
- 5- 4. "Special education" means classroom, home, hospital, institutional, or other instruction to meet the needs of handicapped children with disabilities, transportation, and corrective and supporting services required to assist ~~exceptional~~ children with disabilities in taking advantage of, or responding to, educational programs and opportunities.

**SECTION 2. AMENDMENT.** Section 15-59-02.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59-02.1. Legislative intent - Special education.** This statement of legislative intent is provided to define more clearly the relationship between the state, school districts, and parents of ~~handicapped~~ handicapped children with disabilities in the provision of special education and related services. "Related services" means transportation and such developmental and corrective or supportive services required to assist a ~~handicapped~~ handicapped child with disabilities to benefit from special education.

The school administrator or ~~his~~ the administrator's appointed representative or director of special education other than the child's teacher is responsible for bringing together professionals and parents to share assessment information related to all areas of suspected disability, develop an individualized education program plan for the ~~handicapped~~ handicapped student with disabilities, and make recommendations for required special education and related services.

The legislative assembly believes that in order to assure equality of services which are provided for by limited state funds, the department of public instruction will be required to approve a contract for services based on an individualized education program developed for each ~~handicapped~~ handicapped student with disabilities placed in a private school program or in programs outside the student's original special education unit.

The legislative assembly believes that when money is distributed to a school district for special education personnel, the department of public instruction should give consideration to the units of services provided by the district, the district's special education program costs, and the district's special education program needs.

The legislative assembly recognizes that a ~~handicapped~~ handicapped student with disabilities whose individualized education program so requires is entitled to an educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the ~~handicapping condition~~ disability. All summer programs attended by these students must have approval of

the department of public instruction before receiving foundation aid or state special education reimbursement.

In the case of handicapped students with disabilities who require boarding care away from the family residence in order to receive special education and related services in an approved program, it is the intent of the legislative assembly that the instructional costs and costs of related services, including boarding care, be borne by state special education funds and school district funds.

"All handicapped children with disabilities have the right to a free appropriate education" means that all handicapped students with disabilities have the right to special education and related services which must be provided at no cost to parents. "At no cost" means specifically designed instruction provided without charge but does not preclude expenses normally incurred or charged to parents of nonhandicapped children who are nondisabled. Parents will assume such costs for a handicapped child with disabilities as they would if the child was ~~not~~ nondisabled. Personal items, including, ~~but not limited to,~~ hearing aids, eyeglasses, routine medical expenses, physical exams, medications, and all items necessary for a nonhandicapped child who is nondisabled, will be the financial responsibility of the parent.

School districts must require use of family insurance, or similar third party payments, in whatever amount is allowed, as long as there is no financial loss to the child or the child's parent, for determining a child's medically related ~~handicapping condition~~ disability or other required related services which results in the child's need for special education. It is the school district's responsibility to assume costs not covered by the insurer or similar third party in the above situation.

The school district in which a handicapped student with disabilities resides is responsible to provide transportation for the student as prescribed in the student's individualized education program.

Costs of transportation for the student to attend an approved special education program are the responsibility of the school district with aid from the department of public instruction.

The district of residence may use any reasonably prudent and safe means of transportation at its disposal to carry out the requirements of the individualized education program. Such means may include, ~~but not be limited to,~~ a regularly scheduled schoolbus, public or commercial transportation where appropriate, charter or specially contracted transportation, or transportation provided by a ~~handicapped student's~~ the parent of a child with disabilities or other responsible party at school district expense.

If the transportation between the district of residence and the educational facility is provided by the parents, the reimbursement to the school district from department of public instruction funds must be for mileage costs only and may not include per diem costs for meals, lodging, lost wages, or other costs of any kind.

As the department of human services has authority under chapter 25-16 to provide early intervention services to meet the needs of handicapped children with disabilities ages zero through two years, the legislative assembly recognizes this provision and requires the department of public instruction, the state department of

health and consolidated laboratories, and the department of human services to cooperate in planning and coordinating programs for these children.

