

STATE GOVERNMENT

CHAPTER 455

HOUSE BILL NO. 1275

(Representatives Iverson, Carlson, Ruby)

(Senators Brown, Freborg)

STATE EMPLOYEE MOVING EXPENSES

AN ACT to amend and reenact section 54-01.1-03 of the North Dakota Century Code, relating to moving and related expenses as a result of projects undertaken by a state agency; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

54-01.1-03. Moving and related expenses.

1. Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the displacing agency shall provide for the payment to the displaced person of:
 - a. Actual, reasonable expenses in moving the displaced person and the displaced person's family, business, farm operation, or other personal property;
 - b. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the state agency;
 - c. Actual, reasonable expenses in searching for a replacement business or farm; and
 - d. Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, ~~but not to exceed ten thousand dollars~~ as determined by criteria established by the state agency.
2. Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1 may receive a moving expense allowance, determined according to a schedule established by the state agency.

3. Any displaced person eligible for payments under subsection 1, who is displaced from the person's place of business or farm operation and is eligible under criteria established by the state agency, may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1. ~~Such~~ The payment must consist of a fixed payment in an amount to be determined according to criteria established by the state agency; ~~except that the payment may not be less than one thousand dollars, nor more than twenty thousand dollars.~~ A person whose sole business at the displacement dwelling is the rental of the property to others does not qualify for a payment under this subsection.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2007, and after that date is ineffective.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 2003
Filed April 9, 2003

CHAPTER 456

SENATE BILL NO. 2318

(Senators Epegard, Christenson, Holmberg)
(Representative Glassheim)

NORTH DAKOTA ART MUSEUM DESIGNATED

AN ACT to amend and reenact section 54-02-11 of the North Dakota Century Code, relating to designation of the North Dakota art museum.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-02-11 of the North Dakota Century Code is amended and reenacted as follows:

54-02-11. State art gallery - Ownership of art museum. The North Dakota museum of art, formerly the university of North Dakota art galleries, established in 1972 on the university campus in Grand Forks, is ~~hereby~~ designated the North Dakota state art gallery museum. ~~No general fund moneys may be used to support the North Dakota art gallery now or in the future.~~ Unless clear title is otherwise demonstrable, any work of art, artifact, or artistic property located in the state art gallery museum is deemed to be the property of the North Dakota ~~museum of art museum~~ and is subject to disposition by the North Dakota ~~museum of art museum~~.

Approved March 21, 2003
Filed March 24, 2003

CHAPTER 457

SENATE BILL NO. 2138

(Government and Veterans Affairs Committee)

(At the request of the Secretary of State)

FILING OF CERTIFICATES OF ELECTION

AN ACT to amend and reenact section 54-03-03 of the North Dakota Century Code, relating to filing certificates of election and appointments with the legislative assembly and making the roll of members of the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-03 of the North Dakota Century Code is amended and reenacted as follows:

54-03-03. Secretary of senate and chief clerk of house to receive certifications and to make roll of members - ~~Certificate~~ Certificates filed. ~~The At~~ At the opening of each organizational session, reconvened session, or special session of the legislative assembly, the secretary of state shall certify to the secretary of the senate and the chief clerk of the house of representatives; at the opening of each organizational session, shall make a correct roll of the respective members of their houses respectively to whom certificates of election have been issued by the proper officers or whose appointments have been filed with the secretary of state under applicable provisions of law since the preceding session of the legislative assembly. The certificates must be filed by the secretary of the senate and chief clerk. Each certificate is shall file the certifications and copies of the certificates of election or appointment, and the certifications and copies of the certificates of election or appointment are prima facie evidence of the right to membership in the respective branch of the legislative assembly of the person certified therein to be elected for all purposes of the organization of either branch of the legislative assembly. The secretary of state shall also certify to the secretary of the senate and the chief clerk of the house of representatives the respective members who served in the preceding session of the legislative assembly and whose terms have not expired. After the certifications are received, the secretary of the senate and the chief clerk of the house of representatives shall call and make a correct roll of the names of those respective members who have been certified by the secretary of state. The provisions of this section may not be construed to infringe on the right of each house to be the judge of the qualifications of its members.

Approved March 21, 2003

Filed March 24, 2003

CHAPTER 458

SENATE BILL NO. 2051

(Legislative Council)

(Legislative Management Committee)

ORGANIZATIONAL SESSION AGENDA

AN ACT to amend and reenact section 54-03.1-03 of the North Dakota Century Code, relating to the agenda of the organizational session.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03.1-03 of the North Dakota Century Code is amended and reenacted as follows:

54-03.1-03. Agenda. The agenda of the organizational session must include, ~~but is not limited to,~~ the following:

1. Orientation classes upon legislative rules and procedure for new legislators;
2. Presentation of reports by legislative interim ~~boards or~~ committees or commissions;
3. Party caucuses to ~~determine which party has a majority in each house of the legislative assembly and thereafter proceed to select party nominees for officers of each body~~ review proposed legislative rules and committee assignments, as appropriate;
4. Appointment of ~~employment~~ procedural committees to ~~process applications for positions of employment with the legislative assembly and make recommendation for hiring the selected employees~~;
5. Appointment of a senate committee on committees;
6. Each legislator shall present the legislator's committee appointment preferences to the speaker of the majority party or the chairman of the interim senate committee on committees;
7. Presentation of the budget and revenue proposals recommended by the governor as provided in section 54-44.1-07; and
- 8- 6. All other similar matters, in order that the legislative assembly be fully organized and ready to begin its business by the first day of the regular session.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 459

HOUSE BILL NO. 1167

(Government and Veterans Affairs Committee)

(At the request of the Secretary of State)

REPORTS TO GOVERNOR OR SECRETARY OF STATE

AN ACT to amend and reenact sections 4-05.1-04, 26.1-21-22, 43-25-13, and 43-32-11, subsection 4 of section 54-06-04, and section 54-54-09 of the North Dakota Century Code, relating to reports by agricultural research or research extension centers, the state bonding fund, the board of massage therapists, the board of psychologist examiners, the council on the arts, and other entities submitted to the governor or secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-04. Reports. Each center director shall submit an annual report to the station director as directed by the state board of agricultural research and education. Each report must set forth in detail the investigations and experiments made during the preceding year, recommendations for the welfare of the center, the financial condition of the center, how all moneys have been expended, and the results of experiments. The station director shall submit these reports, with a report of the North Dakota state university main research center, to the state board of agricultural research and education and the state board of higher education on or before the first day of September of each year. ~~If the state board of higher education submits a biennial report to the governor and the secretary of state in accordance with section 54-06-04, the report must include a composite of the reports from the main research center and each research extension center.~~

SECTION 2. AMENDMENT. Section 26.1-21-22 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-22. Publication of statement of fund - Biennial report. The commissioner, on or about December first in each odd-numbered year, shall publish in four newspapers of general circulation within the state a copy of the statement of the commissioner's work and of the condition of the fund during the two preceding fiscal years. The commissioner shall ~~submit a~~ include this statement in the biennial report to the governor and the secretary of state submitted in accordance with section 54-06-04.

SECTION 3. AMENDMENT. Section 43-25-13 of the North Dakota Century Code is amended and reenacted as follows:

43-25-13. Records to be kept by the secretary-treasurer of the board. The secretary-treasurer of the board shall keep a record book of the names of all persons to whom licenses have been granted under this chapter, the license number of each, the date of granting each license and renewal, and other matters of record. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer and the seal of the board, must be admitted as evidence in any of the courts of this state. The secretary-treasurer shall furnish to

any person a certified copy of any record upon payment of a fee of ten dollars plus twenty-five cents per page copied, the fee to belong to the secretary-treasurer. The secretary-treasurer ~~shall~~ may prepare and submit to the governor a biennial report detailing income and expenses and a list of massage therapists licensed.

SECTION 4. AMENDMENT. Section 43-32-11 of the North Dakota Century Code is amended and reenacted as follows:

43-32-11. Annual reports. Each year, the board ~~shall~~ may transmit to the governor, with a copy thereof to the secretary of state and to the North Dakota psychological association, a full report of all activities under this chapter, together with a report of all receipts and disbursements.

SECTION 5. AMENDMENT. Subsection 4 of section 54-06-04 of the North Dakota Century Code is amended and reenacted as follows:

4. All officers, departments, boards, commissions, and state institutions that submit reports covering their operations for the two preceding fiscal years to the governor and the secretary of state shall submit copies of their reports in the form and style, using the materials, and having the content prescribed under subsection 2 on or before the first day of December in each year after the regular session of the legislative assembly. If submitted, one copy of each report must be also distributed to the following agencies:
 - a. ~~Governor's office.~~
 - b. Legislative council.
 - c. ~~Office of management and budget.~~
 - d. c. State law library.
 - e. d. The libraries of each state institution of higher education.
 - f. ~~State library.~~
 - g. e. State archivist for official and public use.

SECTION 6. AMENDMENT. Section 54-54-09 of the North Dakota Century Code is amended and reenacted as follows:

54-54-09. Report. The council shall ~~make~~ submit a biennial report ~~to the governor, secretary of state, and the legislative assembly not later than October first prior to each legislative session~~ as provided in subsection 1 of section 54-06-04. The report is also subject to the requirements of subsections 2, 4, and 5 of section 54-06-04.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 460

SENATE BILL NO. 2106

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

SICK LEAVE PAYMENT UPON TERMINATION

AN ACT to amend and reenact section 54-06-14 of the North Dakota Century Code, relating to payment of sick leave upon termination.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-14 of the North Dakota Century Code is amended and reenacted as follows:

54-06-14. Annual leave and sick leave for state employees. Annual leave and sick leave must be provided for all persons in the permanent employment of this state who are not employed under a written contract of hire setting forth the terms and conditions of their employment, within the limitations, terms, and provisions of this section. Annual leave for an employee entitled to it must be within a range of a minimum of one working day per month of employment to a maximum of two working days per month of employment, based on tenure of employment, to be fixed by rules adopted by the employing unit. Sick leave for an employee entitled to it must be within a range of a minimum of one working day per month of employment to a maximum of one and one-half working days per month of employment, based on tenure of employment, to be fixed by rules adopted by the employing unit. Annual leave must be compensated for on the basis of full pay for the number of working days' leave credited to the employee. Sick leave must be compensated for on the basis of full pay for absence due to illness on working days during tenure of employment. An employee with at least ten continuous years of state employment is entitled to a lump sum payment equal to one-tenth of the pay attributed to the employee's unused sick leave accrued under this section. An employee's years of state employment must be deemed continuous if, under the official personnel policy of an agency, unit, or entity, the employee's work is terminated because of a reduction in force and the employee is reinstated in any agency, unit, or entity within two years, or if the employee is placed on voluntary leave status without pay and the leave lasts no longer than two years for education purposes, or one year for any other voluntary leave without pay. The pay attributed to the accumulated, unused sick leave must be computed on the basis of the employee's salary or wage at the time the employee leaves the employ of the state and at the rate of one hour of pay for each hour of unused sick leave. The agency, unit, or entity that last employed the employee shall make the lump sum payment from funds appropriated by the legislative assembly to that agency, unit, or entity for salaries and wages. Any state agency, unit, or entity which employs persons subject to this section shall formulate and adopt rules governing the granting of annual leave and sick leave which will effectuate the purpose of this section and best suit the factors of employment of that employing unit. Each employing unit shall file with the office of management and budget a copy of the rules adopted, including any amendments or additions to the rules.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 461

SENATE BILL NO. 2108

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

STATE EMPLOYEES COMPENSATION COMMISSION VACANCIES

AN ACT to amend and reenact subsection 2 of section 54-06-25 of the North Dakota Century Code, relating to filling state employees compensation commission vacancies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁷ **SECTION 1. AMENDMENT.** Subsection 2 of section 54-06-25 of the North Dakota Century Code is amended and reenacted as follows:

2. The governor or the governor's designee is a member of the commission and serves as chairman. Four members of the legislative assembly appointed by the chairman of the legislative council are members of the commission. Four state employees are members of the commission, three of whom must be members of the classified service of the state and one of whom must be a member of the nonclassified service of the state. The central personnel division shall conduct the election for the employee representatives. All elected commission members serve for a term of four years and may be reelected for additional terms of office. All appointed commission members serve for a term of two years and may be reappointed for additional terms of office. The state employee members' terms begin on October first of the year they are elected. The terms of office of members who are members of the legislative assembly and the governor's designee begin on October first of each odd-numbered year. Before the conclusion of each term, an election must be held to replace the two members whose terms will end in that year. The terms of those commission members elected on July 1, 1996, expire on September 30, 1999. No more than one employee from the same institution of higher education or agency may serve on the commission at the same time. If two or more employees from the same institution of higher education or agency appear on the ballot at the same time, the employee with the highest vote total is elected to the position. If a member of the commission moves to another agency where another current member of the commission is employed, then the moving member must resign. Vacancies among the elected members on the commission must be filled by the eligible person who received the next highest vote total in the previous election. If the eligible person is not available, the chairman of the commission may call a special election to fill the vacancy for the remainder of the unexpired term of the position vacated.

²⁰⁷ Section 54-06-25 was also amended by section 4 of Senate Bill No. 2092, chapter 493.

The special election to fill a vacancy in an unexpired term must be conducted in the same manner as provided in this section. Vacancies among the legislative members of the commission may be filled for the remainder of the unexpired term by appointment by the chairman of the legislative council.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 462

HOUSE BILL NO. 1093

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

STATE EMPLOYEE BONUS PROGRAMS

AN ACT to amend and reenact sections 54-06-30 and 54-06-31 of the North Dakota Century Code, relating to state employee bonus programs for performance and recruitment and retention programs; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-30 of the North Dakota Century Code is amended and reenacted as follows:

54-06-30. (~~Effective through June 30, 2005~~) State employee performance bonus program - Criteria - Limitations. State agencies may provide monetary performance bonuses to their ~~classified state~~ employees under this section.

1. State agencies may pay bonuses under this section if:
 - a. The agency has had a written employee performance evaluation policy in place for more than one year before paying the bonus;
 - b. The written employee performance evaluation policy required in subdivision a must have at least three levels of performance criteria; and
 - c. The agency performance bonus program adopted under this section must be a written policy and must be communicated to each ~~classified~~ employee in the agency. Development of the written policy must include input from employees.
2. ~~Classified state~~ State employees are eligible to receive a bonus under this section only if:
 - a. The employee has held a ~~classified~~ position in state government for at least one year before a bonus is paid;
 - b. The employee's overall annual performance evaluation satisfies the agency's performance bonus program criteria for receiving a bonus; and
 - c. The employee is a full-time or part-time regular nonprobationary employee holding a regularly funded nontemporary position ~~in the classified service~~.
3. ~~A classified~~ An employee may not receive more than one performance bonus per fiscal year and may not receive more than one thousand dollars in bonuses per biennium.

4. Agencies may pay bonuses under this section during a fiscal year to not more than the number of ~~classified~~ employees equal to twenty-five percent of the ~~classified~~ employees employed by the agency on July first at the beginning of each state fiscal year. Each agency must fund the performance bonus program from within its agency budget for salaries and wages.
5. Bonuses paid under this section may not be included in an employee's base salary for purposes of calculating any wage or salary increase.
6. Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.

SECTION 2. AMENDMENT. Section 54-06-31 of the North Dakota Century Code is amended and reenacted as follows:

54-06-31. (~~Effective through June 30, 2003~~) State employee recruitment and retention bonus ~~pilot~~ programs - Criteria - Limitations. State agencies may develop ~~pilot~~ programs to provide bonuses to recruit or retain ~~classified state~~ employees in hard-to-fill occupations.

1. State agencies may pay recruitment and retention bonuses under this section only if:
 - a. The agency has a written policy in place identifying eligible positions or occupations and provisions for providing and receiving bonuses;
 - b. The agency has filed a copy of the written policy with the central personnel division; and
 - c. The agency reports to the central personnel division each bonus provided to an employee under the ~~pilot~~ program.
2. State agencies must fund bonus ~~pilot~~ programs from within its agency salaries and wages budget.
3. The central personnel division shall periodically report to a legislative committee designated by the legislative council on the implementation, progress, and bonuses provided under agency recruitment and retention bonus ~~pilot~~ programs.
4. Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 20, 2003
Filed March 20, 2003

CHAPTER 463

SENATE BILL NO. 2050

(Legislative Council)

(Legislative Management Committee)

GOVERNOR TO RECEIVE BILLS

AN ACT to create and enact a new section to chapter 54-07 of the North Dakota Century Code, relating to the duties of the governor; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-07 of the North Dakota Century Code is created and enacted as follows:

Governor to receive bills. The governor shall accept delivery of bills passed by the legislative assembly and presented to the governor during regular business hours. The governor may coordinate with the presiding officer of the senate or the presiding officer of the house of representatives with respect to the delivery of senate or house bills outside normal business hours or during times the governor anticipates being out of the office for more than three legislative days.

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

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 464

SENATE BILL NO. 2072

(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

SECRETARY OF STATE FEES AND SERVICE OF PROCESS

AN ACT to create and enact a new section to chapter 54-09 of the North Dakota Century Code, relating to fees to be paid to the secretary of state by government officials when performing their duties; and to amend and reenact sections 54-09-04 and 54-09-07 of the North Dakota Century Code, relating to fees charged by and service of process on the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-09-04 of the North Dakota Century Code is amended and reenacted as follows:

54-09-04. Fees. The secretary of state, unless otherwise provided by law, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in the secretary of state's office, one dollar for every four pages or fraction thereof.
2. For affixing the signature of the secretary of state, certificate, or seal, or combination thereof to any document, ten dollars.
3. For filing a certificate of appointment of attorney, five dollars.
4. For searching records and archives of the state, five dollars. For the purposes of this section, a search of records conducted by the secretary of state for which a fee must be collected includes the following:
 - a. A search of a filed document that is active or archived, an archived index, or an index of business name changes to identify specific information to satisfy a request;
 - b. A search of any record for which written verification of the facts of the search is required; and
 - c. For every search of records when the request for the search is contained in a list compiled by the requester.

The secretary of state may provide, at no charge, information from publications or reference materials published or maintained by the secretary of state and verbal confirmation of any element of information maintained in a computer data base.

5. For filing any paper not otherwise provided for, ten dollars.

6. For filing utility property transfers, five dollars, and issuing a certificate of filing, five dollars.
7. For sending a copy of a document by electronic transmission, one dollar for each page.
8. For filing any process, notice, or demand for service, twenty dollars.
9. For preparing any listing or compilation of any information recorded or filed in the office of the secretary of state, thirty-five dollars plus the actual cost for assembling and providing the information on the medium requested.

~~A member of the legislative assembly or a state or county officer may not be charged for any search relative to matters appertaining to duties of office, any fee for a certified copy of any law or resolution passed by the legislative assembly relative to the individual's official duties, or for filing any process, notice, or demand for service.~~ An individual required to file an oath of office with the secretary of state may not be charged for filing the oath of office, nor may a state or county officer be charged for filing any document with the secretary of state when acting in the officer's official capacity. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state. Unless otherwise provided by law, the secretary of state shall retain a handling charge from filing fees tendered when a document submitted to the secretary of state under any law is rejected and not perfected. The handling charge is five dollars or fifty percent of the filing fee, whichever is greater, but may not exceed one hundred dollars. This section does not apply to fees submitted for filing in, or information obtained from, the computerized central notice system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base.

SECTION 2. A new section to chapter 54-09 of the North Dakota Century Code is created and enacted as follows:

Exception from fees. A member of the legislative assembly or a state or county office may not be charged by the secretary of state for any search relative to matters appertaining to duties of office, any fee for a certified copy of any law or resolution passed by the legislative assembly relative to the individual's official duties, or for filing any process, notice, or demand for service relative to the individual's official duties.

SECTION 3. AMENDMENT. Section 54-09-07 of the North Dakota Century Code is amended and reenacted as follows:

54-09-07. Service of process on secretary of state if agent not found - Procedure - Time for answering process. If an agent other than the secretary of state has been appointed for receipt of service, but the affidavit of a sheriff or of an adult who is not a party to a proceeding establishes that diligent inquiry has been made and that personal service cannot be accomplished upon any registered agent, officer, or superintending, managing, or general agent of an entity, then the secretary of state may be deemed the agent of the entity for receiving service of process. Service on the secretary of state must be made by registered mail or personal delivery to the secretary of state and not by electronic communication. The party serving process, notice, or demand must provide a copy of the affidavit of a sheriff or of an adult who is not a party to the proceeding that service cannot be accomplished and must file with the secretary of state ~~an original and two~~ three copies of the process, notice, or demand, together with the fees required by section 54-09-04. Service on the secretary of state constitutes personal service on the entity. The secretary of state shall immediately forward a copy of the sheriff or other adult's affidavit and of the process, notice, or demand by registered mail addressed to the entity to be served at its registered office or last address on file with the secretary of state. Notwithstanding a shorter period of time specified in the process, notice, or demand, the entity has thirty days after the secretary of state receives the documents to respond to the process, notice, or demand.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 465

HOUSE BILL NO. 1100

(Judiciary Committee)

(At the request of the State Auditor)

STATE AUDITOR DUTIES

AN ACT to amend and reenact sections 54-10-21, 54-11-04, and 54-27-08 of the North Dakota Century Code, relating to the duties of the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-21 of the North Dakota Century Code is amended and reenacted as follows:

54-10-21. Duty of state auditor on failures by officers. The state auditor ~~shall~~ may report to the attorney general the refusal or neglect of any state or county officer to obey the state auditor's instructions, and recommendations. After investigation, the attorney general ~~promptly shall~~ may take appropriate action to enforce compliance therewith.

²⁰⁸ **SECTION 2. AMENDMENT.** Section 54-11-04 of the North Dakota Century Code is amended and reenacted as follows:

54-11-04. Records of state treasurer. The state treasurer shall keep the following records:

- 1. A ~~cash book in which must be entered the amount~~ record of all moneys received or paid out, showing from whom received or to whom paid and on what account or fund.
- 2. A ~~ledger in which~~ record that must ~~be kept~~ keep an account with each fund.
- 3. A daily balance ~~book in which~~ record that must ~~be shown~~ show the amount in state depositories and the amount in cash on hand.
- 4. ~~Such other books as the state auditor shall prescribe~~ The records may be created and published via electronic devices and must be in compliance with state audit guidelines.

These records must be disposed of in accordance with the procedures established pursuant to chapter 54-46.

SECTION 3. AMENDMENT. Section 54-27-08 of the North Dakota Century Code is amended and reenacted as follows:

²⁰⁸ Section 54-11-04 was also amended by section 3 of Senate Bill No. 2118, chapter 467.

54-27-08. How moneys paid from state treasury - Warrants - When not necessary. Except as otherwise provided, moneys may be paid from the state treasury only upon the warrant or order prepared by the office of management and budget drawn on the state treasurer. The ~~state auditor~~ director of the office of management and budget shall recommend a form for order and warrant-check of the state government which must conform, so far as consistent with statutory requirements, to approved banking practice to facilitate handling of such instruments by banks and other depositories. When an order and warrant-check is signed by the state auditor, the state treasurer shall accept the order or warrant with the treasurer's signature, making the order and warrant-check negotiable. No warrant upon the treasurer may be delivered or mailed to the payee or the payee's agent or representative until the warrant has been signed by the treasurer and entered on the treasurer's books as a check drawn on a bank depository. A record must be maintained specifying upon what fund or from what apportionment each warrant is to be paid. The state treasurer may redeem outstanding bonds or pay interest on bonds when due without the warrant of the office of management and budget, retaining the bond or interest coupon as a voucher for the payment until the next settlement. With respect to electronic records and electronic signatures, the state treasurer shall utilize the services provided by the information technology department.

Approved March 20, 2003

Filed March 20, 2003

CHAPTER 466

HOUSE BILL NO. 1051

(Legislative Council)

(Legislative Audit and Fiscal Review Committee)

DRAFT AUDIT REPORT CONFIDENTIALITY

AN ACT to amend and reenact section 54-10-26 of the North Dakota Century Code, relating to draft audit reports prepared by the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-26 of the North Dakota Century Code is amended and reenacted as follows:

54-10-26. State auditor's working papers - Confidential. Working papers of the state auditor are not public records and are exempt from section 44-04-18. Working papers include records kept by the auditor of the procedures applied, the tests performed, the information obtained, draft audit reports, and the pertinent conclusions reached in the engagement. Working papers may be, at the discretion of the state auditor and unless otherwise prohibited by law, made available for inspection. A draft audit report released to the governing body or management of the audited entity is confidential until the final audit report is issued or work ceases on the audit. The issued audit report is public information. The working papers of an issued audit report are public. At the discretion of the state auditor, all or a portion of the working papers of an issued audit report may be declared confidential. ~~Such a~~ The declaration of confidentiality must state the reason for the confidentiality and the date, as can best be reasonably determined at the time, when ~~it~~ the working papers will be made public.

Approved April 16, 2003

Filed April 17, 2003

CHAPTER 467

SENATE BILL NO. 2118

(Government and Veterans Affairs Committee)

(At the request of the State Treasurer)

STATE TREASURER DUTIES AND RECORDS

AN ACT to amend and reenact sections 1-02-35, 54-11-01, and 54-11-04 of the North Dakota Century Code, relating to warrants, duties, and records of the state treasurer; and to repeal section 54-11-03 of the North Dakota Century Code, relating to the redemption of warrants by the state treasurer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-02-35 of the North Dakota Century Code is amended and reenacted as follows:

1-02-35. Date of taking effect of code. This code is hereby declared to be an emergency measure and this code shall take effect and be in force immediately upon its passage by the legislative assembly and approval of the governor with the following exceptions: 4-01-14, 6-01-21.4, 6-09-17, 11-10-02, 11-10-06, 12-49-06, 15-21-02, 15-39-16, 15-39-21, 15-39-32, 15-40-07, 15-40-19, 15-40-20, 15-44-02, 15-44-03, 18-03-03, 18-03-04, 18-03-05, 18-03-07, 18-03-08, 18-04-02, 18-04-03, 18-04-05, 18-04-06, 18-05-12, 18-05-13, 19-01-08, 19-05-08, 19-05-09, 19-05-10, 20-13-07, 20-14-08, 24-02-12, 24-02-13, 24-02-37, 25-08-10, 25-08-11, 25-08-13, 25-08-14, 25-08-15, 25-08-16, 25-08-17, 25-08-19, 25-08-20, 25-08-21, 26-22-09, 27-07-02, 27-08-20, 27-18-01, 27-18-02, 27-18-03, 27-18-04, 27-18-05, 29-01-14, 29-07-06, 32-12-03, 32-12-04, 33-01-00.1, 33-01-08, 33-01-23, 33-03-12, 33-12-12, 36-22-09, 37-06-02, 37-06-03, 37-06-06, 37-15-13, 37-15-15, 39-03-08, 40-07-08, 40-14-01, 40-15-01, 40-18-01, 40-18-03, 40-18-05, 40-18-06, 40-18-07, 40-18-08, 40-18-10, 40-18-11, 40-18-13, 40-18-14, 40-18-16, 40-18-17, 40-18-18, 40-18-19, 50-06-14, 54-06-06, 54-06-08, 54-10-01, 54-10-02, 54-10-03, 54-10-04, 54-11-01, 54-11-02, ~~54-11-03~~, 54-12-07, 54-14-01, 54-14-02, 54-15-04, 54-15-05, 54-15-06, 54-15-08, 54-15-09, 54-15-13, 54-16-08, 54-16-09, 54-18-14, 54-23-06, 54-23-41, 54-26-14, 54-27-03, 54-27-04, 54-27-05, 54-27-06, 54-27-07, 54-27-08, 54-27-09, 54-27-11, 54-27-14, 54-27-15, 54-27-15.1, 54-27-15.4, 54-30-16, 55-01-04, 55-01-07, 57-37-24, 57-45-08, 58-05-02, 58-05-07, 61-02-13, and chapter 54-44, except that any portion of those above sections or chapters relating to state purchases and printing, the state printing commission and the state printer are effective upon the final passage and approval of this code. The equivalent sections of the North Dakota Revised Code of 1943 and the 1957 Supplement to the North Dakota Revised Code of 1943 of the above sections are in effect through June 30, 1961.

The following chapters and sections are repealed on July 1, 1961: chapters 10-08, 10-09, 10-10, 10-11, 54-13; sections 6-01-21, 11-10-03, 40-18-02, 54-10-05, 54-10-06, 54-10-07, 54-10-08, 54-10-09, 54-10-11, 54-15-12, 54-15-14, 54-21-15, 54-21-16, 54-27-15.2, and 65-02-10.

SECTION 2. AMENDMENT. Section 54-11-01 of the North Dakota Century Code is amended and reenacted as follows:

54-11-01. Duties of state treasurer. The state treasurer shall:

1. Receive and keep all the moneys belonging to the state not required to be received and kept by some other person.
2. Register the orders or certificates of the office of management and budget delivered to the state treasurer when moneys are paid or to be paid into the treasury.
3. Prepare a receipt for each deposit of money into the treasury. The receipt must show the amount, the source from which the money accrued, and the funds into which it is paid. The receipts must be numbered in order. Duplicates, if requested, must be delivered to the office of management and budget and the person paying money into the treasury.
4. Pay warrants drawn by the office of management and budget and signed by the state auditor out of the funds upon which they are drawn and in the order in which they are presented.
5. Keep an account of all moneys received and disbursed.
6. Keep separate accounts of the different funds.
7. Keep a record of all revenues and expenditures of state agencies and all moneys received and disbursed by the treasurer in accordance with the requirements of the state's central accounting system.
8. Receive in payment of public dues the warrants drawn by the office of management and budget and signed by the state auditor in conformity with law.
9. Redeem warrants drawn by the office of management and budget and signed by the state auditor in conformity with law, if there is money in the treasury appropriated for that purpose.
10. Report to the office of management and budget on the last day of each month the amount disbursed for the redemption of bonds and the payment of warrants during the month. The report must show:
 - a. The date and number of each bond and warrant;
 - b. The fund out of which each was paid; and
 - c. The balance in cash on hand in the treasury to the credit of each fund.
11. At the request of either house of the legislative assembly, or of any committee thereof, give information in writing as to the condition of the treasury, or upon any subject relating to the duties of office.
12. Submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the report must show the exact balance in the treasury to the credit of the state. The report also must show in detail the receipts and disbursements, together with a summary thereof, the balances in the various funds at the beginning and ending of the biennium, and also must show where the funds of the

state are deposited. It must be certified by the state treasurer and approved by the governor.

13. Authenticate with the official state seal ~~of the state treasurer~~ all writings and papers issued from the treasurer's office.
14. ~~Keep a book in which the state treasurer shall enter all warrants paid, giving the name of the owner and the number and amount of each warrant.~~
- ~~45.~~ 15. Keep and disburse all moneys belonging to the state in the manner provided by law.
- ~~46.~~ 15. Keep books of the state treasurer open at all times for the inspection of the governor, the state auditor, the commissioner of financial institutions, the office of management and budget, and any committee appointed to examine them by either house of the legislative assembly.
- ~~47.~~ 16. Unless otherwise specified by law, credit all income earned on the deposit or investment of all state moneys to the state's general fund. This subsection does not apply to:
 - a. Income earned on state moneys that are deposited or invested to the credit of the industrial commission or any agency, utility, industry, enterprise, or business project operated, managed, controlled, or governed by the industrial commission.
 - b. Income earned by the Bank of North Dakota for its own account on state moneys that are deposited in or invested with the Bank.
 - c. Income earned on college and university funds not deposited in the state treasury.
- ~~48.~~ 17. Perform all other duties as are prescribed by law.

²⁰⁹ **SECTION 3. AMENDMENT.** Section 54-11-04 of the North Dakota Century Code is amended and reenacted as follows:

54-11-04. Records of state treasurer. The state treasurer shall keep the following records:

1. A ~~cash book in which must be entered the amount~~ record of all moneys received or paid out, showing from whom received or to whom paid and on what account or fund.
2. A ~~ledger in which~~ record that must be kept keep an account with each fund.
3. A daily balance ~~book in which~~ record that must be shown show the amount in state depositories and the amount in cash on hand.

²⁰⁹ Section 54-11-04 was also amended by section 2 of House Bill No. 1100, chapter 465.

4. ~~Such other books as the state auditor shall prescribe~~ Records must be created and published via electronic devices and must be in compliance with state audit guidelines.

These records must be disposed of in accordance with the procedures established pursuant to chapter 54-46.

SECTION 4. REPEAL. Section 54-11-03 of the North Dakota Century Code is repealed.

Approved April 9, 2003
Filed April 9, 2003

CHAPTER 468**HOUSE BILL NO. 1350**

(Representatives Delmore, Nelson, Weiler)
(Senators Andrist, Bowman, Seymour)

**SPECIAL OPERATIONS TEAM REIMBURSEMENT
FUND**

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to creation of a special operations team reimbursement fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

Special operations team reimbursement fund - Continuing appropriation.

The attorney general may establish a special operations team reimbursement fund of up to two hundred fifty thousand dollars consisting of federal funds and moneys obtained from cities and counties. The funds are appropriated as a standing and continuing appropriation to the attorney general for reimbursement to city and county governments that provide special operations team services to rural areas. The attorney general shall develop guidelines for the reimbursement of expenses to city and county governments providing special operations team services.

Approved April 4, 2003

Filed April 7, 2003

CHAPTER 469

SENATE BILL NO. 2151

(Judiciary Committee)

(At the request of the Attorney General)

CRIME LABORATORY TRANSFER TO ATTORNEY GENERAL

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to transferring the state crime laboratory division including the state toxicologist to the office of the attorney general and to provide for transfer of related administrative rules; to amend and reenact sections 19-01-10 and 19-03.1-37, subsection 2 of section 28-32-01, sections 31-13-01, 31-13-03, 31-13-04, 31-13-05, 31-13-07, 31-13-08, and 31-13-09, and subsection 9 of section 39-20-07 of the North Dakota Century Code, relating to the state crime laboratory, the state toxicologist, and DNA testing; to repeal sections 12-60-21, 12-60-22, and 23-01-09.1 of the North Dakota Century Code, relating to the bureau of criminal investigation and the state toxicologist; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-01-10 of the North Dakota Century Code is amended and reenacted as follows:

19-01-10. Department to make analyses, inspections, and examinations - Report of examination as evidence - Publication of report. The department shall make, or cause to be made, analyses, examinations, and inspections of all products, articles, compositions, or things included under this title whenever such analyses, inspections, or examinations are necessary to determine whether any of such products, articles, compositions, or things violate this title relating to the products, articles, compositions, or things in question, or violate any definition, standard, tolerance, rule, or regulation issued with regard to such products, articles, compositions, or things pursuant to any provision contained in this title. ~~The department may also~~ However, the state crime laboratory shall make or cause to be made, analysis, examination, inspection, or test of any product, article, composition, or thing at the request of any prosecutor, defense counsel, or law enforcement officer in the state of North Dakota when such analysis, examination, inspection, or test is made in connection with an investigation into violations of the criminal law of this state. A copy of any report issued by the department or the state crime laboratory of the examination or analyses of any product, article, composition, or thing, duly authenticated by the ~~chemist~~ person making the analysis or examination, when given under oath, is prima facie evidence in all courts of the matters and facts therein contained. The department may collect samples of any product, article, composition, or thing for the purpose of making analyses, inspections, and investigations in connection with research carried on by it and may publish the reports thereof for the information of the public.

SECTION 2. AMENDMENT. Section 19-03.1-37 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-37. Burden of proof - Liabilities.

1. It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.
2. In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.
3. No liability is imposed by this chapter upon any authorized state, county, or municipal officer engaged in the lawful performance of the officer's duties.
4. In all prosecutions under this chapter, chapter 19-03.2, or chapter 19-03.4 involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the ~~forensic sciences division of the state department of health~~ crime laboratory, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.
5. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena the state toxicologist or the director of the ~~forensic sciences division of the state department of health~~ crime laboratory, or any employee of either, to testify at the preliminary hearing and trial of the issue at no cost to the defendant. If the state toxicologist, the director of the ~~forensic sciences division of the state department of health~~ crime laboratory, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16.
6. In all cases of conspiracy to violate chapter 19-03.1, 19-03.2, or 19-03.4, the state is not required to prove or establish that a conspirator knew the other person to the agreement intended to deliver or possess with intent to deliver a controlled substance, an imitation controlled substance, or drug paraphernalia to a third person.

²¹⁰ **SECTION 3. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees,

²¹⁰ Section 28-32-01 was also amended by section 1 of Senate Bill No. 2092, chapter 493, and section 5 of Senate Bill No. 2288, chapter 174.

or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the central personnel system as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational technology council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, North Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The ~~state department of health~~ attorney general with respect to the state toxicologist.

- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- t. 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.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.3.
- w. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

SECTION 4. AMENDMENT. Section 31-13-01 of the North Dakota Century Code is amended and reenacted as follows:

31-13-01. Definitions. As used in this chapter, unless the context otherwise requires:

- 1. "Department" means the department of corrections and rehabilitation.
- 2. ~~"Division" means the forensic science division of the department of health.~~
- 3. "DNA" means deoxyribonucleic acid.
- 3. "Laboratory" means the state crime laboratory.

²¹¹ **SECTION 5. AMENDMENT.** Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

31-13-03. (Effective through July 31, 2004) Persons to be tested - Costs. The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense and any person who is in the custody of the department after July 31, 1995, as a result of a conviction of one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. The court shall order any person convicted after July 31, 2001, of a felony offense contained in chapter 12.1-16, 12.1-17, or 12.1-18, section 12.1-22-01, or chapter 12.1-27.2 and any

²¹¹ Section 31-13-03 was also amended by section 1 of House Bill No. 1235, chapter 276.

person who is in the custody of the department after July 31, 2001, as a result of a conviction for one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood or other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood or other body fluids as required by this section. Any person convicted after July 31, 1995, who is not sentenced to a term of confinement shall provide a sample of blood or other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The sentencing court shall assess the cost of the procedure against the person being tested. The department shall collect the cost of the procedure from the person being tested and transfer the amount collected to the ~~state department of health~~ attorney general for deposit in the general fund.

(Effective after July 31, 2004) Persons to be tested - Costs. The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense and any person who is in the custody of the department on or after August 1, 1995, as a result of a conviction of one of these offenses to have a sample of blood and other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood and other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood and other body fluids as required by this section. Any person convicted on or after August 1, 1995, who is not sentenced to a term of confinement shall provide a sample of blood and other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The cost of the procedure must be assessed to the person being tested.

SECTION 6. AMENDMENT. Section 31-13-04 of the North Dakota Century Code is amended and reenacted as follows:

31-13-04. DNA testing - Procedure - Immunity - Penalty. The samples of blood and other body fluids for DNA testing must be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist, or other qualified medical personnel approved by the ~~division~~, laboratory and packaged and submitted in containers provided by the ~~division~~ laboratory and in accordance with rules adopted by the ~~division~~ laboratory. No civil or criminal liability may attach to any person authorized to draw blood and other body fluids as provided by this chapter as a result of the act of drawing blood and other body fluids from any person, provided the blood and other body fluids were drawn according to generally accepted medical procedures. Any person who tampers or attempts to tamper with any sample of blood or other body fluids or the collection container without lawful authority is guilty of a class C felony.