**SECTION 3. AMENDMENT.** Section 15-59-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59-04. School districts to provide special education.** School districts shall provide special education to ~~handicapped~~ children with disabilities in accordance with the provisions of this chapter and in so doing may act jointly with one or more other districts and shall cooperate with the director of special education and with the institutions of the state. Each school district shall submit a plan ~~with~~ to the superintendent of public instruction for implementing special education in the district. Special education services to ~~handicapped~~ children with disabilities three to six years of age shall be fully implemented by July 1, 1985. School districts may provide special education to ~~gifted~~ children who are gifted in accordance with the provisions of this chapter and in so doing may act jointly with one or more other districts and shall cooperate with the director of special education.

**SECTION 4. AMENDMENT.** Section 15-59-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-59-04.1. Records.** Every school district shall make and keep a current record of all school age ~~handicapped~~ children with disabilities who are residents of the school district.

**SECTION 5. AMENDMENT.** Section 15-59-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-59-05. Powers and duties of the director of special education.** The superintendent of public instruction shall establish general state policy within the provisions of this chapter and shall endeavor to ensure a cooperative special education program coordinating all available services. ~~He~~ The superintendent of public instruction shall cooperate with private agencies, soliciting their advice and cooperation in the establishment of policy and in the coordination and development of special education programs. In accordance with the provisions of this chapter, the director of special education shall prescribe rules and regulations for the special education of ~~exceptional~~ children with disabilities and for the administration of this chapter. ~~He~~ The director of special education shall assist the school districts of the state in the inauguration, administration, and development of special education programs, and ~~he shall~~ establish standards and provide for the approval of certification of schools, teachers, facilities, and equipment.

**SECTION 6. AMENDMENT.** Section 15-59-05.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59-05.2. Interagency cooperative agreements for the provision of educational-related services to ~~handicapped~~ students with disabilities.** The department of public instruction shall cooperatively develop and implement interagency agreements with appropriate public and private agencies, including the department of corrections and rehabilitation, the state department of human services, and the state department of health and consolidated laboratories, for purposes of maximizing available state resources in fulfilling the

educational-related service requirements of Public Law 94-142 [89 Stat. 773] and section 504 of the Rehabilitation Act of 1973, as amended.

**SECTION 7. AMENDMENT.** Section 15-59-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59-06. State cooperation in special education.** ~~Exceptional children~~ Children with disabilities who are enrolled in approved programs of special education must be deemed to be regularly enrolled in the school district of residence and must be included in the determination of elementary and high school per-pupil payments from the state foundation aid program whether or not such pupils are regularly attending school in the school or school district receiving such payments. A prorated state foundation aid payment for a student to attend a public school program for ~~handicapped~~ students with disabilities, approved by the superintendent of public instruction, may be made provided that the individualized education program for the child is written during the last quarter of the school term and specifically requires that the child attend a summer special education program. In the case of a student who is enrolled in a nonpublic school but who is attending a public school special education program, payments must be made to the appropriate public school district in relation to the proportion of a normal schoolday as such student participates in such special education program. For the purposes of this section, a normal schoolday must be deemed to consist of six hours. Upon the determination by the director of special education that the school district has made expenditures for each ~~exceptional child with a disability or child who is gifted~~ in such program equal to the average expenditures made in such district for elementary or high school students, as the case may be, the director by vouchers drawn upon funds provided by the legislative assembly for such purpose may provide reimbursement to such school or school district. The amount the school district is required to expend must be reduced proportionately if a child attends the school for less than an entire year. If any school district within a special education unit has any ~~handicapped~~ elementary or high school student with disabilities who, in the opinion of a qualified psychologist, a medical doctor, district superintendent, and the district or multidistrict director of special education, is unable to attend the public schools in the special education unit because of a ~~handicapping-condition~~ disability, such school district shall contract with an in-state public school outside the special education unit in which the student is a legal resident which will accept such student and has proper facilities for the education. No school district may enter into a contract with any in-state public school for the education of any student because of a ~~handicapping-condition~~ disability, unless the curriculum provided by such school and the contract has been approved in advance by the superintendent of public instruction. The contract must provide that such school district agrees to pay to the in-state public school as part of the cost of educating such student an amount for the school year equal to two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department; provided, that such payment may not exceed the actual per-pupil cost incurred by such in-state public school. The school district's liability must be reduced proportionately if the student attends the in-state public school for less than an entire year. The superintendent of public instruction, upon notification by the admitting district and upon verification by the superintendent that tuition payments are due the admitting district and are unpaid, shall withhold all payments from the state for foundation aid to the district of residence until the tuition due has been paid. The transportation must be furnished as provided by rules of the department of