²¹² **SECTION 7. AMENDMENT.** Section 31-13-05 of the North Dakota Century Code is amended and reenacted as follows:

31-13-05. DNA data base established - How utilized. The ~~division~~ laboratory shall establish a centralized data base of DNA identification records for convicted sexual offenders. The established system must be compatible with the procedures set forth in the national DNA identification index to ensure data exchange on a national level. The centralized DNA data base must be used to assist federal, state, and local criminal justice and law enforcement agencies within and outside the state in the identification or prosecution of sex-related crimes. The ~~division~~ laboratory shall receive, analyze, and classify samples in compliance with section 31-13-04 and shall record the DNA result in a centralized data base for identification and statistical purposes. The ~~division~~ laboratory may contract with another laboratory for the analysis and classification of the samples. A report of the analysis certified by the ~~division~~ laboratory is admissible in any court as prima facie evidence of the facts stated in the report.

²¹³ **SECTION 8. AMENDMENT.** Section 31-13-07 of the North Dakota Century Code is amended and reenacted as follows:

31-13-07. Removal of DNA profiles from data base. A person whose DNA profile has been included in the data base pursuant to this chapter may petition the district court for expungement on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The ~~division~~ laboratory shall expunge all identifiable information in the data base pertaining to the person and destroy all samples from the person upon receipt of a certified order.

SECTION 9. AMENDMENT. Section 31-13-08 of the North Dakota Century Code is amended and reenacted as follows:

31-13-08. Rules. The ~~state department of health~~ attorney general shall adopt rules pursuant to chapter 28-32 necessary to carry out provisions of the DNA data base identification system. The rules must include procedures for collection, analysis, and classification of samples of blood and other body fluids, data base system usage and integrity, and methods for contracting with another laboratory for the analysis and classification of samples.

SECTION 10. AMENDMENT. Section 31-13-09 of the North Dakota Century Code is amended and reenacted as follows:

31-13-09. DNA profiles to be available to law enforcement - Penalty. Upon payment of a reasonable fee established by the ~~division~~ laboratory, the ~~division~~ laboratory shall provide, upon the request of appropriate law enforcement agencies for use for official purposes, an updated list of names of individuals whose DNA profiles are stored in the data base at the ~~division~~ laboratory. Any person who disseminates, receives, or otherwise uses or attempts to use information in the data

²¹² Section 31-13-05 was also amended by section 2 of House Bill No. 1235, chapter 276.

²¹³ Section 31-13-07 was also amended by section 3 of House Bill No. 1235, chapter 276.

base, knowing that the dissemination, receipt, or use is for a purpose other than as authorized by law, is guilty of a class A misdemeanor.

²¹⁴ **SECTION 11. AMENDMENT.** Subsection 9 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the person who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act. If the state toxicologist, the director of the ~~forensic sciences division of the state department of health~~ crime laboratory, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16.

SECTION 12. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

State crime laboratory division.

1. A state crime laboratory is created as a division of the office of the attorney general. This division consists of a director, the state toxicologist, and such other personnel as may be appointed by the attorney general. The state crime laboratory may establish and charge fees for services rendered. The state crime laboratory must be administratively separated from the bureau of criminal investigation. The director serves at the pleasure of the attorney general and is entitled to receive a salary set by the attorney general within the limits of legislative appropriation.
2. The state crime laboratory shall employ the services of a qualified toxicologist who must be the state toxicologist. The attorney general shall appoint the state toxicologist. The attorney general may appoint such qualified deputy state toxicologists as may be necessary to exercise the authority and responsibility prescribed by law for the state toxicologist. The results of toxicological or chemical testing or analysis, other than provided for in section 39-20-13, made by the state toxicologist at the request of law enforcement agencies for criminal investigation may not be disclosed directly or indirectly by the state toxicologist or any agent or employee of the attorney general to anyone other than the person or agency requesting the test or analysis or to any other person upon whom the toxicological or chemical test was performed or the person's authorized representative, except the state toxicologist may permit the inspection of the reports of any such test or analysis results by any other person having a proper interest therein as determined by the director of the state crime laboratory.

²¹⁴ Section 39-20-07 was also amended by section 7 of House Bill No. 1161, chapter 316.

3. Upon the request of the state forensic examiner, any state's attorney, sheriff, chief of police, coroner, or other local, state, or federal law enforcement official, the attorney general may make available to the requesting official the state crime laboratory's facilities and personnel to assist in the investigation or detection of crimes and the apprehension or prosecution of criminals.

SECTION 13. REPEAL. Sections 12-60-21, 12-60-22, and 23-01-09.1 of the North Dakota Century Code are repealed.

SECTION 14. ADMINISTRATIVE RULES RELATING TO THE STATE CRIME LABORATORY. The legislative council shall transfer administrative rules that the attorney general designates as relating to the state crime laboratory from the title of the North Dakota Administrative Code relating to the state department of health to the title of the North Dakota Administrative Code relating to the attorney general. The legislative council, after consulting the attorney general, may change references in any administrative rules to conform to this Act. These rules continue in effectiveness without promulgation under chapter 28-32 of the North Dakota Century Code. Any certifications, designations, or approvals made by the state toxicologist, including those made on or before the effective date of this Act, continue to be valid after the effective date.

SECTION 15. EFFECTIVE DATE. This Act is effective July 1, 2003.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 4, 2003
Filed April 4, 2003

CHAPTER 470

SENATE BILL NO. 2232

(Senators Espegard, Flakoll, Grindberg)
(Representative Nicholas)

STUDENT LOAN TRUST BONDS

AN ACT to amend and reenact section 54-17-25 of the North Dakota Century Code, relating to bonds of the student loan trust.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17-25 of the North Dakota Century Code is amended and reenacted as follows:

54-17-25. Bonds authorized - Establishment of secondary market program. Whenever the industrial commission decides that it is in the public interest to diminish the investment of state funds in United States government guaranteed or reinsured or North Dakota guaranteed student loans, that it will be difficult to divest the state of appreciable amounts of such loans by piecemeal offering to the investing and saving public, that business conditions are favorable to a state-sponsored program to consolidate state-held student loans, and to enlarge private participation in such loans, or that the public will otherwise benefit, the commission may by plenary resolution duly adopted in accordance with the provisions hereof authorize preparation, sale, and issuance of revenue bonds of North Dakota in such amounts and at such times and in such form, which may include the issuance of bonds the interest income on which is subject to federal income taxes, as the commission shall determine to be for the public good. The industrial commission may issue subordinate or residual bonds in a total principal amount not to exceed twenty-three million dollars plus costs of issuance and any reasonably required reserve whenever the industrial commission determines that it is appropriate or expedient to do so and the bonds may contain such terms and provisions as the commission may determine. The commission may refund and refinance the bonds from time to time as often as it is advantageous and in the public interest to do so. The bonds shall be a ~~paramount~~ charge upon a sufficient designated portion of the resources of the student loan trusts, subject only to necessary administrative expenses of the trusts duly appropriated out of the interest earning resources thereof. The bonds may bear such rate or rates of interest as the commission may provide. The bonds must have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any county, municipality, or political subdivision therein. The bonds must be payable solely out of the separate resources generated respectively from collection of payments on and earnings and proceeds of United States government guaranteed or reinsured or North Dakota guaranteed student loans, and must respectively so recite. They are not indebtedness of the state of North Dakota or of any agency, board, department, or officer or agent thereof. Without limiting the foregoing, the commission may request the organization of a nonprofit corporation meeting the requirements of the Internal Revenue Code of 1954, as amended and redesignated as the Internal Revenue Code of 1986 [Pub. L. 99-54], and as it may be amended from time to time, and enter into one or more agreements with such corporation providing for the establishment of a secondary market program in the state of North Dakota for the acquisition by the corporation of such loans made pursuant to title IV, part B of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353;

20 U.S.C. 1001 et seq.], as amended through December 31, 1996, as the commission shall, in its discretion, deem advisable.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 471

HOUSE BILL NO. 1339

(Representatives Kempenich, Wald)
(Senators Dever, Erbele)

ELECTRICITY TRANSMISSION EXPORT CONSTRAINT RESOLUTION

AN ACT for resolution of electricity transmission export constraints.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Governmental public purpose - Electricity transmission export constraint priority. The legislative assembly finds and declares that it is an essential governmental function and public purpose to assist with the removal of electrical transmission export constraints and to assist with the upgrading and expansion of the region's electrical transmission grid in order to facilitate the development of the state's abundant natural resources for export to the region's consumers. The industrial commission shall give priority to those projects, processes, or activities that assist with the resolution of electricity transmission export constraints in this state.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 472

SENATE BILL NO. 2311

(Senators Wardner, Bowman, O'Connell)
(Representatives Rennerfeldt, Wald, Warner)

OIL AND GAS RESEARCH COUNCIL AND FUND

AN ACT to create and enact a new chapter to title 54 and a new section to chapter 57-51.1 of the North Dakota Century Code, relating to creating and establishing an oil and gas research council and oil and gas research fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions.

1. "Commission" means the North Dakota industrial commission.
2. "Council" means the oil and gas research council.

Oil and gas research council. There is created the oil and gas research council. The purpose of the council is to coordinate a program designed to demonstrate to the general public the importance of the state oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote environmentally sound exploration and production methods and technologies, to develop the state's oil and gas resources, and to support research and educational activities concerning the oil and natural gas exploration and production industry.

Commission to operate council. The commission shall operate, manage, and control the council.

Powers and duties of commission in managing and operating council. The commission is granted all the powers necessary or appropriate to carry out and effectuate the purposes of this Act, including the power to:

1. Make grants or loans, and to provide other forms of financial assistance as necessary or appropriate, to qualified persons for research, development, marketing, and educational projects, and processes or activities directly related to oil and gas exploration and production industry;
2. Enter into contracts or agreements to carry out the purposes of this Act, including authority to contract for the administration of the oil and gas research, development, marketing, and educational program;
3. Keep accurate records of all financial transactions performed under this Act;

4. Cooperate with any private, local, state, or national commission, organization, or agent, or group and to make contracts and agreements for programs benefiting the oil and gas industry;
5. Accept donations, grants, contributions, and gifts from any public or private source and deposit such in the oil and gas research fund; and
6. Make and explore orders, rules, and regulations necessary to effectuate the purposes of this Act.

Oil and gas research council.

1. The oil and gas research council is composed of seven members, four of whom must currently be engaged in and have at least five years of active experience in the oil and natural gas exploration and production industry. The council consists of:
 - a. Four members appointed by the governor from a list provided by the North Dakota oil and gas association. The governor may reject the list and request the association to submit a new list until the appointments are made.
 - b. One member appointed by the governor from a list provided by the North Dakota association of oil and gas producing counties. The governor may reject the list and request the association to submit a new list until the appointment is made.
 - c. The executive director of the North Dakota petroleum council, or the executive director's designee.
 - d. A county commissioner from an oil producing county appointed by the governor.
 - e. The director of the oil and gas division and the state geologist shall serve on the council as advisory nonvoting members.
2. Subject to subsection 7, the terms of office for members of the council are three years but of those first appointed, two serve for one year, two serve for two years, and three serve for three years.
3. The council shall select its chairman from among its members.
4. The council shall have at least one regular meeting each year and such additional meetings as the chairman determines necessary at a time and place to be fixed by the chairman. Special meetings must be called by the chairman on written request of any three members. Four members constitute a quorum.
5. The council shall recommend to the commission the approval of grants, loans, or other financial assistance necessary or appropriate for funding, research, development, marketing, and educational projects or activities and any other matters related to this Act.
6. Each member of the council is entitled to receive reimbursement of expenses in performing official duties in amounts provided by law for other state offices.

7. Members of the council appointed by the governor serve at the pleasure of the governor.

Access to council records.

1. Materials and data submitted to, or made or received by, the council or commission, to the extent that the council determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the council or receiving council services under this Act, are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota, and are subject to section 44-04-18.4.
2. A person or entity must file a request with the council or commission to have material designated as confidential under subsection 1. The request must contain any information required by the council and must include at least the following:
 - a. A general description of the nature of the information sought to be protected.
 - b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
 - c. An explanation of why the information is not readily ascertainable by proper means by other persons.
 - d. A general description of any person or entity that may obtain economic value from disclosure or use of the information, and how the person or entity may obtain this value.
 - e. A description of the efforts used to maintain the secrecy of the information.
3. Any request under subsection 2 is confidential. The council shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the council determines the information is either not relevant or not a trade secret, the council shall notify the requester and the requester may ask for the return of the information and request within ten days of the notice. If no return is sought, the information and request are a public record.
4. The names or identities of independent technical reviewers on any project or program and the names of council members making recommendations are confidential, may not be disclosed by the council, and are not public records subject to section 44-04-18 or section 6 of article XI of the Constitution of North Dakota.

SECTION 2. A new section to chapter 57-51.1 of the North Dakota Century Code is created and enacted as follows:

Oil and gas research fund - Deposits - Continuing appropriation. There is established a special fund in the state treasury to be known as the oil and gas research fund. In the 2003-05 biennium, the first fifty thousand dollars of revenue from the state's share of the oil and gas production tax and oil extraction tax must be deposited into a special fund known as the oil and gas research fund. In the 2003-05 biennium, if actual revenues for the 2001-03 biennium from the state general fund share of the oil and gas production tax and oil extraction tax exceeded seventy-one million sixty-four thousand dollars, the excess up to five hundred thousand dollars must be deposited in a special fund known as the oil and gas research fund, as provided in this section. After the 2003-05 biennium, two percent of the state's share of the oil and gas gross production tax and oil extraction tax revenues that are deposited into the state general fund, up to one million three hundred thousand dollars per biennium, must be deposited into the oil and gas research fund. The state treasurer shall transfer into the oil and gas research fund two percent of the state's share of the oil and gas production tax and the oil extraction tax revenues that have been deposited into the general fund for the previous three months. All money deposited in the oil and gas research fund is appropriated as a continuing appropriation to the council to be used for purposes stated in section 1 of this Act.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 473

HOUSE BILL NO. 1345

(Representatives Carlson, Delmore, Maragos)
(Senators Dever, J. Lee, Wardner)

MODULAR HOME BUILDING CODE COMPLIANCE

AN ACT to create and enact a new subsection to section 54-21.3-03 of the North Dakota Century Code, relating to the state building code; and to amend and reenact section 54-21.3-07 of the North Dakota Century Code, relating to modular residential and commercial structures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-21.3-03 of the North Dakota Century Code is created and enacted as follows:

A modular residential structure or a prebuilt home placed in the state must be constructed in compliance with the state building code. A modular residential structure or a prebuilt home placed in a jurisdiction that has amended the state building code must be constructed in compliance with the state building code and the amendments adopted by that jurisdiction.

SECTION 2. AMENDMENT. Section 54-21.3-07 of the North Dakota Century Code is amended and reenacted as follows:

54-21.3-07. Modular residential and commercial structures - Third-party inspections - Rules. The manufacturer of a modular residential or commercial structure that is built in a factory ~~may~~ shall contract with a third party for the inspection of the structure for compliance with all applicable building, electrical, fire, and plumbing codes and standards during the manufacturing process in the factory. A third party that conducts inspections and certifies compliance with all applicable codes and standards must be approved as a certified third-party inspector by the division of community services. The department of commerce shall adopt rules for the certification of inspectors and for the procedures to be followed in conducting inspections of modular residential and commercial structures. ~~¶~~ When a manufacturer of modular residential or commercial structures contracts with a certified third-party inspector to monitor compliance with all applicable building, electrical, fire, and plumbing codes and standards for a modular residential or commercial structure, no further inspection by state or local building, electrical, fire, or plumbing inspectors may be required for that structure during the manufacturing process in the factory. This section does not apply to a factory manufacturing fewer than six residential or commercial structures per year.

Approved March 17, 2003
Filed March 17, 2003

CHAPTER 474

SENATE BILL NO. 2312

(Senators Kringstad, Dever, Lyson)
(Representatives Dosch, Sitte)

MANUFACTURED HOME INSTALLATION PROGRAM

AN ACT to provide for a manufactured home installation program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Adoption of an installation program. The department of commerce shall adopt rules establishing a manufactured home installation program for all manufactured homes built in accordance with the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et. seq.]. The rules must establish minimum installation standards. If required by federal law, the rules may include standards and requirements for licensing and training of installers, inspections of installations, dispute resolution, and penalties for noncompliance. The standards do not apply to manufactured homes installed before the original effective date of the rules. Unless otherwise required by federal law, the standards regarding foundations do not apply to a manufactured home to be installed in a mobile home park if the mobile home park was in existence before the original effective date of the rules and if the manufactured home is installed pursuant to the manufacturer's instructions. The rules must include provisions for the enforcement of these standards.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 475

SENATE BILL NO. 2064

(Industry, Business and Labor Committee)

(At the request of the Office of Management and Budget)

WIRELESS SERVICE FEE COLLECTION

AN ACT to amend and reenact section 54-23.2-09 of the North Dakota Century Code, relating to state radio communications collection of 911 service fees for wireless access lines; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-23.2-09 of the North Dakota Century Code is amended and reenacted as follows:

54-23.2-09. Mobile data terminal and 911 service fees. State radio communications shall establish and charge fees to provide mobile data terminal service to interested local law enforcement agencies. The fees must be based on actual costs incurred by state radio communications for providing the service.

State radio communications may provide 911 services to a political subdivision with a population of fewer than twenty thousand and shall charge at least twenty cents per telephone access line and wireless access line for 911 services provided to political subdivisions. The fee for 911 wireless services must be charged to and paid by the political subdivision receiving services from state radio communications under this section from and after the date of the agreement entered into by the political subdivision or its designee under section 57-40.6-05, whether the date of that agreement is before or after the effective date of this Act. Each county currently receiving 911 services from state radio communications shall abide by the standards established by law.

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

Approved April 4, 2003

Filed April 4, 2003

CHAPTER 476

HOUSE BILL NO. 1073

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

DOCR LAND SALES AND LEASES

AN ACT to amend and reenact subsection 12 of section 54-23.3-04 of the North Dakota Century Code, relating to authority of the director of the department of corrections and rehabilitation to lease and sell land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 54-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

12. To sell, lease, or exchange land owned by the state under the jurisdiction of the department of corrections and rehabilitation. A lease by the director is not subject to the conditions of this subsection. The director may sell or exchange, with the governor's approval, selected portions of land owned by the state under the jurisdiction of the department of corrections and rehabilitation and ~~to~~ may sell, trade, lease, or grant mining easements to extract and remove any resources found on, in, or under said department of corrections and rehabilitation lands, including clay, coal, oil, gas, gravel, sand, dirt, and sod, under the following conditions and provisions:
 - a. Any such sale, exchange, or transaction must allow for the submission of bids pursuant to a notice published in at least one official county newspaper. The sale, exchange, or transaction is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
 - b. Any such sale, exchange, or transaction may not be made for less than the appraised value, and the state reserves the right to reject any and all bids.
 - c. The commissioner of university and school lands or the commissioner's designee shall provide technical assistance and advice to the director of the department of corrections and rehabilitation in any transaction.
 - d. All legal documents, papers, and instruments required by any transaction must be reviewed and approved as to form and legality by the attorney general.
 - e. Any of these transactions can be entered into on any terms and conditions permitted by law and approved by the governor.

- f. All funds and proceeds realized from any of these transactions must be placed in an interest-bearing fund in the state treasury, designated as the North Dakota state penitentiary land fund to be used for the acquisition of additional land and facilities; to maintain, expand, or develop affiliated facilities; to relocate the Missouri River correctional center and the farming and ranching operations of the North Dakota state penitentiary; or for penitentiary renovation.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 477

SENATE BILL NO. 2274

(Senators Brown, Grindberg)
(Representatives Carlson, Wrangham)

ECONOMIC DEVELOPMENT AND FINANCE DIRECTOR DUTIES

AN ACT to amend and reenact sections 10-30.5-05 and 54-34.3-05 of the North Dakota Century Code, relating to the duties of the director of the department of commerce division of economic development and finance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.5-05 of the North Dakota Century Code is amended and reenacted as follows:

10-30.5-05. Management. The director of the ~~finance office of the~~ department of commerce division of economic development and finance ~~must be~~ shall appoint the chief executive officer of the corporation. The board of directors shall determine minimum qualifications of all other staff positions.

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

SECTION 2. AMENDMENT. Section 54-34.3-05 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Administer other programs of financial assistance assigned to it by law or otherwise.
2. Perform such other duties as assigned to it by the director.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 478

HOUSE BILL NO. 1423

(Representatives Froseth, Haas, Severson)
(Senators Andrist, Grindberg, Klein)

RURAL GROWTH INCENTIVE PROGRAM

AN ACT to amend and reenact section 54-34.3-13 of the North Dakota Century Code, relating to rural growth incentive program grants and loans by the department of commerce; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-34.3-13 of the North Dakota Century Code is amended and reenacted as follows:

54-34.3-13. Rural growth incentive program.

1. The department shall manage and administer the rural growth incentive program. A city with a population of less than two thousand five hundred may apply to the department to be designated as a rural growth incentive city. A rural growth incentive city may be eligible for a loan, grant, or both under this section.
2. The department shall designate an applicant city as a rural growth incentive city eligible for a loan if the city raises funds in the amount of a dollar for dollar match for the amount requested in the loan, prepares an economic development strategic plan, and meets any additional program requirements provided by rule. The source of city funds used for loan matching funds may be any combination of public and private funds.
2. If the department designates a city as a rural growth incentive city:
 - a. Subject eligible for a loan under this section, subject to the availability of funds, the state shall make a loan to the city in an amount not less than twenty-five thousand dollars and not more than seventy-five thousand dollars. The department shall establish the amount of the interest rate for loans provided to a city under this ~~section~~ subsection. The funding source of the state loan is the North Dakota development fund. The city shall distribute the city and state funds to qualifying new or expanded primary sector businesses in the city. A qualifying business in the city includes a business that provides essential services to the city. For purposes of this ~~section~~ subsection, a business that provides essential services does not include a public utility. The governing body of the city determines whether a new or expanded primary sector business qualifies for funding, and the director of the department determines whether a business that provides essential services to the city qualifies for funding. The state shall distribute a loan to a rural growth incentive city once the city establishes the city has chosen a specified qualified business to receive funding.

3. The department shall designate an applicant city as a rural growth incentive city eligible for a grant if the city raises funds in the amount of a dollar-for-dollar match for the amount requested in the grant application and meets any additional program requirements provided by rule. The source of city funds used for grant matching funds may be any combination of public and private funds. If the department designates a city as a rural growth incentive city eligible for a grant under this section, subject to availability of funds, the state shall make a grant to the city in an amount not to exceed ten thousand dollars. The recipient rural growth incentive city shall use the grant money received to conduct a feasibility study for the location of a new business, including an expansion of a business with the primary place of business outside the rural growth incentive city. The business under this subsection is not limited to primary sector businesses. The funding source of the state grant is the North Dakota development fund. Total grants awarded by the department under this subsection may not exceed one hundred thousand dollars per biennium.
4. The city may not use city or state funds raised or provided under this section for costs associated with administering the rural growth incentive city.

 - b. The department shall provide the rural growth incentive city with training to assist the city in expanding primary sector businesses, locating new businesses, and working with state economic development programs.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2005, and after that date is ineffective.

Approved March 31, 2003
Filed March 31, 2003

CHAPTER 479

HOUSE BILL NO. 1230

(Representatives Belter, Carlson)
(Senator Fischer)

GARRISON DIVERSION OVERVIEW COMMITTEE REPEALED

AN ACT to amend and reenact section 54-35-02.7 of the North Dakota Century Code, relating to legislative overview of the Garrison diversion project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.7. Garrison diversion overview committee - Duties. The legislative council shall create a legislative council committee entitled the Garrison diversion overview committee. The committee shall consist of the majority and minority leaders and their assistants from the house and senate, the speaker of the house, the president pro tempore of the senate selected at the end of the immediately preceding legislative session, the chairmen of the house and senate standing committees on natural resources, and the chairmen of the house and senate standing committees on agriculture. If a member of the committee named in this section is unable to serve on the committee, the chairman of the legislative council may appoint another member of the legislative assembly to fill the vacancy. The committee is responsible for legislative overview of the Garrison diversion project and related matters; and for any necessary discussions with adjacent states on water-related topics. Staff services for the committee must be provided by the legislative council staff. The committee shall report to the legislative council in the same manner as do other interim legislative council committees.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 480

SENATE BILL NO. 2418

(Senators Cook, Freborg, Stenehjem)
(Representatives Berg, R. Kelsch, Monson)
(Approved by the Delayed Bills Committee)

NO CHILD LEFT BEHIND INVESTIGATING COMMITTEE

AN ACT to create a select committee regarding implementation of the No Child Left Behind Act of 2001; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. NO CHILD LEFT BEHIND ACT OF 2001 - SELECT COMMITTEE - APPOINTMENT - DUTIES.

1. The legislative council shall appoint a select committee consisting of five members of the senate and six members of the house of representatives for the purpose of investigating the adoption of the No Child Left Behind Act of 2001 [Pub. L. 107-110; 115 Stat. 1425; 20 U.S.C. 6301 et seq.], its rationale, the promulgation of any federal regulations implementing the No Child Left Behind Act of 2001, the direct and indirect impact of the Act and its regulations on the school districts of this state, and the financial impact of the Act and its regulations on the budget of this state and on the taxpayers of this state.
2. The legislative council shall designate the chairman and vice chairman of the committee.
3. The committee shall operate under the rules applicable to other legislative council committees, except the committee has the power to communicate directly with the United States secretary of education, employees of the United States department of education, and any other federal officials, both elected and appointed, regarding implementation of the No Child Left Behind Act of 2001.
4. When an agency files a notice of proposed rulemaking with the office of the legislative council under subsection 1 of section 28-32-10 on any matter governed by the No Child Left Behind Act of 2001, the agency shall provide a copy of the notice to the chairman of the committee. The chairman shall convene the committee within sixty days of receiving the notice, or as soon thereafter as practicable, for the purpose of receiving a presentation by the agency regarding the nature and scope of the proposed rules and for the purpose of receiving presentations by members of the public regarding the nature and scope of the proposed rules.
5. The committee shall report to the fifty-ninth legislative assembly if the committee determines the state is not in compliance with any requirement of the No Child Left Behind Act of 2001.

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

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 481**HOUSE BILL NO. 1155**

(Representative Bellew)

SCHOOL DISTRICT RESIDENCE STUDY

AN ACT to provide for a legislative council study of the criteria by which a student's school district of residence is established.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2003-04 interim, the criteria by which a student's school district of residence is established and whether that criteria correctly assigns both benefits and responsibilities to the appropriate school districts. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 482**HOUSE BILL NO. 1186**

(Representative Wieland)

(Senator Mathern)

COUNTY COURT FACILITY LEASING STUDY

AN ACT to provide for a legislative council study of the state leasing of county court facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State leasing of county court facilities - Legislative council study. During the 2003-04 interim, the legislative council shall consider studying the leasing or renting of county court facilities by the state or other political subdivision, including the possibility of counties retaining a portion of fees collected by the counties in lieu of leasing or renting by the state or other political subdivision. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 483

HOUSE BILL NO. 1386 (Representatives Schmidt, Froelich)

PUBLIC OFFICER BONDING STUDY

AN ACT to provide for a legislative council study of bonds required by law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY OF BONDS REQUIRED BY LAW. During the 2003-04 interim, the legislative council shall consider studying North Dakota Century Code provisions requiring public officers and other individuals and entities to provide bonds, whether the state bonding fund is an appropriate entity to provide those bonds, whether private entities within the state provide bonds for public officials and other individuals and entities required to be bonded, and whether the bonds required by statute are appropriate and necessary. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 484

HOUSE BILL NO. 1497

(Representatives Carlson, Berg, Svedjan)
(Senators Holmberg, Stenehjem)

GOVERNMENT PERFORMANCE AND ACCOUNTABILITY COMMITTEE

AN ACT to provide for a legislative council study of state government performance and accountability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - GOVERNMENT PERFORMANCE AND ACCOUNTABILITY - APPOINTMENT - ACCEPTANCE OF FUNDS - EXPENDITURES. The legislative council shall consider studying, during the 2003-04 interim, state government performance and accountability practices. The legislative council shall appoint a ten-member government performance and accountability committee in the same manner as the council appoints other interim committees. The council shall appoint at least six legislators to the committee. The council may appoint two citizen members to the committee. The council may also include the governor, or the governor's designee, and an additional executive branch representative as members of the committee. The council shall designate the chairman of the committee. The committee shall operate in accordance with the statutes and procedures governing the operation of other legislative council interim committees. The committee may accept and use gifts, grants, or assistance to accomplish its purposes. The study, if conducted, must include a review of other state's performance budgeting practices and strategic planning efforts and how those practices and efforts may apply to North Dakota and improve North Dakota's budgeting process. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 485

HOUSE BILL NO. 1504

(Representatives Berg, Keiser, Svedjan)

(Senators Cook, Stenehjem, Wardner)

(Approved by the Delayed Bills Committee)

BUSINESS CLIMATE STUDY

AN ACT to provide for a legislative council study of the state's business climate; and to provide for an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - NORTH DAKOTA BUSINESS CLIMATE - REPORT. During the 2003-04 interim, the legislative council shall study the state's business climate, including the creation of an index of key objective measurement that address the state's competitiveness with other states; the consideration of methods of creating business partnerships with North Dakota Indian tribes in order to increase primary sector business growth in the state, with a focus on business opportunities that may be available to North Dakota Indian tribes through the United States small business administration 8(a) business development program; and active participation in the activities of the primary sector business congress. In conducting the study, the legislative council shall create a primary sector business congress. The congress must include representatives of primary sector business and may include representatives of local economic developers and the executive branch. The congress shall assist in the business climate study; evaluate the impact of existing state economic development programs on primary sector businesses; identify methods to increase primary sector business job growth in the state; and prioritize for the legislative council the state's primary sector business economic development programs and initiatives. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$25,000, or so much of the sum as may be necessary, to the legislative council for the biennium beginning July 1, 2003, and ending June 30, 2005, for the purpose of conducting the study as provided in section 1 of this Act.

Approved April 16, 2003

Filed April 17, 2003

CHAPTER 486**SENATE BILL NO. 2262**
(Senator Mutch)**MOTOR VEHICLE INSURANCE STUDY**

AN ACT to provide for a legislative council study of motor vehicle and motorist insurance systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - MOTOR VEHICLE NO-FAULT, UNDERINSURED MOTORIST, AND UNINSURED MOTORIST INSURANCE. The legislative council shall study, during the 2003-04 interim, the motor vehicle no-fault, underinsured motorist, and uninsured motorist insurance systems. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved April 14, 2003
Filed April 9, 2003

CHAPTER 487**SENATE BILL NO. 2287**

(Senators Klein, Andrist, Fischer)
(Representatives Froelich, Weisz)

**ACCREDITED BUSINESS ACCOUNTANT LICENSURE
STUDY**

AN ACT to provide for a legislative council study of licensure of accredited business accountants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. ACCREDITED BUSINESS ACCOUNTANT LICENSURE - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2003-04 interim, the feasibility and desirability of providing for the licensure of accredited business accountants. If the study is selected by the legislative council, the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 488

SENATE BILL NO. 2310

(Senators Every, Erbele, Fairfield)

(Representatives Gulleson, Zaiser)

WIND ENERGY DEVELOPMENT STUDY

AN ACT to provide for a legislative council study of wind energy development.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL - WIND ENERGY DEVELOPMENT STUDY. The legislative council shall consider studying, during the 2003-04 interim, issues related to wind energy development in this state, including wind turbine siting requirements, wind energy development contract provisions, the potential economic benefits of wind energy development for farmers and ranchers, the potential adverse impacts of wind energy development on landowners, and the impact of wind energy development on organized labor, especially in the energy industry. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved April 4, 2003

Filed April 4, 2003

CHAPTER 489

SENATE BILL NO. 2379

(Senator Nething)
(Representative Wald)

ASSUMPTION OF RISK STUDY

AN ACT to provide for a legislative council study of the doctrine of assumption of risk.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. ASSUMPTION OF RISK - LEGISLATIVE COUNCIL STUDY.

The legislative council shall consider studying, during the 2003-04 interim, the doctrine of assumption of risk and the impact the reenactment of the doctrine would have on other state laws. The legislative council shall report its findings and recommendations, together with any legislation required to implement the legislation, to the fifty-ninth legislative assembly.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 490

SENATE BILL NO. 2075

(Industry, Business and Labor Committee)

(At the request of the Office of Management and Budget)

SURPLUS PROPERTY SALE PROCEEDS

AN ACT to amend and reenact subsection 5 of section 54-44-04.6 of the North Dakota Century Code, relating to the distribution of proceeds from the sale of surplus property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 54-44-04.6 of the North Dakota Century Code is amended and reenacted as follows:

5. All proceeds received from the transfer or sale of surplus property must be deposited with the state treasurer for deposit in the surplus property operating fund. For each piece of property sold for less than three thousand dollars, all proceeds must be retained in the surplus property operating fund unless the office of management and budget determines the sale proceeds are subject to special requirements for distribution. For each piece of property sold for three thousand dollars or more, the office of management and budget shall transfer to the agency from which the property was received an amount equal to the proceeds of the sale less the administrative expenses of the sale. The agency shall deposit the proceeds into the fund from which the property was originally purchased. At the end of each biennium, the office of management and budget shall transfer all funds in the surplus property operating fund that exceed the amount needed for operating the surplus property function for one year to the general fund.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 491

HOUSE BILL NO. 1441

(Representatives Monson, R. Kelsch, Maragos, Nicholas)
(Senators Nichols, Wardner)

OIL PUT OPTIONS

AN ACT to authorize the state to purchase oil put options; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Oil and gas tax revenue put options. Upon request of the director of the office of management and budget and upon approval by the industrial commission, the state investment board may purchase oil put options for the office of management and budget. The purchase of put options must be designed to offset reduced state general fund oil and gas tax revenues due to oil and gas prices falling below selected levels. Put options may be purchased only at such times that the purchase assures that oil tax revenues plus the revenues from the sale of put options will be in excess of the oil tax revenues estimated for that level of production by the most recently adjourned legislative assembly. The office of management and budget shall report any purchases of put options to the budget section of the legislative council.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, for the biennium beginning July 1, 2003, and ending June 30, 2005, such amounts as may be necessary, but not to exceed the additional general fund revenues that will become available pursuant to the sale of oil put options as provided in this Act, to the office of management and budget to purchase oil put options through the state investment board.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2005, and after that date is ineffective.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 492

HOUSE BILL NO. 1076

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

BUDGET LEGISLATION SUBMISSION DEADLINE

AN ACT to amend and reenact section 54-44.1-07 of the North Dakota Century Code, relating to the date by which appropriation and budget-related legislation must be submitted to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.1-07 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-07. Presentation of budget data - How presented to the legislative assembly. The director of the budget or the director's ~~designated subordinate~~ designee shall present the budget data information in section 54-44.1-06, ~~including the budget and revenue proposals recommended by the governor~~ except the drafts of acts required by subsection 7 of that section, and make available sufficient copies thereof to the legislative assembly at the organizational session. The drafts of acts required by subsection 7 of section 54-44.1-06 must be submitted to the legislative council within seven days after the day of adjournment of the organizational session. The budget data must be completed and made available to the legislative assembly in such form as may be prescribed by the legislative council. The legislative council shall set the time and place at which such budget data is to be presented.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 493

SENATE BILL NO. 2092

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

HUMAN RESOURCE MANAGEMENT SERVICES

AN ACT to amend and reenact subdivision a of subsection 2 of section 28-32-01, section 50-06.1-16, subsection 1 of section 52-02-06, sections 54-06-25, 54-23.3-05, 54-23.3-06, 54-44.3-01, 54-44.3-02, 54-44.3-11, and 54-44.3-30, subsection 3 of section 54-52.6-01, and subsection 5 of section 54-57-01 of the North Dakota Century Code, relating to changing the name of the central personnel division to North Dakota human resource management services and revising references to the central personnel system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁵ **SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the ~~central personnel system~~ classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.

SECTION 2. AMENDMENT. Section 50-06.1-16 of the North Dakota Century Code is amended and reenacted as follows:

50-06.1-16. Committee on employment of people with disabilities - Appointment - Expenses - Director - Duties. There is established a committee on employment of people with disabilities. The committee consists of three members. The governor shall appoint each member for a term of three years, staggered so that the term of one member expires July first of each year. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as original appointments, except that the appointment may be made for only the remainder of the unexpired term. The members are entitled to be paid for mileage and actual expenses incurred in attending meetings and in performance of their official duties in amounts provided by law for other state officers and employees. The committee, with the approval of the governor, shall appoint a full-time director to serve at the pleasure of the governor. For administrative purposes, the director is an unclassified employee of the department and is not included in the ~~central personnel system~~ classified service. The committee shall coordinate activities and serve as a clearinghouse for information relating to the employment of people with disabilities. The committee shall prepare for and perform followup duties in connection with state,

²¹⁵ Section 28-32-01 was also amended by section 3 of Senate Bill No. 2151, chapter 469, and section 5 of Senate Bill No. 2288, chapter 174.

regional, and national conferences, encourage interest, participation, and cooperation with state departments, agencies, and other organizations in developing needed services, facilities, and opportunities, and provide consultant help to local organizations created for the purpose of coordinating activities for the employment of people with disabilities.

SECTION 3. AMENDMENT. Subsection 1 of section 52-02-06 of the North Dakota Century Code is amended and reenacted as follows:

1. In accordance with chapter 54-44.3 and rules adopted thereunder and on the basis of the authority granted under section 52-02-02, the bureau shall select and prescribe the duties and powers of officers, employees, and other persons as may be necessary in the performance of its duties under the chapter; provided, that in cooperation with ~~the central personnel division~~ North Dakota human resource management services the bureau shall take such action as may be necessary to meet the personnel standards adopted by the secretary of labor pursuant to the Social Security Act [42 U.S.C. 301 et seq.] and the Wagner-Peyser Act [48 Stat. 113; 29 U.S.C. 49-49k], both as amended.

²¹⁶ **SECTION 4. AMENDMENT.** Section 54-06-25 of the North Dakota Century Code is amended and reenacted as follows:

54-06-25. State employees compensation commission - Appointment of members.

1. The state employees compensation commission shall make recommendations on appropriate levels of state employee compensation and fringe benefits. The commission may not consider conditions of employment other than salary and fringe benefit issues. The ~~central personnel~~ division shall provide staff services for the commission.
2. The governor or the governor's designee is a member of the commission and serves as chairman. Four members of the legislative assembly appointed by the chairman of the legislative council are members of the commission. Four state employees are members of the commission, three of whom must be members of the classified service of the state and one of whom must be a member of the nonclassified service of the state. The ~~central personnel~~ division shall conduct the election for the employee representatives. All elected commission members serve for a term of four years and may be reelected for additional terms of office. All appointed commission members serve for a term of two years and may be reappointed for additional terms of office. The state employee members' terms begin on October first of the year they are elected. The terms of office of members who are members of the legislative assembly and the governor's designee begin on October first of each odd-numbered year. Before the conclusion of each term, an election must be held to replace the two members whose terms will end in that year. The terms of those commission members

²¹⁶ Section 54-06-25 was also amended by section 1 of Senate Bill No. 2108, chapter 461.

elected on July 1, 1996, expire on September 30, 1999. No more than one employee from the same institution of higher education or agency may serve on the commission at the same time. If two or more employees from the same institution of higher education or agency appear on the ballot at the same time, the employee with the highest vote total is elected to the position. If a member of the commission moves to another agency where another current member of the commission is employed, then the moving member must resign. Vacancies on the commission must be filled by the person who received the next highest vote total in the previous election.