public instruction. The remainder of the actual cost of educating the ~~handicapped~~ student with disabilities not covered by other payments or credits must be paid from funds provided by the legislative assembly for such purpose.

**SECTION 8. AMENDMENT.** Section 15-59-06.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59-06.2. Cost of special education - Liability of school district.** If allowable costs for special education and related services for an ~~exceptional~~ a child with disabilities in a special education program, as determined by the superintendent of public instruction, exceed the reimbursement provided by the state, the school district is liable to pay for each such student an amount over the state reimbursement up to a maximum each school year of two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department. The two and one-half times amount includes the amount the school district is required to pay in section 15-59-06. The state is liable for one hundred percent of the remainder of the cost of education and related services for each such ~~handicapped~~ student with disabilities.

**SECTION 9. AMENDMENT.** Section 15-59-07 of the North Dakota Century Code is amended and reenacted as follows:

**15-59-07. Contracts for ~~handicapped~~ children with disabilities to attend private or out-of-state public schools.** If any school district in this state has any ~~handicapped~~ elementary or high school student with disabilities who in the opinion of a qualified psychologist, a medical doctor, and the district superintendent is unable to attend the public schools in the district because of a physical or mental ~~handicap~~ disability or because of a learning disability, such school district shall contract with any accredited private nonsectarian nonprofit corporation within or without the state or an out-of-state public school which has proper facilities for the education of such student, if there are no public schools in the state with the necessary facilities which will accept such student. No school district shall enter into a contract with any private nonsectarian nonprofit corporation or out-of-state public school for the education of any student having a physical ~~handicap~~ or learning disability, unless the curriculum provided by such school and the contract has been approved in advance by the superintendent of public instruction. The contract ~~shall~~ must provide that such school district agrees to pay to the private nonsectarian nonprofit corporation or the out-of-state public school as part of the cost of educating such student an amount for the school year equal to two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department; provided, that such payment ~~shall~~ may not exceed the actual per-pupil cost incurred by such private nonsectarian nonprofit corporation or out-of-state public school. The transportation ~~shall~~ must be furnished and reimbursed as provided by rules and ~~regulations~~ of the department of public instruction. The rules and ~~regulations~~ of the department of public instruction ~~shall~~ have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident ~~shall~~ must be reimbursed by the state special education fund for not more than the number of round trips home per year provided for in the individualized education program at a rate not to exceed that paid state officials. The remainder of the actual cost of educating the ~~handicapped~~ student with disabilities not covered by other payments or credits ~~shall~~ must be paid from funds appropriated by the legislative assembly for special

education notwithstanding limitations cited in section 15-59-06. The district of residence ~~shall be~~ is entitled to the per-pupil foundation payment. The reimbursement herein provided to the contracting district from the state special education funds ~~shall be~~ is in lieu of any other foundation aid to which the district might otherwise be entitled.

**SECTION 10. AMENDMENT.** Section 15-59-07.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59-07.2. Reimbursement by the superintendent of public instruction for special education boarding care costs.** The superintendent of public instruction, within the limits of legislative appropriations, shall reimburse local school districts for eighty percent of the costs of room and board paid on behalf of ~~handicapped~~ children with disabilities placed in facilities outside their school district of residence for special education services not available within their school district of residence. Reimbursements ~~shall~~ must be made regardless of whether the child has been placed in a facility within the state or outside the state. Any special education room and board costs in excess of those payments made by the superintendent of public instruction are the responsibility of the local school district. The placement of ~~handicapped~~ children with disabilities in public or private facilities will be made by school districts. Placement in congregate care will be made in facilities designated by the department of human services.