3. The commission shall meet at the call of the chairman as often as may be necessary, but at least once during each year of the biennium. The commission shall consider proper levels of compensation and fringe benefits for state employees and make its recommendations on these issues to the governor in time for consideration in preparation of the executive budget to be submitted to the next legislative assembly. The commission shall also submit its recommendations to the legislative council at the biennial meeting at which the legislative council receives the reports of its interim committees.
4. The members of the legislative assembly who are commission members are entitled to receive compensation from the legislative council for each day in attendance at commission meetings in the same manner as provided for members of the legislative council and reimbursement from the legislative council for travel and other necessary expenses incurred in performing commission duties in the amounts provided for state employees under section 54-06-09. The state employee members of the commission are entitled to receive reimbursement for necessary expenses incurred in attending commission meetings at the rates provided for state employees under section 54-06-09 and may not be assessed any annual leave or loss of salary for attendance at meetings of the commission. The employing agency of state employee members shall pay their expenses.
5. Each member of the classified service may be a candidate for election to the state employees compensation commission. A member of the nonclassified service may be a candidate for election to the commission if the employee occupies a regularly funded and approved position. In order to vote for a candidate in the election to fill a vacancy on the commission, an employee must be a member of the classified service or must occupy a regularly funded and approved position. Student and temporary employees, elected state officials, and appointees of the governor are not eligible to serve on the commission, participate as a candidate for election to the commission, or vote for members of the commission. If after election to the commission, an employee moves from one type of service to another, that employee may continue serving on the commission until the regular expiration of that employee's term.
6. The ~~central personnel~~ division shall ensure that a notice of an opening on the commission and the election is provided to an officer at each agency and institution. The officer at each agency and institution shall post the notice in a conspicuous place. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of the election, and where to obtain the nomination petitions for filing.

7. In order to be placed on the commission ballot, an employee shall contact the ~~central personnel~~ division for a petition form. The petition form must be returned to the ~~central personnel~~ division no more than twenty calendar days after the publishing date of the notice by the ~~central personnel~~ division with at least one hundred signatures of eligible state employees. Petition forms that are not complete, or are returned after the required date, must be declared void.
8. The ballot must be prepared by the ~~central personnel~~ division and distributed to each agency and institution payroll officer. An officer of each agency and institution shall provide mailing labels for all qualified employees to the ~~central personnel~~ division upon the division's request. A ballot for the election must be distributed with each employee's payroll check on the employee's regularly scheduled payday.
9. Employees of the ~~central personnel~~ division shall count the ballots following the final day that the ballots must be returned. Each candidate may have one overseer present at the ballot counting who may examine each ballot as to its sufficiency after the ballot has been counted. A candidate may act as that candidate's overseer. If a candidate wishes to designate a representative to act as that candidate's overseer, the candidate must provide a notarized authorization to the election committee at the counting of ballots. An overseer may act on behalf of more than one candidate; however, the overseer must show required authorization from each candidate represented. The overseer may question the decision of the ballot counters regarding a ballot immediately after the counting of the ballot. If questioned, the comments of the overseer must be heard. The ~~central personnel~~ division or the division's representative shall decide if the complaint is valid and whether the ballot will be accepted. The decision of the ~~central personnel~~ division or the division's representative is final and must be given in writing. Once all ballots have been counted and all questions raised by the overseers have been decided by the ~~central personnel~~ division or the division's representative, the election is closed and results must be declared final. The ~~central personnel~~ division shall notify all candidates of the election results within ten working days of the election.
10. As used in this section, "division" means North Dakota human resource management services.

SECTION 5. AMENDMENT. Section 54-23.3-05 of the North Dakota Century Code is amended and reenacted as follows:

54-23.3-05. Appointment and removal of officers. The director of the department of corrections and rehabilitation with the approval of the governor may appoint a director of the division of juvenile services, a director of the division of adult services, and other division directors and personnel as deemed necessary for the effective and efficient operation of the department. The director of the division of juvenile services, the director of the division of adult services, and other division directors who may be appointed shall meet qualifications as established for the classified positions under the central personnel classification system service. The division directors may be removed by the director of the department, with the approval of the governor, for misconduct, neglect of duty, incompetency, or other cause showing an inability or refusal to properly perform the duties of their office. All other officers and employees of each division must be appointed and removed by the

director of the division, subject to the approval of the director of the department of corrections and rehabilitation. All officers and employees of the department of corrections and rehabilitation are subject to the provisions of the state personnel policies.

SECTION 6. AMENDMENT. Section 54-23.3-06 of the North Dakota Century Code is amended and reenacted as follows:

54-23.3-06. Salaries of division directors and other officers. The director of the department of corrections and rehabilitation shall determine the salary of each division director within the limits of legislative appropriations and within the salary range of the classified position as established by the central personnel division North Dakota human resource management services for the position. All other officers and employees shall receive salaries determined by their division director and approved by the director of the department.

SECTION 7. AMENDMENT. Section 54-44.3-01 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-01. Purpose of chapter. The general purpose of this chapter is to create the division of central personnel North Dakota human resource management services in order to establish a unified system of personnel administration human resource management for the classified service of the state based upon merit principles and scientific methods, governing the position classification, pay administration, and transfer of its employees. All appointments and promotions to positions in the state classified service must be made without regard to sex, race, color, national origin, age, religious affiliations, or political opinions on the basis of merit and fitness.

SECTION 8. AMENDMENT. Section 54-44.3-02 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-02. Definitions. As used in this chapter, unless the context clearly requires otherwise:

1. "Appointing authority" means the authority to appoint to positions in the classified service and is reserved to officials and heads of departments and agencies within the government.
2. "Board" means the state personnel board.
3. "Director" means the director of the central personnel division North Dakota human resource management services.
4. "Division" means the central personnel division North Dakota human resource management services.
5. "Employee" means any person who occupies a position in the classified service.
6. "Officer" means an employee of the state government who is appointed and serves at the pleasure of an official, board, or commission.
7. "Official" means a member of the state government elected by popular vote.

SECTION 9. AMENDMENT. Section 54-44.3-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-11. ~~Central personnel division~~ North Dakota human resource management services - Director - Appointment - Removal. ~~There~~ North Dakota human resource management services is created a ~~central personnel division~~ within the office of management and budget under the supervision and control of a director who is responsible for the performance and exercise of the duties, functions, and powers imposed upon the division.

1. The director must be experienced in the field of ~~personnel administration~~ human resource management and shall hold considerable knowledge of merit principles, goals, and their methods of operation.
2. The director of the office of management and budget shall appoint the director. The position of director is not a classified position and the director shall serve at the pleasure of the director of the office of management and budget.

SECTION 10. AMENDMENT. Section 54-44.3-30 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-30. Agencies subject to merit system. All personnel employed by the department of human services, the regional offices of that department, job service North Dakota, ~~the central personnel division~~ North Dakota human resource management services, the state department of health, and other agencies or political subdivisions as may by federal law or rule be required to be subject to a merit system in order to obtain federal grants-in-aid are covered by the merit system provided in this chapter. Merit system coverage must also be provided to personnel employed as purchasing agents or buyers in the purchasing division of the office of management and budget. Other agencies, departments, or divisions and positions must be placed under a merit system in the manner and to the extent required by law.

SECTION 11. AMENDMENT. Subsection 3 of section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Eligible employee" means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by ~~the central personnel division~~ North Dakota human resource management services.

SECTION 12. AMENDMENT. Subsection 5 of section 54-57-01 of the North Dakota Century Code is amended and reenacted as follows:

5. The director of administrative hearings shall develop categories of positions in the classified service under class titles for the appointment or employment of administrative law judges and support staff in consultation with and approved by the director of ~~the central personnel division~~ North Dakota human resource management services, including the salary to be paid for each position or category of position.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 494

SENATE BILL NO. 2107

(Judiciary Committee)

(At the request of the Office of Management and Budget)

CENTRAL PERSONNEL MEDIATION RECORD CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 54-44.3 of the North Dakota Century Code, relating to confidentiality of central personnel division mediation service records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44.3 of the North Dakota Century Code is created and enacted as follows:

Mediation - Open records exemption - Retaliation prohibition. Records of the division relating to mediation services provided by the division are exempt from section 44-04-18. An employee may not be discharged, disciplined, or penalized concerning the employee's compensation, conditions, location, or other privileges of employment because of the employee's request for or participation in the mediation services provided by the division.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 495

HOUSE BILL NO. 1180

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

STATE PURCHASING AND BIDDING

AN ACT to create and enact four new sections to chapter 54-44.4 of the North Dakota Century Code, relating to procurement of services, competitive sealed bid proposals, small purchases, and protested solicitations and awards; to amend and reenact sections 44-08-05.1, 54-44.4-01, 54-44.4-02, and 54-44.4-04, subsections 1 and 2 of section 54-44.4-05, section 54-44.4-06, and subsections 1, 2, and 4 of section 54-44.4-09 of the North Dakota Century Code, relating to purchasing policy, purchasing by the office of management and budget, solicitation criteria, exempt records, limited competitive and noncompetitive purchases, multistep sealed bids, and vendor registration; to require the director of the office of management and budget to study the state procurement process; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁷ **SECTION 1. AMENDMENT.** Section 44-08-05.1 of the North Dakota Century Code is amended and reenacted as follows:

44-08-05.1. Vouchers - Requirements for approval - Penalty - Action for violations. Any public officer or employee who has the power to approve a voucher for a department, agency, or institution for travel expenses or any other state expenditure of public funds shall determine before approving ~~such~~ the voucher ~~the~~ following:

1. That the expenditure for travel or other expenditures were for lawful and official purposes.
2. If for travel expense, that the travel actually occurred, and that the sums claimed for travel expenses are actually due the individual who is seeking reimbursement, allowance, or payment.
3. If the voucher is for expenditure other than travel expense, that the expenditure is lawful and that the voucher contains no false claims.

For purchases made with the use of a purchasing card authorized under ~~subsection 8 of section 54-44.4-02~~ section 11 of this Act, an employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all agencies, may review and approve vouchers under this section and make payments pursuant thereto. Any public officer or employee who willfully approves a voucher with knowledge it contains false or unlawful claims or

²¹⁷ Section 44-08-05.1 was also amended by section 3 of Senate Bill No. 2078, chapter 388.

that it does not otherwise meet the requirements of this section for approval is guilty of theft and punishable under ~~the provisions of~~ chapter 12.1-23. Any public officer or employee who, without the use of ordinary care and diligence, negligently approves a voucher for a department, agency, or institution containing false or unlawful claims or which does not otherwise meet the requirements of this section for approval is personally liable for any funds improperly expended. The director of the office of management and budget, members of the office of the budget, state auditor, or any other person who has knowledge of an actual or possible violation of this section shall make such information known to the attorney general. The attorney general shall investigate any alleged ~~violations~~ violation and, if a violation appears to exist, shall ~~criminally~~ prosecute under chapter 12.1-23 or bring a civil suit for the recovery of such funds as may actually have been improperly paid against the payee and officer or employee who approved such voucher in violation of ~~any of~~ the above requirements or shall bring both such criminal action and civil suit. The officer or employee who approves any voucher negligently has the right of subrogation against the payee of such voucher in the event public funds have been improperly paid to the payee.

SECTION 2. AMENDMENT. Section 54-44.4-01 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-01. Declaration of policy - Definitions. ~~It is hereby declared to be~~ state policy to provide comprehensive purchasing services based upon sound procurement practices and principles wherein, through full competition with fair and equal opportunity to all qualified persons ~~and firms~~ to sell to the state, each state agency and institution shall obtain its necessary ~~supplies~~ commodities and ~~equipment~~ services at competitive cost, consistent with quality, time, and performance requirements, except as otherwise provided by law. As used in this chapter, unless the context requires otherwise:

1. "Commodities" means all property, including equipment, supplies, materials, printing, insurance, and leases of equipment.
2. "Procurement officer" means an individual duly authorized to enter and administer purchasing contracts and make written determinations with respect thereto and also includes an authorized representative acting within the limits of authority.
3. "Professional services" means those services requiring special knowledge, education, or skills when the qualifications and experience of the individual rendering the services are of primary importance and the individual is required to exercise professional judgment. Professional services providers include appraisers, attorneys, accountants, psychologists, physicians, dentists, planners, analysts, and consultants. The term includes human services under which a person provides direct health or social welfare services to the citizens on behalf of the state. The term does not include services defined in section 54-44.7-01.
4. "Purchasing agency" means a governmental entity in the executive branch of government other than the office of management and budget which is authorized by this chapter, rules adopted under this chapter, written policy of the office of management and budget, or by way of delegation from the office of management and budget to enter purchasing contracts for commodities and services.

5. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. The term does not include professional services.

SECTION 3. AMENDMENT. Section 54-44.4-01 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-01. Declaration of policy - Definitions. ~~It is hereby declared to be~~ state policy to provide comprehensive purchasing services based upon sound procurement practices and principles wherein, through full competition with fair and equal opportunity to all qualified persons ~~and firms~~ to sell to the state, each state agency and institution shall obtain its necessary ~~supplies~~ commodities and ~~equipment~~ services at competitive cost, consistent with quality, time, and performance requirements, except as otherwise provided by law. As used in this chapter, unless the context requires otherwise:

1. "Commodities" means all property, including equipment, supplies, materials, printing, insurance, and leases of equipment.
2. "Procurement officer" means an individual duly authorized to enter and administer purchasing contracts and make written determinations with respect thereto and also includes an authorized representative acting within the limits of authority.
3. "Professional services" means those services requiring special knowledge, education, or skills when the qualifications and experience of the individual rendering the services are of primary importance and the individual is required to exercise professional judgment. Professional services providers include appraisers, attorneys, accountants, psychologists, physicians, dentists, planners, analysts, and consultants. The term includes human services under which a person provides direct health or social welfare services to the citizens on behalf of the state. The term does not include services defined in section 54-44.7-01.
4. "Purchasing agency" means a governmental entity in the executive branch of government other than the office of management and budget which is authorized by this chapter, rules adopted under this chapter, written policy of the office of management and budget, or by way of delegation from the office of management and budget to enter purchasing contracts for commodities and services.
5. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. The term includes professional services.

SECTION 4. AMENDMENT. Section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-02. Office of management and budget purchasing services. The office of management and budget shall purchase or lease or otherwise arrange for the procurement, for all state agencies and institutions in the executive branch of state government, all materials, furniture, fixtures, printing, insurance, services, and

other commodities, ~~except the~~. The following commodities and services, however, are not subject to the procurement requirements of this chapter:

1. Land, buildings, space, or the rental thereof.
2. Telephone and telegraph service and electrical light and power services.
3. Public books, maps, periodicals, and technical pamphlets.
4. Department of transportation materials, equipment, and supplies in accordance with section 24-02-16.
5. Procurements through a contract or other instrument executed by the industrial commission under chapter 54-17.5.
6. 7. Professional services, unless the office of management and budget agrees to procure professional services in response to an agency's written request.
7. 8. Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agent of that equipment when the maintenance or servicing can best be performed by the manufacturer or authorized service agent, or when such a contract would otherwise be advantageous to the state.
8. 9. Emergency purchases the office of management and budget cannot make within the required time and which involve public health or public safety, or when immediate expenditures are necessary for repairs of state property to protect it against further loss or damage, or to prevent or minimize serious disruption in state services. Emergency purchases must be made with the level of competition practicable under the circumstances, and a written determination of the basis for the emergency and for the selection of the particular contractor must be included in the contract file.
9. 10. ~~Such specific items or items~~
10. 11. Commodities and services costing less than a specified amount as determined and indicated by written directive by the director of the office of management and budget. The director may organize and administer, including by contract with a provider, a system of procurement for items agencies are authorized to purchase under this subsection which includes use of a procurement card. If the director establishes and administers a purchasing card system, the director may designate which agencies are required to use it for purchasing of items designated under this subsection costing less than a specified amount designated in writing by the director.
11. Specified commodities and services as determined by written directive by the director of the office of management and budget.
12. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services.

All purchases made by the office of management and budget or a state agency or institution to which authority to purchase has been delegated by the office of management and budget must be made in accordance with this chapter, rules adopted under this chapter, and written policies of the office of management and budget. The office of management and budget shall purchase ~~items~~ commodities or services as requested by agencies and institutions under the jurisdiction of the state board of higher education and the legislative and judicial branches of state government. The agencies and institutions under the jurisdiction of the state board of higher education, with the office of management and budget, shall make such joint purchases of like ~~items~~ commodities or services of high common usage as determined jointly by the agencies and institutions under the jurisdiction of the state board of higher education and the office of management and budget as will result in less cost to the state. The office of management and budget, pursuant to terms and conditions imposed by it, may agree with political subdivisions that have organized a purchasing group pursuant to a joint powers agreement under chapter 54-40.3 to cooperatively purchase certain specific ~~items~~ commodities or services designated by the office of management and budget if the cooperative purchase will result in a benefit to the state and to the political subdivisions participating in the joint powers agreement.

SECTION 5. AMENDMENT. Section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-02. Office of management and budget purchasing services. The office of management and budget shall purchase or lease or otherwise arrange for the procurement, for all state agencies and institutions in the executive branch of state government, all materials, furniture, fixtures, printing, insurance, services, and other commodities; except the. The following commodities and services, however, are not subject to the procurement requirements of this chapter:

1. Land, buildings, space, or the rental thereof.
2. Telephone and telegraph service and electrical light and power services.
3. Public books, maps, periodicals, and technical pamphlets.
4. Department of transportation materials, equipment, and supplies in accordance with section 24-02-16.
5. ~~Professional services, unless the office of management and budget agrees to procure professional services in response to an agency's written request~~ Procurements through a contract or other instrument executed by the industrial commission under chapter 54-17.5.
6. Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agent of that equipment when the maintenance or servicing can best be performed by the manufacturer or authorized service agent, or when such a contract would otherwise be advantageous to the state.
7. Emergency purchases the office of management and budget cannot make within the required time and which involve public health or public safety, or when immediate expenditures are necessary for repairs of state property to protect it against further loss or damage, or to prevent or minimize serious disruption in state services. Emergency purchases

must be made with the level of competition practicable under the circumstances, and a written determination of the basis for the emergency and for the selection of the particular contractor must be included in the contract file.

8. ~~Such specific items or items~~ Commodities and services costing less than a specified amount as determined ~~and indicated~~ by written directive by the director of the office of management and budget. ~~The director may organize and administer, including by contract with a provider, a system of procurement for items agencies are authorized to purchase under this subsection which includes use of a procurement card. If the director establishes and administers a purchasing card system, the director may designate which agencies are required to use it for purchasing of items designated under this subsection costing less than a specified amount designated in writing by the director.~~
9. Specified commodities and services as determined by written directive by the director of the office of management and budget.
10. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services.

All purchases made by the office of management and budget or a state agency or institution to which authority to purchase has been delegated by the office of management and budget must be made in accordance with this chapter, rules adopted under this chapter, and written policies of the office of management and budget. The office of management and budget shall purchase ~~items~~ commodities or services as requested by agencies and institutions under the jurisdiction of the state board of higher education and the legislative and judicial branches of state government. The agencies and institutions under the jurisdiction of the state board of higher education, with the office of management and budget, shall make such joint purchases of like ~~items~~ commodities or services of high common usage as determined jointly by the agencies and institutions under the jurisdiction of the state board of higher education and the office of management and budget as will result in less cost to the state. The office of management and budget, pursuant to terms and conditions imposed by it, may agree with political subdivisions that have organized a purchasing group pursuant to a joint powers agreement under chapter 54-40.3 to cooperatively purchase certain specific ~~items~~ commodities or services designated by the office of management and budget if the cooperative purchase will result in a benefit to the state and to the political subdivisions participating in the joint powers agreement.