**SECTION 11. AMENDMENT.** Section 15-59-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59-10. Enforcement of right to education - Attorneys' fees.** Each parent or guardian of a ~~handicapped~~ child with disabilities as defined in subsection 3 of section 15-59-01, or a ~~handicapped~~ an adult with disabilities between the ages of eighteen and twenty-one is entitled to enforce ~~that handicapped child's or handicapped adult's~~ the right of that child or adult with disabilities to an education guaranteed by state and federal law, through an administrative proceeding, civil action, or other remedy available by common law or statute. The parent or guardian of a child with disabilities or the adult with disabilities is encouraged to submit a written request to the appropriate school administrator or director of special education regarding the relief sought prior to a proceeding. In any administrative or judicial proceeding to enforce that right, the court may, in its discretion, award reasonable attorneys' fees and costs to a parent, guardian, or ~~handicapped~~ adult with disabilities who prevails in that proceeding. ~~However, no attorney's fees or costs may be awarded for services rendered or costs incurred before the time when the parent, guardian, or handicapped adult submitted a written request to the appropriate school administrator or director of special education, for the relief sought and obtained in that proceeding.~~

**SECTION 12. AMENDMENT.** Section 15-59.3-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59.3-01. Definitions.** As used in this chapter:

1. "Boarding home care for ~~special education~~ students with disabilities" means the provision of boarding home care for ~~those students~~ a student who is a child with disabilities as described in subsection ~~1~~ 2 of section 15-59-01 and includes the provision of food, shelter, security, and safety, on a twenty-four-hour basis to one or more students.

2. "Department" means the department of human services.
3. "Family boarding home" means an occupied private residence at which boarding home care for ~~special-education~~ students with disabilities is regularly provided by the owner or lessee thereof to no more than four children, unless all students provided boarding home care are related to each other by blood or marriage, in which case this limitation ~~shall~~ does not apply.
4. "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this chapter.
5. "Registration" means the process whereby the department maintains a record of all family boarding homes, prescribes standards and adopts rules under section 15-59.3-06, and requires the operator of such home to certify that the operator has complied with the prescribed standards and adopted rules.
6. "Registration certificate" is a written instrument issued by the department to publicly document that the certificate holder is in compliance with this chapter and the applicable rules and standards prescribed by the department.
7. "Relative" means any person having the following relationship to the student by marriage, blood, or adoption: grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt.

**SECTION 13. AMENDMENT.** Section 15-59.3-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<sup>1</sup> **15-59.3-02. Boarding home care for ~~special-education~~ students with disabilities - Registration required.** No person, partnership, voluntary organization, or corporation may establish or operate a family boarding home without first obtaining a registration certificate. The mandatory provisions of this section requiring registration do not apply when the boarding home care is provided in:

1. The home of a relative.
2. A home or institution under the management and control of the state or the public school board.
3. A home furnishing "foster care for children" as defined in subsection 1 of section 50-11-00.1.

**SECTION 14. AMENDMENT.** Section 15-59.3-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59.3-03. Public agency purchase of boarding home care for ~~special-education~~ students with disabilities.** No agency of state or local government may purchase or provide boarding home care for ~~special-education~~ students with disabilities unless the family boarding home:

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<sup>1</sup> NOTE: Section 15-59.3-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

1. Has obtained a registration certificate; or
2. If exempted from registration by subsection 1 or 2 of section 15-59.3-02, complies with all applicable standards and rules issued or adopted by the department.