SECTION 6. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 7. AMENDMENT. Section 54-44.4-04 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-04. Office of management and budget - Rules. The office of management and budget shall adopt, ~~pursuant to~~ in accordance with the procedures provided by chapter 28-32, rules necessary to administer this chapter. The written directives issued by the director exercising authority provided in ~~subsection 8 of section~~ sections 54-44.4-02 and section 54-44.4-03 need not be adopted ~~as rules under in accordance with chapter 28-32.~~

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 54-44.4-05 of the North Dakota Century Code are amended and reenacted as follows:

1. Except as otherwise provided in sections 44-08-01 and 25-16.2-02, and in this ~~section~~ chapter, purchasing contracts must be awarded through a competitive bidding process to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability, unless it is determined to be advantageous to the state to select a contractor through a competitive proposal process using other or additional criteria. ~~The office of management and budget procurement officer may reject any or all bids or negotiate for a lower price with a successful bidder. Each bid received, with the name of the bidder, must be recorded. The office of management and budget may enter into term contracts for the acquisition of commodities or services and may make multiple awards for term commodity or service contracts when it deems a multiple award to be in the best interests of the state. Until the date and time set for receiving and opening bids and proposals pursuant to a request for bids or proposals, all~~ All bids and proposals received under this chapter pursuant to a competitive sealed bid are exempt records under subsection 5 of section 44-04-17.1 until the date and time the bids are opened.
2. The office of management and budget shall adopt rules specifying the circumstances under which competition may be waived or limited, when negotiation may be used, and specifying the required justifications and procedures for using those methods of purchasing. The circumstances that may permit limited competitive, noncompetitive, or negotiated purchases include:
 - a. The commodity or service is available from only one ~~supplier~~ source.
 - b. The commodity or service is available from another governmental entity's contract.
 - c. The commodity or service is to be purchased for experimentation or trial.
 - d. ~~Competitive bidding has failed to produce a bidder~~ No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.
 - e. Commodities are being purchased for over-the-counter resale.
 - f. Acceptable ~~goods~~ commodities or services are produced or provided by correctional institutions or other government agencies.

- g. The anticipated cost of purchasing specified ~~goods~~ commodities or services is less than an amount determined by the office of management and budget which would justify the expense of a competitive bidding or competitive proposal process.
- h. A used commodity is advantageous to the state and the commodity is available only on short notice.
- i. The commodity is a component or replacement part for which there is no commercially available substitute and which can be obtained only from the manufacturer.
- j. Compatibility with equipment currently owned by the state is essential to the proper functioning of that equipment.
- k. The agency provides documentation indicating that the services or the circumstances are of such a nature that deviation from the procurement procedure is appropriate.

SECTION 9. AMENDMENT. Section 54-44.4-06 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-06. All purchases to be made in accordance with specifications - Multistep sealed bids.

1. For purposes of this chapter, specification means a description of all required physical, design, performance, functional, and other characteristics of ~~an item~~ a commodity or service the purchaser requires and, consequently, what a bidder must offer. ~~All purchases made by the office of management and budget, institutions of higher education, or any state agency or institution to which authority to purchase has been delegated, must be made in accordance with written policies of the office of management and budget and the agencies and institutions under the jurisdiction of the state board of higher education.~~ The office of management and budget and institutions of higher education shall develop similar specifications for purchases of ~~items~~ commodities and services of high common usage. State agencies and institutions shall provide such assistance as may be requested by the office of management and budget and the institutions of higher education in the development of specifications. The office of management and budget and the institutions of higher education shall implement such procedures as are necessary for the inspection, testing, and acceptance of ~~supplies and equipment~~ commodities or services to determine that ~~goods~~ those received are in conformity with contract specifications.
2. When it is determined to be impractical to initially prepare a purchase description to support an award based on price, a solicitation may be issued requesting the submission of unpriced offers to be followed by a competitive bidding or competitive proposal process limited to those bidders or offerors found to be qualified under the criteria set forth in the first solicitation.

SECTION 10. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Competitive sealed proposals - Exempt records.

1. A contract for commodities or services may be entered by competitive sealed proposals when a determination is made that the use of competitive sealed bidding is either not practicable or not advantageous to the state. The request for proposal must state the relative importance of price and other factors and subfactors, if any.
2. Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. All proposals received pursuant to a competitive sealed proposal process are exempt records under subsection 5 of section 44-04-17.1 until an award is made.
3. Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before award for the purpose of obtaining best and final offers. In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing offerors.
4. Unless all proposals are rejected, award must be made to the responsible offeror whose proposal conforms to the solicitation and is determined, in writing, to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file must contain the basis on which the award is made. Written notice of the award of the contract to the successful offeror must be promptly given to all offerors.

SECTION 11. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Small purchases.

1. A procurement not exceeding the amount established by written directive of the director of the office of management and budget under section 54-44.4-02 or by the state board of higher education under subsection 5 of section 15-10-17 may be made in accordance with small purchase procedures.
2. A small purchase need not be made through competitive sealed bidding or competitive sealed proposals. However, small purchases must be made with competition that is practicable under the circumstances.
3. Procurement requirements may not be artificially divided as to constitute a small purchase under this section.
4. The director of the office of management and budget may establish and administer, including by contract with a provider, a system of procurement for commodities agencies are authorized to purchase

under this section. If the director establishes a purchasing card system under this subsection, the director may designate which agencies are required to use the purchasing card system for purchasing commodities under this section.

SECTION 12. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Resolution of protested solicitations and awards.

1. An interested party may protest the award of a contract, the notice of intent to award a contract, or a solicitation for commodities or services by the office of management and budget or purchasing agency under this chapter. The protest must be submitted in writing to the procurement officer responsible for the contract or solicitation within seven calendar days after the protestor knows or should have known of the facts giving rise to the protest.
2. If a contract has been awarded, the procurement officer immediately shall give notice of a protest to the contractor. In the case of pending award, a stay of award may be requested. A stay must be granted unless a written determination is made that the award of the contract without delay is necessary to protect the interests of the state.
3. If the protest is not resolved by mutual agreement, the procurement officer promptly shall send by certified mail to the protestor a written decision containing the basis for the decision and inform the protestor of the protestor's right to appeal.
4. The protestor may file an appeal of the decision rendered by the procurement officer with the director of the office of management and budget or designee. An appeal must be filed in writing within seven calendar days after the protestor receives the decision rendered by the procurement officer of the office of management and budget or the purchasing agency. The appeal must include a copy of the decision being appealed and the basis for the appeal. Within seven calendar days the director of the office of management and budget or the director's designee shall send by certified mail written notice of the decision to the protestor.

SECTION 13. AMENDMENT. Subsections 1, 2, and 4 of section 54-44.4-09 of the North Dakota Century Code are amended and reenacted as follows:

1. The office of management and budget shall establish and maintain current lists of persons that desire to provide commodities or services to the state. Every person or business entity that desires to bid or submit a proposal on contracts for commodities or services awarded under this chapter must be an approved vendor in order to receive a request for bids or proposals. Unless waived by the director of the office of management and budget, or the director's designee, a bid or proposal may not be considered under this section from any vendor that is not approved be placed on the bidders list. The office of management and budget or the purchasing agency shall use the list when issuing invitation for bids or request for proposals over the amount established for small purchases, except as otherwise provided in this section.

2. To become an approved vendor a person ~~or business entity~~ shall file an application with the office of management and budget. The application must contain information requested by the office of management and budget, including business and persons' names, telephone numbers, addresses, federal tax identification numbers, type of business organization, ~~other permits or licenses issued by this state and related numbers, the nature of the business and the products sold, the types of bids or proposals in commodities or services for which the applicant is interested, references in receiving solicitations, and other business information the office of management and budget determines relevant.~~ The application must also contain a statement appointing the secretary of state as the applicant's agent for service of process pursuant to subsection 3. The application must be signed and certified by an owner, partner, or company officer authorized by company bylaws or other organizational document to bind the company. The signature requirement may include the use of an electronic signature as defined in section 9-16-01 when authorized under section 9-16-17. The office of management and budget may require proof of the signing person's authority by certified copy of appropriate company documents.
4. The ~~director of the office of management and budget, or the director's designee, procurement officer~~ may waive the requirements for registration with the secretary of state as provided in this section and authorize receipt of a bid or proposal from a vendor that ~~unqualifiedly refuses to register as provided in this section if the director or the director's designee is not on the list of approved vendors if the procurement officer~~ makes a written determination that:
 - a. A commodity is so unique and possesses such specific characteristics essential to the government program in question that it is available only from one source and not through wholesalers or retailers;
 - b. An emergency as defined in subsection 7 of section 54-44.4-02 exists; or
 - c. The commodity to be purchased is a one-time purchase for which at least two approved vendors are not available and the director of the office of management and budget, or the director's designee, determines consideration of bids or proposals from unregistered vendors is in the best interest of the state it is in the best interest of the state to receive the bid or proposal. The successful bidder or offeror must become approved before the award and the existence of this approval requirement must be stated in the solicitation. If an unapproved vendor is selected for award, the vendor's bid or proposal may be rejected if that vendor fails to become approved within sixty days or within a shorter period as specified in writing by the procurement officer. Before issuing a solicitation, the procurement officer may waive the approval requirement if the procurement officer determines, in consultation with the secretary of state, that registration with the secretary of state and appointment of an agent for service of process in this state are not required. The waiver of the approval requirement must be stated in the solicitation. In the event of a tie bid or proposal, the ~~registered~~ approved vendor must be given preference.

SECTION 14. OFFICE OF MANAGEMENT AND BUDGET - PROCUREMENT STUDY. During the 2003-04 interim, the director of the office of management and budget shall conduct a comprehensive study of the state procurement process, including all relevant laws, rules, and guidelines. The director shall prepare a bill to address inefficiencies, inconsistencies, and outmoded procurement provisions discovered as a result of this study and request introduction of the bill as an agency bill in the fifty-ninth legislative assembly.

SECTION 15. EFFECTIVE DATE. Sections 3, 5, and 6 of this Act become effective on July 1, 2004.

SECTION 16. EXPIRATION DATE. Sections 2 and 4 of this Act are effective through June 30, 2004, and after that date are ineffective.

Approved April 16, 2003

Filed April 16, 2003

CHAPTER 496

HOUSE BILL NO. 1075

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

STATEWIDE FORMS MANAGEMENT PROGRAM

AN ACT to amend and reenact section 54-44.6-01 of the North Dakota Century Code, relating to the statewide forms management program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.6-01 of the North Dakota Century Code is amended and reenacted as follows:

54-44.6-01. Declaration of legislative intent. The legislative assembly finds and declares that there is a need to minimize the governmental paperwork burden for state and local government entities, individuals, businesses, and others; that the costs of collecting, maintaining, using, and disseminating information are constantly escalating due to the increasingly voluminous and complex nature of state statutes and regulations; that there is a need to coordinate, integrate, and to the extent practicable and appropriate, make uniform the information policies and practices in North Dakota; and that the governmental paperwork burden can best be eased by establishing a statewide forms management program within the ~~office of management and budget~~ information technology department.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 497

SENATE BILL NO. 2033

(Legislative Council)
(Employee Benefits Programs Committee)

PEACE AND CORRECTIONAL OFFICER RETIREMENT

AN ACT to create and enact two new subsections to section 54-52-01 and a new section to chapter 54-52 of the North Dakota Century Code, relating to participation by peace officers and correctional officers employed by political subdivisions in the defined benefit retirement plan; and to amend and reenact section 54-52-02.1, subsection 3 of section 54-52-05, and subsection 3 of section 54-52-17 of the North Dakota Century Code, relating to participation by peace officers and correctional officers employed by political subdivisions in the defined benefit retirement plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁸ **SECTION 1.** Two new subsections to section 54-52-01 of the North Dakota Century Code are created and enacted as follows:

"Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.

"Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by a political subdivision.

SECTION 2. AMENDMENT. Section 54-52-02.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.1. Political subdivisions authorized to join public employees retirement system.

1. A political subdivision may, on behalf of its permanent employees, on behalf of its peace officers and correctional officers separately from its other employees, and permanent noncertified employees only in the case of school districts, enter into agreements with the retirement board for the purpose of extending the benefits of the public employees retirement system, as provided in this chapter, to those employees. The agreement may, in accordance with this chapter, contain provisions relating to benefits, contributions, effective date, modification, administration, and other appropriate provisions as the retirement board and the political subdivision agree upon, but the agreement must provide that:

²¹⁸ Section 54-52-01 was also amended by section 15 of Senate Bill No. 2013, chapter 34, and section 2 of Senate Bill No. 2058, chapter 498.

- a. The political subdivision will contribute on behalf of each eligible employee an amount equal to that provided in section 54-52-06 or section 4 of this Act for peace officers and correctional officers participating separately from other political subdivision employees.
 - b. A portion of the moneys paid by the political subdivision may be used to pay administrative expenses of the retirement board.
2. Notwithstanding any other provision of law, a political subdivision having an existing police pension plan may merge that plan into the public employees retirement system under rules adopted by and in a manner determined by the board.
3. Notwithstanding any other provision of this chapter, ~~no~~ a political subdivision of this state not currently participating in the public employees retirement system on June 30, 1977, may thereafter not become a participant in the retirement system until an actuarial study is performed under the direction of the board to calculate the cost of that portion of benefits to be paid by the retirement system to the employees of the political subdivision based on any prior service or on any service after June 30, 1977, and before the date of initial participation in the retirement system, or both; and the political subdivision has adopted a method, approved by the board, to pay the costs determined in this subsection over a period not to exceed twenty-five years from June 30, 1977. No political subdivision may discontinue participation in the fund without first making such payment to the fund as may be necessary for the fund to pay the future benefits of the eligible employees of the political subdivision as determined on the basis of rules adopted by the board required employer contribution. The required employer contribution must be an amount determined sufficient to fund the normal cost and amortize any past service liability over a period not to exceed thirty years as determined by the board. Any fees incurred in performing the actuarial study must be paid for by the political subdivision in a manner determined by the board.

²¹⁹ **SECTION 3. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay the employee contributions required by subsection 2 and sections 54-52-06.1 ~~and~~, 54-52-06.2, and section 4 of this Act. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee

²¹⁹ Section 54-52-05 was also amended by section 7 of Senate Bill No. 2058, chapter 498.

contributions from the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board, in writing, by June fifteenth of each odd-numbered year.

SECTION 4. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution. Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment.

²²⁰ **SECTION 5. AMENDMENT.** Subsection 3 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

3. Retirement dates are defined as follows:

- a. Normal retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by a political subdivision, is:
 - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
 - (2) When the member has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
- b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the

²²⁰ Section 54-52-17 was also amended by section 8 of Senate Bill No. 2058, chapter 498.

age of fifty-five years and has completed at least three consecutive years of employment as a national guard security officer or firefighter immediately preceding retirement.

- c. Normal retirement date for a peace officer or correctional officer employed by a political subdivision is:
 - (1) The first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty-five years and has completed at least three consecutive years of employment as a peace officer or correctional officer immediately preceding retirement; or
 - (2) When the peace officer or correctional officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
- d. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.
- ~~e.~~ e. Early retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by a political subdivision, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment. For a peace officer or correctional officer employed by a political subdivision, early retirement date is the first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.
- ~~e.~~ f. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:
 - (1) Became disabled during the period of eligible employment; and
 - (2) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 498

SENATE BILL NO. 2058

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

PERS ADMINISTRATION

AN ACT to create and enact sections 54-52-02.11 and 54-52-02.12, a new subsection to section 54-52-17.4, two new sections to chapter 54-52, three new subsections to section 54-52-26, section 54-52.2-03.3, and two new sections to chapter 54-52.6 of the North Dakota Century Code, relating to participation, service credit purchases, confidentiality under the public employees retirement system, contributions to a defined contribution plan account, qualified domestic relations order applicability to the deferred compensation program, and compliance with the Internal Revenue Code; to amend and reenact section 28-22-19, subsections 3, 7, 10, and 14 of section 54-52-01, sections 54-52-02 and 54-52-02.5, subsection 3 of section 54-52-05, sections 54-52-17, 54-52-17.2, 54-52-17.4, and 54-52-27, subsection 1 of section 54-52.1-03.3, section 54-52.2-06, and subsection 4 of section 54-52.6-13 of the North Dakota Century Code, relating to exemptions from legal process, definitions, membership, contributions, benefits, service credit, conversion of sick leave, and retiree health benefits under the public employees retirement system and account refunds for members of the defined contribution retirement system; and to repeal section 54-52-17.8 of the North Dakota Century Code, relating to benefit limitations under the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-22-19 of the North Dakota Century Code is amended and reenacted as follows:

28-22-19. Exemptions from legal process - Public pensions, assistance, and awards. The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, ~~and 54-52-17.6, and 54-52.2-03.3,~~ a state agency, a political subdivision of the state, or a firefighters relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.
2. All awards made pursuant to chapter 54-23.4 as compensation for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

²²¹ **SECTION 2. AMENDMENT.** Subsections 3, 7, 10, and 14 of section 54-52-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials ~~who elect to remain members of the retirement system; provided, that judges of the supreme and district courts eligible under section 54-52-02.3 and appointed officials who elect to participate under section 54-52-02.5 are eligible employees and shall participate in the public employees retirement system under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12.~~ Eligible employee does not include nonclassified state employees who elect to become members of the retirement plan established under chapter 54-52.6 but does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board.
7. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.
10. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least ~~five months~~ twenty weeks each year of employment.
14. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan and meeting the normal retirement date.

SECTION 3. AMENDMENT. Section 54-52-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02. Formulation of plan - Exclusion of employees covered by plans in existence. All departments, boards, institutions, commissions, or agencies of the state of North Dakota, the Garrison diversion conservancy district, district health units, the supreme court, and the district courts, hereinafter referred to as agency, shall participate in a retirement system which will provide for the payment of benefits to state and political subdivision employees or to their beneficiaries thereby enabling the employees to care for themselves and their dependents and which by its provisions will improve state and political subdivision employment, reduce excessive personnel turnover, and offer career employment to high-grade men and women. However, a city health department providing health services in a city-county health district formed under chapter 23-35 is not required to participate in the public employees retirement system but may participate in the public employees retirement system under section 54-52-02.1. Employees presently covered by a pension plan or retirement plan to which the state is contributing, except social security, are not

²²¹ Section 54-52-01 was also amended by section 1 of Senate Bill No. 2033, chapter 497, and section 15 of Senate Bill No. 2013, chapter 34.

eligible for duplicate coverage except as provided under sections 39-03.1-14.1 and 54-52-17.2.

SECTION 4. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.5. Newly elected and appointed state officials. After December 31, 1999, a person elected or appointed to an a state office for the first time must, from and after the date that person qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the first time" means a person appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that person's appointment.

SECTION 5. Section 54-52-02.11 of the North Dakota Century Code is created and enacted as follows:

54-52-02.11. Participation requirements for nonstate elected officials. Elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.

SECTION 6. Section 54-52-02.12 of the North Dakota Century Code is created and enacted as follows:

54-52-02.12. Participation requirements for nonstate appointed officials. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.

²²² **SECTION 7. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1 and 54-52-06.2 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 6 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from

²²² Section 54-52-05 was also amended by section 3 of Senate Bill No. 2033, chapter 497.

the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board, in writing, ~~by June fifteenth of each odd-numbered year.~~

²²³ **SECTION 8. AMENDMENT.** Section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

54-52-17. Formulation of plan. Participating members shall receive benefits according to this section and according to rules adopted by the board, not inconsistent with this chapter. No person is entitled to receive a prior service benefit if the person was not continuously employed by a governmental unit in North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date, postponed retirement date, or early retirement date, as defined in this section. Part-time employment will be recognized as full-time employment on a prorated basis as the board may prescribe.
2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. Months not employed are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the participating member has worked for less than thirty-six months at the normal retirement date, the final average salary is the average salary for the total months of employment.
3. Retirement dates are defined as follows:
 - a. Normal retirement date, except for a national guard security officer or firefighter, is:
 - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
 - (2) When the member has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.

²²³ Section 54-52-17 was also amended by section 5 of Senate Bill No. 2033, chapter 497.

- b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least three consecutive years of employment as a national guard security officer or firefighter immediately preceding retirement.
- c. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.
- d. Early retirement date, except for a national guard security officer or firefighter, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment.
- e. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:
 - (1) Became disabled during the period of eligible employment; and
 - (2) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.

- 4. The board shall calculate retirement benefits as follows:
 - a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit

and a prior service benefit, as defined in this chapter, which is determined as follows:

- (1) Service benefit equals two percent of final average salary multiplied by the number of years of service employment.
 - (2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.
- b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:
- (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
 - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
- c. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.
- d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date, which is the earlier of age sixty-five or the age at which current service plus age equals eighty-five. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.
- e. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.
- f. ~~A participating member who is a vested permanent employee is entitled to purchase additional years of service credit to enable the member to qualify for the normal retirement date defined by subdivision a of subsection 3. The years of service purchased~~

~~must be added to the years of service employment under paragraph 4 of subdivision a for calculating the service benefit.~~

5. Upon termination of employment after completing three years of eligible employment, except for supreme and district court judges, who must complete five years of eligible employment, but before normal retirement date, a member who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits payable commencing on the member's normal retirement date equal to one hundred percent of the member's accrued single life benefits.
6. If before retiring a member dies after completing three years of eligible employment, except for supreme and district court judges, who must have completed five years of eligible employment, the board shall pay the member's account balance to the member's designated beneficiary as provided in this subsection. If the member has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the member's account balance to the named beneficiary. If the member has named more than one primary beneficiary, the board shall pay the member's account balance to the named primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If there are no remaining primary beneficiaries, the board shall pay the member's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the member's account balance to the member's estate. If the member has not designated an alternate beneficiary or the surviving spouse is the beneficiary, the surviving spouse of the member may select a form of payment as follows:
 - a. If the member was a supreme or district court judge, the surviving spouse may select one of the following optional forms of payment:
 - (1) A lump sum payment of the member's retirement account as of the date of death.
 - (2) Payments as calculated for the deceased member as if the member was of normal retirement age at the date of death, payable until the spouse dies.
 - b. The surviving spouse of all other members may select one of the following options:
 - (1) A lump sum payment of the member's retirement account as of the date of death.
 - (2) Payments for sixty months as calculated for the deceased member as if the member was of normal retirement age at the date of death.
 - (3) Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.

- (4) If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity, payable until the spouse dies. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1, 1995.
7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. The board shall automatically refund a member's account balance if the member has completed less than three years of eligible employment and was not a supreme or district court judge. If the member was a supreme or district court judge, the board shall automatically refund a member's account balance if the member completed less than five years of eligible employment. A member may waive the refund if the member submits a written statement to the board, within thirty days after termination, requesting that the member's account balance remain in the fund.
8. The surviving spouse of a member receiving retirement benefits must be the member's primary beneficiary unless there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing. If a member receiving retirement benefits or the member's surviving spouse receiving retirement benefits dies before the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference must be paid to the named beneficiary of the recipient or, if there is no named beneficiary, to the recipient's estate.
9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
 - a. Single life.
 - b. An actuarially equivalent joint and survivor option, with fifty percent or one hundred percent options.
 - c. An actuarially equivalent level social security option, which is available only to members who retire prior to attaining the age at which they may begin to receive unreduced social security benefits.
 - d. Life with five-year or ten-year certain options.

Except for supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement

benefits must be in the form of a single life benefit. For supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension with fifty percent of the benefit continuing for the life of the surviving spouse, if any.

10. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code.
11. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b) annuity or Internal Revenue Code section 457 deferred compensation plan for the purchase of permissive service credit, as defined in Internal Revenue Code section 415(n)(3)(A) or as repayment of a cashout from a governmental plan under Internal Revenue Code section 415(k)(3).
12. The board may establish individual retirement accounts and individual retirement annuities as permitted under section 408(q) of the Internal Revenue Code to allow employees to make voluntary employee contributions. The board may adopt rules to implement and administer the accounts and annuities under this section.

SECTION 9. AMENDMENT. Section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-17.2. Multiple plan membership - Eligibility for benefits - Amount of benefits.

1. a. For the purpose of determining eligibility for benefits under this chapter, an employee's years of service ~~employment~~ credit is the total of the years of service ~~employment~~ credit earned in the public employees retirement system and the years of service credit earned in any number of the following:
 - (1) The teachers' fund for retirement.
 - (2) The highway patrolmen's retirement system.
 - (3) The teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF), for service credit earned while employed by North Dakota institutions of higher education.

Service credit may not exceed twelve months of credit per year.

- b. ~~If an employee terminates eligible employment under the system, if that employee has not received a refund of the employee's account balance, and if the employee begins eligible employment in a plan described in paragraph 1, 2, or 3 of subdivision a, that employee may elect to remain an inactive member of the system without refund of the employee's account balance. The election must be made within ninety days after beginning the eligible employment.~~

The board shall terminate the inactive status of an employee under this subdivision if the employee gains eligible employment under this chapter or if the employee terminates eligible employment under a plan described in paragraph 1, 2, or 3 of subdivision a.

- e. An Pursuant to rules adopted by the board, an employee who has service credit in the system and in any number of the plans described in paragraphs 1, and 2, and 3 of subdivision a is entitled to benefits under this chapter calculated by using the certified salaries of the retirement plan of last membership. The employee may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:

- (1) The average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment in the public employees retirement system. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.
- (2) The average of the highest salary received by the member for any thirty-six consecutive months during the last one hundred twenty months of employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

The board shall calculate benefits for an employee under this subsection by using only those years of service employment credit earned under this chapter.

2. a. If an employee, who is a participating member, is also employed in any position where membership in the teachers' fund for retirement is required, then for purposes of current employment the employee is a member of the retirement system in which the employee has the most years of service employment. If the employee has an equal amount of service in both the public employees retirement system and the teachers' fund for retirement, the employee is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the employee the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the employee is required to be a member under this subsection. The employers upon receipt of this certification shall pay over to that retirement system the member assessments and employer contributions at the rates currently existing for that retirement system. If the employee is required to be a member of the teachers' fund for retirement, the board, at the employee's election, shall designate the employee an inactive member of the public employees retirement system until the employee ceases the employment which requires membership in both the public employees retirement system and the teachers' fund for retirement who is eligible to participate in the public employees retirement system is also employed in any position

when membership in an alternate retirement system is required, then, for purposes of current participation, the employee is a member of each applicable retirement system. The employer shall pay over to each retirement system the member assessment and employer contributions at the rates currently existing for that retirement system.

- b. If an employee described in subdivision a was employed prior to August 1, 2003, and has dual membership rights, the employee may elect to begin participation in the alternate plan pursuant to the plan provisions on August 1, 2003, or may continue participation according to the plan provisions in effect on July 31, 2003. An employee's election under this subdivision is ineffective unless delivered to the public employees retirement system administrative offices by five p.m. on October 31, 2003. If an election is not received by the public employees retirement system, the participation and benefit calculation requirements in effect on July 31, 2003, apply to that employee.

3. ~~Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1, 2, or 3 of subdivision a of subsection 1, repurchase that service credit that was canceled.~~

²²⁴ **SECTION 10.** A new subsection to section 54-52-17.4 of the North Dakota Century Code is created and enacted as follows:

In addition to service credit identified in this section, a vested member may purchase up to five years of service credit unrelated to any other eligible service.

²²⁵ **SECTION 11. AMENDMENT.** Section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-17.4. (Contingent effective date and expiration date - See note)
Purchase of additional credit.**

1. A member may elect to purchase credit for years of service and prior service for which the member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
- a. Active employment in the armed forces of the United States, except as provided in subsection 5, for up to four years of credit.

²²⁴ Section 54-52-17.4 was also amended by section 17 of Senate Bill No. 2013, chapter 34, and section 11 of Senate Bill No. 2058, chapter 498.

²²⁵ Section 54-52-17.4 was also amended by section 10 of Senate Bill No. 2058, chapter 498, and section 17 of Senate Bill No. 2013, chapter 34.

- b. ~~Employment as a permanent employee by a governmental unit that does not participate in the public employees retirement system under this chapter~~ employer either within or outside the state of North Dakota.
 - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
 - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
 - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.
 - f. ~~Employment as a permanent employee of a governmental unit not located in North Dakota.~~
 - g. Employment as a permanent employee by the federal government.
2. A participating member may elect to purchase credit for the following absences for which the participating member is not receiving service credit:
- a. Employer-approved leave of absence; or
 - b. Months away from work while participating as a seasonal employee.
3. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:
- a. Except as provided in subsection 5, for up to four years of credit for active employment in the armed forces of the United States.
 - b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.
 - c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges retirement system.
4. The member may purchase credit under this section, or the member's employer may purchase for the member, by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by

the number of months of credit refunded, multiplying that amount times the number of months of credit the member seeks to repurchase, and adding interest at the actuarial rate of return. The member or the member's employer shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.

5. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the ~~member's most recent monthly salary~~ the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased; plus interest at a rate determined by the board. If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 one percent times the ~~member's present monthly salary~~ the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.

(Contingent effective date and expiration date - See note) Purchase of additional credit.

1. A member may elect to purchase credit for years of service and prior service for which the member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
 - a. Active employment in the armed forces of the United States, except as provided in subsection 5, for up to four years of credit.

- b. ~~Employment as a permanent employee by a governmental unit that does not participate in the public employees retirement system under this chapter~~ employer either within or outside the state of North Dakota.
 - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
 - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
 - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.
 - f. ~~Employment as a permanent employee of a governmental unit not located in North Dakota.~~
 - g. Employment as a permanent employee by the federal government.
2. A participating member may elect to purchase credit for the following absences for which the participating member is not receiving service credit:
- a. Employer-approved leave of absence; or
 - b. Months away from work while participating as a seasonal employee.
3. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:
- a. Except as provided in subsection 5, for up to four years of credit for active employment in the armed forces of the United States.
 - b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.
 - c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges retirement system.
4. The member may purchase credit under this section, or the member's employer may purchase for the member, by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by

the number of months of credit refunded, multiplying that amount times the number of months of credit the member seeks to repurchase, and adding interest at the actuarial rate of return. The member or the member's employer shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.

5. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the ~~member's most recent monthly salary~~ the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased; plus interest at a rate determined by the board. If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 one percent times the ~~member's present monthly salary~~ the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.
6. Pursuant to rules adopted by the board, the board may allow a member to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If the member elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 3 of section 54-52-05 apply to the purchase arrangement.

SECTION 12. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Internal Revenue Code compliance. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code as it applies for governmental plans.

SECTION 13. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Employer service purchases. A participating employer may purchase additional service credit on behalf of a member under the following conditions:

1. The member may not be given the option to choose between an employer service purchase and an equivalent amount paid in cash.
2. The member must meet one of the following conditions at the time the purchase is made:
 - a. The member's age plus service credit must be equal to or greater than seventy-five; or
 - b. The member's age must be at least fifty-five and the member must have at least three years of service credit.
3. The board must determine the purchase price on an actuarially equivalent basis.
4. The purchase must be completed before the member's retirement.
5. The employer may purchase a maximum of five years of service credit on behalf of the member.
6. The employer must pay the purchase price for the service credit purchased under this section in a lump sum.

SECTION 14. Three new subsections to section 54-52-26 of the North Dakota Century Code are created and enacted as follows:

Beneficiaries designated by a participating member or a former participating member to receive benefits after the member's death, but only after the member's death. Information relating to beneficiaries may be disclosed to other beneficiaries of the same member.

The general public, but only after the board has been unable to locate the member for a period in excess of two years, and limited to the member's name and the fact that the board has been unable to locate the member.

Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.

SECTION 15. AMENDMENT. Section 54-52-27 of the North Dakota Century Code is amended and reenacted as follows:

54-52-27. ~~Conversion~~ Purchase of sick leave credit. At termination of eligible employment a member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the member's employer, if the member or the member's employer pays an amount equal to the member's final average salary, times the number of months of sick leave converted, times the percent of employer

and employee contributions to the retirement program of the member, plus one percent for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of the member's certified sick leave. All conversion payments must be made within sixty days of termination of employment and before the member receives a retirement annuity unless the member has submitted an approved payment plan to the board.

SECTION 16. AMENDMENT. Subsection 1 of section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The following persons are entitled to receive credit for hospital and medical benefits coverage under subsection 2:
 - a. A member or surviving spouse of the highway patrolmen's retirement system ~~receiving retirement benefits, or the surviving spouse of a member of the highway patrolmen's retirement system who was eligible to receive or was receiving retirement benefits, under section 39-03.1-11~~ is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.
 - b. A member or surviving spouse of the public employees retirement system ~~receiving retirement benefits, or the surviving spouse of a member of the public employees retirement system who was eligible to receive or was receiving retirement benefits, under section 54-52-17~~ is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.
 - c. A member or surviving spouse of the retirement program established by job service North Dakota under section 52-11-01 ~~receiving retirement benefits, or the surviving spouse of a member of that retirement program who was eligible to receive or was receiving retirement benefits, under the plan provisions of that retirement program~~ is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.
 - d. A retired judge or surviving spouse receiving retirement benefits under the retirement program established under chapter 27-17, ~~or the surviving spouse of a retired judge who was eligible to receive or was receiving retirement benefits, under section 27-17-01~~ is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.
 - e. A former participating member of the defined contribution retirement plan receiving retirement benefits, or the surviving spouse of a former participating member of that retirement plan who was eligible to receive or was receiving benefits, under section 54-52.6-13, is eligible as determined by the board pursuant to its rules.

SECTION 17. Section 54-52.2-03.3 of the North Dakota Century Code is created and enacted as follows:

54-52.2-03.3. Benefit payments to alternate payee under qualified domestic relations order.

1. The board or a vendor contracted for by the board shall apportion a participating member's account in the deferred compensation plan under this chapter in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to the board to determine if the domestic relations order is qualified under this section and pursuant to the plan document established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders.
2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the participating member. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under this chapter, or to provide increased benefits. A qualified domestic relations order must specify:

 - a. The name and the last-known mailing address of the participating member and the name and mailing address of each alternate payee covered by the order;
 - b. The amount or percentage of the participating member's benefits to be paid by the plan to each alternate payee;
 - c. That the alternate payee must take a lump sum payment of the benefits allocated to the alternate payee within one hundred twenty days of the later of the board's acceptance of the qualified domestic relations order or the entry of the order by the court; and
 - d. Each plan to which the order applies.

SECTION 18. A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

Additional employer contributions. Additional lump sum contributions by an employer to a participating member's defined contribution retirement plan account may be made if the participating member has twenty-five years of service, has not retired, and has not received a retirement benefit under this chapter. Contributions may be made in an amount actuarially equivalent to the amounts determined pursuant to chapter 54-52 as follows:

1. For the conversion of sick leave pursuant to section 54-52-27;
2. The equivalent of up to five years of service credit unrelated to any other eligible service as provided in subsection 5 of section 13 of this Act.

SECTION 19. A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

Contributions for military service. A participating member, or a member not presently under covered employment, may request credit and contributions for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding such period, times the number of months for which the member is making contributions. If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding such period, times the number of months for which the member made contributions. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 one percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the member's months for which the member made contributions. For credit before July 1, 1966, no contribution is required.

SECTION 20. AMENDMENT. Section 54-52.2-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52.2-06. Deferred compensation program - Benefits - Taxation - Exemption from judicial process - Assignment. The deferred compensation program established by this chapter shall exist and serve in addition to retirement, pension, or benefit systems established by the state, county, city, town, or other political subdivision, and no deferral of income under the deferred compensation program shall effect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program is not subject to taxation until distribution is actually made to the employee. Any unpaid benefits under the deferred compensation program established by this chapter are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, except as provided by section 54-52.2-03.3. Neither the employee, the employee's beneficiary, nor any designee of the employee or the employee's beneficiary has the right to commute, sell, assign, transfer, or otherwise convey the right to receive payments under this chapter.

SECTION 21. AMENDMENT. Subsection 4 of section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

4. If the former participating member's vested account balance is less than five thousand dollars, the board shall automatically refund the member's vested account balance upon termination of employment. The member

may waive the refund if the member submits a written statement to the board, within ~~thirty~~ one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 22. REPEAL. Section 54-52-17.8 of the North Dakota Century Code is repealed.

Approved April 4, 2003

Filed April 4, 2003

CHAPTER 499

SENATE BILL NO. 2060

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

GROUP INSURANCE ADMINISTRATIVE CHANGES

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to an employer-based wellness program; and to amend and reenact subsection 4 of section 54-52.1-01, subsection 3 of section 54-52.1-03, and sections 54-52.1-03.1, 54-52.1-11, and 54-52.3-05 of the North Dakota Century Code, relating to eligibility for and employee payments to the uniform group insurance program and confidentiality of information under the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁶ **SECTION 1. AMENDMENT.** Subsection 4 of section 54-52.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. "Eligible employee" includes members of the legislative assembly, judges of the supreme court, paid members of state or political subdivision boards, commissions, or associations, full-time employees of political subdivisions, elective state officers as defined by subsection 2 of section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota workers' compensation fund. As used in this subsection, "permanent employee" means one whose services are not limited in duration, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least seventeen and one-half hours per week and at least five months each year or for those first employed after August 1, 2003, is employed at least twenty hours per week and at least twenty weeks each year of employment. For purposes of sections 54-52.1-04.1, 54-52.1-04.7, 54-52.1-04.8, and 54-52.1-11, "eligible employee" includes retired and terminated employees who remain eligible to participate in the uniform group insurance program pursuant to applicable state or federal law.

SECTION 2. AMENDMENT. Subsection 3 of section 54-52.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A retiree who has accepted a periodic distribution from the defined contribution retirement plan pursuant to section 54-52.6-13 who the board determines is eligible for participation in the uniform group insurance program or has accepted a retirement allowance from the

²²⁶ Section 54-52.1-01 was also amended by section 35 of Senate Bill No. 2046, chapter 48.

public employees retirement system, the highway patrolmen's retirement system, the teachers' insurance and annuity association of America - college retirement equities fund (~~TIAA-CREF~~) for service credit earned while employed by North Dakota institutions of higher education, the retirement system established by job service North Dakota under section 52-11-01, the judges' retirement system established under chapter 27-17, or the teachers' fund for retirement may elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the member's spouse reaches age sixty-five, upon the receipt of a benefit, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this subsection, the retiree or surviving spouse must meet the minimum requirements established by the board. Subject to sections 54-52.1-03.2 and 54-52.1-03.3, each retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided. A retiree who has met the initial eligibility requirements of this subsection to begin participation in the uniform group insurance program remains eligible as long as the retiree maintains the retiree's participation in the program by paying the required premium pursuant to rules adopted by the board.