**SECTION 15. AMENDMENT.** Section 15-59.3-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59.3-04. Registration certificate granted.** Applications for a registration certificate for the operation of a home receiving ~~special-education~~ students with disabilities for boarding home care must be made on the forms provided, and in the manner prescribed, by the department. The department may investigate the applicant's activities and make an inspection of the proposed home. A registration certificate for the operation of the home must be granted by the department within ten working days of receipt of the proper forms upon a determination that:

1. The premises to be used are in sanitary condition and properly equipped to provide for the health and safety of all students who may be received;
2. The persons in charge of such home and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and the rules and standards prescribed by the department; and
3. The home will be maintained according to the standards prescribed for its conduct by the rules of the department. The registration certificate ~~shall be in effect~~ is effective for a period of not more than two years.

**SECTION 16. AMENDMENT.** Section 15-59.3-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59.3-05. Conviction not bar to registration - Exceptions.** Conviction of an offense does not disqualify a person from registration under this chapter unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or proprietor of a boarding home for ~~special-education~~ students with disabilities, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 17. AMENDMENT.** Section 15-59.3-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59.3-06. Minimum standards - Rules - Inspection by a governmental unit.** The department may:

1. Establish reasonable minimum standards for the operation of boarding homes and the registration of such homes. In appropriate circumstances and upon good cause shown, specific minimum standards may be substituted by alternate, equivalent standards, approved by the department.
2. Take such action and make such reasonable rules for the regulation of boarding home care for ~~special-education~~ students with disabilities as may be necessary to carry out the purposes of this chapter and entitle the state to receive aid from the federal government.
3. Authorize a governmental unit to:

- a. Inspect any home for which a registration certificate is applied for or issued under this chapter; and
- b. Certify to the department that the home meets the requirements of this chapter and the minimum standards prescribed by the department.

**SECTION 18. AMENDMENT.** Section 15-59.3-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59.3-07. Investigation of applicants and registrants - Maintenance of records - Confidentiality of records.**

1. The department and its authorized agents at any time may investigate and inspect the conditions of the home and the qualifications of the owner or operator thereof. Upon request of the department, the state department of health and consolidated laboratories or the state fire marshal, or his a designee, shall inspect any home for which a registration certificate is applied for or issued and shall report its findings to the department.
2. All holders of registration certificates shall:
  - a. Maintain such records as the department may prescribe regarding each student in their care and control, and shall report to the department, when requested, such facts as the department may require with reference to the students upon forms furnished by the department; and
  - b. Admit for inspection authorized agents of the department and open for examination all records, books, and reports of the home.
3. All records and information maintained with respect to students receiving home care for ~~special-education~~ students with disabilities are confidential, must be properly safeguarded, and must not be disclosed except:
  - a. In a judicial proceeding;
  - b. To officers of the law or other legally constituted departments or agencies; or
  - c. To parents and persons having a definite interest in the well-being of the student or students concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary.

Approved April 1, 1993  
Filed April 2, 1993

## CHAPTER 206

SENATE BILL NO. 2388  
(Senator Holmberg)  
(Representative Poolman)

### SCHOLARS PROGRAM REAPPLICATION

AN ACT to amend and reenact section 15-62.2-03.2 of the North Dakota Century Code, relating to eligibility to reapply for scholarships under the student financial assistance and scholars program.

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

**SECTION 1. AMENDMENT.** Section 15-62.2-03.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-62.2-03.2. Reapplication eligibility - Amount of scholarships - Duration.** Scholars are eligible to reapply for scholarships for subsequent academic years provided they maintain a 3.6 grade point average based upon a 4.0 grading system. Scholars entering the scholars program during or after the 1994 fall semester are eligible to reapply for scholarships for subsequent academic years provided they maintain a 3.50 grade point average. The amount of the scholarship must equal the tuition charged at the scholar's eligible institution but may not exceed the amount charged for tuition at the state universities. A state scholar may receive a scholarship for not more than eight semesters or twelve quarters of undergraduate study, or until the attainment of the student's baccalaureate degree, whichever comes first.

Approved March 22, 1993  
Filed March 23, 1993