²²⁷ **SECTION 3. AMENDMENT.** Section 54-52.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.1. Certain political subdivisions authorized to join uniform group insurance program - Employer contribution. A political subdivision may extend the benefits of the uniform group insurance program under this chapter to its permanent employees, subject to minimum requirements established by the board and a minimum period of participation of sixty months. If the political subdivision withdraws from participation in the uniform group insurance program, before completing sixty months of participation, the political subdivision shall make payment to the board in an amount equal to any expenses incurred in the uniform group insurance program that exceed income received on behalf of the political subdivision's employees as determined under rules adopted by the board. ~~The political subdivision may determine the amount of the employer's monthly contribution toward the total monthly premium amount required of each eligible participating employee.~~

SECTION 4. A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Wellness program. The board shall develop an employer-based wellness program. The program must encourage employers to adopt a board-developed wellness program by either charging extra health insurance premium to nonparticipating employers or reducing premium for participating employers.

SECTION 5. AMENDMENT. Section 54-52.1-11 of the North Dakota Century Code is amended and reenacted as follows:

²²⁷ Section 54-52.1-03.1 was also amended by section 1 of Senate Bill No. 2176, chapter 500.

54-52.1-11. Confidentiality of employee records. Information pertaining to an eligible employee's group medical records for claims, employee premium payments made, salary reduction amounts taken, history of any available insurance coverage purchased, and amounts and types of insurance applied for under the supplemental life insurance coverage under this chapter is confidential and is not a public record. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the eligible employee has given written ~~consent~~ authorization to have the information disclosed.
2. A person legally representing the eligible employee, upon proper proof of representation, and unless the eligible employee specifically withholds ~~consent~~ authorization.
3. A person authorized by a court order.
4. A person or entity to which the board is required to disclose information pursuant to federal or state statutes or regulations.
5. ~~If involved in a dissolution proceeding, the member's spouse or former spouse, that person's legal representative, and the judge presiding over the member's dissolution proceeding.~~ Any person or entity if the purpose of the disclosure is for treatment, payment, or health care operations.

SECTION 6. AMENDMENT. Section 54-52.3-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.3-05. Confidentiality of program records. Any records and information pertaining to a public employee's medical and dependent care reimbursement under the pretax benefits program are confidential and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. The records and information may be disclosed, under rules adopted by the board, only to:

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

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 500

SENATE BILL NO. 2176

(Senators Wardner, Brown, Nelson)

(Representatives Glassheim, Haas, N. Johnson)

UNIFORM GROUP INSURANCE PARTICIPATION

AN ACT to amend and reenact section 54-52.1-03.1 of the North Dakota Century Code, relating to participation by retired political subdivision employees in the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁸ **SECTION 1. AMENDMENT.** Section 54-52.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.1. Certain political subdivisions authorized to join uniform group insurance program - Employer contribution. A political subdivision may extend the benefits of the uniform group insurance program under this chapter to its permanent employees, subject to minimum requirements established by the board and a minimum period of participation of sixty months. If the political subdivision withdraws from participation in the uniform group insurance program, before completing sixty months of participation, the political subdivision shall make payment to the board in an amount equal to any expenses incurred in the uniform group insurance program that exceed income received on behalf of the political subdivision's employees as determined under rules adopted by the board. The political subdivision may determine the amount of the employer's monthly contribution toward the total monthly premium amount required of each eligible participating employee. A retiree who has accepted a retirement allowance from a participating political subdivision's retirement plan may elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the employee's spouse reaches age sixty-five, upon the receipt of a benefit, when the political subdivision joins the uniform group insurance plan if the retiree was a member of the former plan, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this section, the retiree or surviving spouse must meet the minimum requirements established by the board. Each retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided. The board may require documentation that the retiree has accepted a retirement allowance from an eligible retirement plan other than the public employees retirement system.

Approved March 19, 2003
Filed March 19, 2003

²²⁸ Section 54-52.1-03.1 was also amended by section 3 of Senate Bill No. 2060, chapter 499.

CHAPTER 501

SENATE BILL NO. 2077

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

STATE EMPLOYEE FAMILY LEAVE

AN ACT to amend and reenact subsection 2 of section 54-52.4-01 and sections 54-52.4-02, 54-52.4-04, and 54-52.4-05 of the North Dakota Century Code, relating to state employee family leave entitlements, notices to employers, and certifications for leave.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 54-52.4-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Employee" means an individual employed in this state by an employer, ~~whose employment is not limited in duration, who is employed for an average of at least twenty hours per week, and who has been employed by the same employer for at least one year~~ has been employed by the employer for at least twelve months, and who has worked at least one thousand two hundred fifty hours for the employer over the previous twelve months.

SECTION 2. AMENDMENT. Section 54-52.4-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52.4-02. Family leave.

1. An employer shall grant an employee's request for a family leave of absence for any of the following reasons:
 - a. To care for the employee's child by birth, if the leave ~~begins~~ concludes within ~~sixteen weeks~~ twelve months of the child's birth.
 - b. To care for a child placed with the employee, by a child-placing agency licensed under chapter 50-12, for adoption or as a precondition to adoption under section 14-15-12, but not both, or for foster care, if the leave ~~begins~~ concludes within ~~sixteen weeks~~ twelve months of the child's placement.
 - c. To care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition.
 - d. Because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's job.
2. For any combination of reasons specified in subsection 1, an employee may take family leave ~~to be determined by the employer on a pro rata basis according to a formula based on the average number of hours per week that the employee is employed, whereby~~ in any twelve-month period ~~an employee who is employed for an average of twenty hours~~

~~per week during the preceding twelve months may take not more than two months of family leave and an employee who is employed for an average of forty or more hours per week during the preceding twelve months may take for not more than four months of family leave twelve workweeks. The twelve weeks of family leave may be taken intermittently for leave under subdivisions a or b of subsection 1 if approved by the employer. The twelve weeks of family leave may be taken intermittently for leave under subdivisions c or d of subsection 1 if the leave is medically necessary. If an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled must be determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule.~~

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

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

54-52.4-04. Notice to employer.

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

SECTION 4. AMENDMENT. Section 54-52.4-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.4-05. Certification for leave to care for child, spouse, ~~or~~ parent, or employee's serious health condition.

1. If an employee requests family leave for ~~a reason~~ the reasons described in subdivision c or d of subsection 1 of section 54-52.4-02 or leave under section 54-52.4-03, the employer may require the employee to provide certification, as described in subsection 2, from the provider of health care to the child, spouse, ~~or~~ parent, or employee.
2. An employer may not require certification of more than:
 - a. That the child, spouse, ~~or~~ parent, or employee has a serious health condition.
 - b. The date the serious health condition commenced and its probable duration.
 - c. Within the knowledge of the health care provider, the medical facts regarding the serious health condition.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 502

HOUSE BILL NO. 1087

(Transportation Committee)

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

TRANSPORTATION INSTITUTE PURPOSE AND ADVISORY COUNCIL

AN ACT to amend and reenact sections 54-53-02 and 54-53-03 of the North Dakota Century Code, relating to composition of the advisory transportation council and purpose of the upper great plains transportation institute.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-53-02 of the North Dakota Century Code is amended and reenacted as follows:

54-53-02. Advisory transportation council - Composition. There is established a transportation council that shall serve in an advisory capacity to the upper great plains transportation institute. The director of the institute shall serve as the executive secretary of the council. The council shall elect its own chairman. The council membership consists of ~~a traffic counsel selected by the members of the council; a representative of the railways serving the state who is selected by the council; and~~ one representative from and appointed by the following organizations:

1. The greater North Dakota association.
2. The North Dakota public service commission.
3. The North Dakota farm bureau.
4. The North Dakota farmers union.
5. The North Dakota ~~stockmen's~~ grain growers association.
6. The North Dakota state wheat commission.
7. The North Dakota department of commerce ~~division of economic development and finance.~~
8. The North Dakota grain dealers association.
9. The North Dakota motor carriers association.
10. The North Dakota aeronautics commission.
11. The North Dakota department of transportation.
12. The North Dakota agriculture commissioner.
13. The North Dakota association of general contractors.

14. The North Dakota railway industry, appointed by the council.
15. The North Dakota primary sector of manufacturing, appointed by the council.

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

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

SECTION 2. AMENDMENT. Section 54-53-03 of the North Dakota Century Code is amended and reenacted as follows:

54-53-03. Purpose - Powers and duties. The purpose of the institute must be to conduct and supervise research in the field of transportation and logistics in order to facilitate acquisition of a wider knowledge and understanding of marketing factors associated with the geographical location of the state of North Dakota and the upper great plains in the field of transportation and their influence on the socioeconomic systems of the state, region, and country. Research areas must include the study of commodity and other freight movements into and out of the state in order to better know and understand the various factors affecting the marketing of area products and services. The institute shall make public its findings and conclusions in regard thereto together with any suggested solutions. In the administration of its duties under this chapter, the institute shall consult and coordinate with various governmental and nongovernmental agencies, shipper and producer groups, and carriers, in this state and in other states, interested in the field of transportation.

Approved April 7, 2003

Filed April 7, 2003

CHAPTER 503

HOUSE BILL NO. 1043 (Legislative Council) (Information Technology Committee)

INFORMATION TECHNOLOGY POWERS AND DUTIES

AN ACT to create and enact two new subsections to section 54-59-05 of the North Dakota Century Code, relating to powers and duties of the information technology department; and to amend and reenact sections 54-35-15.1 and 54-59-02, subsection 4 of section 54-59-05, and sections 54-59-07, 54-59-11, and 54-59-14 of the North Dakota Century Code, relating to the information technology committee, information technology department responsibility, forms management, the state information technology advisory committee, the powers and duties of the information technology department, information technology plans, and the information technology operating account.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-15.1 of the North Dakota Century Code is amended and reenacted as follows:

54-35-15.1. Information technology committee - Appointment. The legislative council, during each biennium, shall appoint an information technology committee in the same manner as the council appoints other interim committees. The council shall appoint ~~four~~ six members of the house of representatives and ~~three~~ five members of the senate to the committee. The chief information officer of the state is an ex officio, nonvoting member of the committee. The council shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative council interim committees.

SECTION 2. AMENDMENT. Section 54-59-02 of the North Dakota Century Code is amended and reenacted as follows:

54-59-02. Information technology department - Responsibility. The information technology department is established with the responsibility for all wide area network services planning, selection, and implementation for all state agencies, including institutions under the control of the board of higher education, counties, cities, and school districts in this state. With respect to a county, city, or school district, wide area network services are those services necessary to transmit voice, data, or video outside the county, city, or school district. In exercising its powers and duties, the department is responsible for computer support services, host software development, statewide communications services, standards for providing information to other state agencies and the public through the internet, technology planning, process redesign, and quality assurance. The department may not exercise its powers and duties in a manner that competes or otherwise interferes with the provision of telecommunications service to a private, charitable, or nonprofit entity by a privately or cooperatively owned telecommunications company.

²²⁹ **SECTION 3. AMENDMENT.** Subsection 4 of section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

4. May purchase, finance the purchase, or lease equipment ~~or~~, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. An agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of three years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the budget section of the legislative council before executing a financing agreement. If the budget section does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. The department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium ~~for equipment~~. Each executive branch agency or institution, except the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.

²³⁰ **SECTION 4.** Two new subsections to section 54-59-05 of the North Dakota Century Code are created and enacted as follows:

May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003. The department shall file with the state auditor before September 1, 2003, a description of the wide area network service the department provided to each private, charitable, and nonprofit entity receiving services from the department on January 1, 2003.

Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.

²²⁹ Section 54-59-05 was also amended by section 24 of House Bill No. 1019, chapter 18, and section 4 of House Bill No. 1043, chapter 503.

²³⁰ Section 54-59-05 was also amended by section 24 of House Bill No. 1019, chapter 18, and section 3 of House Bill No. 1043, chapter 503.

SECTION 5. AMENDMENT. Section 54-59-07 of the North Dakota Century Code is amended and reenacted as follows:

54-59-07. State information technology advisory committee. The state information technology advisory committee consists of the chief information officer ~~or the officer's designee, who is a nonvoting member; the director of the department of commerce division of economic development and finance or the director's designee; the commissioner of higher education or the commissioner's designee; the chairman of the information technology council of North Dakota or a designee; the director of the North Dakota workforce development council or a designee; the chairman of the educational technology council or a designee; and eight the attorney general or the attorney general's designee; the secretary of state or the secretary of state's designee; the tax commissioner or the commissioner's designee; the chief justice of the supreme court or the chief justice's designee; two members of the legislative assembly appointed by the legislative council; a minimum of eight members representing state agencies, appointed by the governor; and two members with technology management expertise representing private industry, appointed by the governor.~~ The appointees of the governor serve at the pleasure of the governor. The governor shall designate the chairman of the committee. Additional members may be asked to participate at the request of the chairman. The department shall provide staff services to the committee. Except for the commissioner of higher education and the representatives of state agencies who receive compensation for their duties as state officers or employees, members The members of the committee are representing private industry are entitled to be compensated for time spent in attendance at meetings of the committee and for other travel as approved by the chairman of the committee at the rate of sixty-two dollars and fifty cents per day and are entitled to reimbursement for ~~their~~ actual and necessary expenses incurred in the same manner as other state officials. The compensation and expenses are to be paid from appropriations for the department. The committee shall advise the department regarding statewide information technology planning, ~~including providing electronic government services for citizens and businesses, developing technology infrastructure to support economic development and workforce training, and developing other~~ budgeting, services of the information technology department, and statewide information technology initiatives and policy.

SECTION 6. AMENDMENT. Section 54-59-11 of the North Dakota Century Code is amended and reenacted as follows:

54-59-11. Information technology plans. Each executive branch state agency or institution, including the institutions under the control of the board of higher education, shall prepare an information technology plan, subject to approval by the department. The plan must be submitted to the department by ~~March~~ July fifteenth of each even-numbered year. The plan must be prepared based on guidelines developed by the department; must provide the information technology goals, objectives, and activities of the entity for the current biennium and the next two bienniums; and must include information regarding the information technology assets owned, leased, or employed by the entity. Each entity required to file a plan shall provide interim updates to its plan if major information technology changes occur which affect its plan. The department shall review each entity's plan for compliance with statewide information technology policies and standards and may require an entity to change its plan to comply with statewide policies or standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches shall file their information technology plans with the department by ~~March~~ July fifteenth of each even-numbered year. Each state entity shall prepare its budget request for the next biennium based on its information technology plan. The agency's budget request and the governor's budget recommendation must include

supporting information describing in detail how the information technology plan relates to the budget request and recommendation. Any budget adjustment by the budget office must include the corresponding change to the plan. Based on the plans, the department shall prepare a statewide information technology plan and distribute copies of that plan to members of the legislative assembly as requested by the legislative council or its designee. The statewide information technology plan must be developed with emphasis on long-term strategic goals and objectives.

SECTION 7. AMENDMENT. Section 54-59-14 of the North Dakota Century Code is amended and reenacted as follows:

54-59-14. Information technology operating account. The department shall establish a state information technology operating account in the state treasury to be used, in accordance with legislative appropriation, for procuring and maintaining information technology; and network services; ~~and central microfilm unit equipment and supplies~~, and for providing information technology, network services, and central microfilm unit services to state entities and network services to users of the state network. Unless exempted by law, each agency or institution provided with information technology or network services shall pay to the department the charges as determined by the department. The department shall deposit the amounts received in the information technology operating account or the information technology development account, as appropriate.

Approved April 16, 2003

Filed April 17, 2003

CHAPTER 504

HOUSE BILL NO. 1444 (Representatives Kroeber, Delmore)

EDUCATIONAL TECHNOLOGY COUNCIL MEMBERSHIP

AN ACT to amend and reenact subsection 2 of section 54-59-17 of the North Dakota Century Code, relating to the membership of the educational technology council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³¹ **SECTION 1. AMENDMENT.** Subsection 2 of section 54-59-17 of the North Dakota Century Code is amended and reenacted as follows:

2. The educational technology council consists of:
 - a. The chief information officer.
 - b. The superintendent of public instruction or the superintendent's designee.
 - c. The commissioner of higher education or the commissioner's designee.
 - d. A representative appointed by the state board for vocational and technical education.
 - e. A representative appointed by the governor from a list of three nominees submitted by the North Dakota association of technology leaders.
 - f. A representative appointed by the governor from a list of three nominees submitted by the North Dakota council of educational leaders.
 - g. A representative appointed by the governor from a list of three nominees submitted by the North Dakota school boards association.
 - h. A representative appointed by the governor from a list of three nominees submitted by the North Dakota association of special education directors.
 - i. ~~Two representatives of school districts, one of which~~ A school district representative who is appointed by the governor and who

²³¹ Section 54-59-17 was also amended by section 96 of House Bill No. 1183, chapter 138.

represents a school district that has an enrollment in kindergarten through grade twelve of fewer than four hundred; appointed by the governor.

- j. A school district representative who is appointed by the governor, who is licensed to teach by the educational standards and practices board, and who is employed by a public school district in this state as a classroom teacher.
- k. The director of technology for the department of public instruction.
- ~~k.~~ l. A representative appointed by the governor from a list of three nominees submitted by the state association of non public schools.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 505

HOUSE BILL NO. 1252

(Representatives Delmore, DeKrey, Kretschmar, Meier)
(Senators Lyson, Traynor)

ITD EMPLOYEE SECURITY CHECKS

AN ACT to create and enact a new section to chapter 54-59 of the North Dakota Century Code, relating to security background checks of certain employees of the information technology department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Employees of the department - Security background information. The chief information officer shall require as a condition of employment with the department that individuals who have unescorted physical access to the facilities or other security sensitive areas of the department designated by the chief information officer be fingerprinted. The chief information officer shall ensure that the fingerprints are submitted to the bureau of criminal investigation and the federal bureau of investigation for verification of the identity of the individuals and to obtain records of criminal arrests and convictions.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 506

SENATE BILL NO. 2041 (Legislative Council) (Information Technology Committee)

CRIMINAL JUSTICE INFORMATION SHARING BOARD

AN ACT to provide for a criminal justice information sharing board; and to amend and reenact sections 12-60-16.2 and 12-60-16.9 of the North Dakota Century Code, relating to the collection of criminal information and fees for criminal history record checks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Criminal justice information sharing board - Membership - Duties and powers. The criminal justice information sharing board consists of the chief justice of the supreme court or the chief justice's designee, the attorney general or the attorney general's designee, and the chief information officer of the state. The chief information officer is chairman of the board. The information technology department shall provide staff support to the board. The board shall set policy relating to the collection, storage, and sharing of criminal justice information and the systems necessary to perform those functions. The board shall provide operational oversight for criminal justice information sharing activities and shall approve and provide oversight of criminal justice information sharing budgets. The board may appoint an executive committee and an advisory committee that would serve in an advisory capacity to the board.

SECTION 2. AMENDMENT. Section 12-60-16.2 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.2. Criminal history record information - Reportable events. Except as otherwise provided in sections 12-60-16.1 through 12-60-16.10, each criminal justice agency shall report to the bureau the information described in this section for each felony and reportable offense so designated pursuant to section 12-60-16.4. The bureau may require the criminal justice agency to provide the information in a manner that the bureau determines to be the most efficient or accurate means of collection. The following criminal justice agencies shall perform the duties indicated:

1. Except as otherwise provided in this subsection, each criminal justice agency that makes an arrest for a reportable offense shall, with respect to that offense and the person arrested, furnish to the bureau the fingerprints, charges, and descriptions of the person arrested. If the arrest is made by a criminal justice agency that is a state law enforcement agency, then, on request of the arresting agency, a sheriff or jail administrator shall take the fingerprints. The arresting agency shall then furnish the required information to the bureau. If a decision is made not to refer the arrest for prosecution, the criminal justice agency making that decision shall report the decision to the bureau. A criminal justice agency may make agreements with other criminal justice agencies for the purpose of furnishing to the bureau information required under this subsection.

2. The prosecuting attorney shall notify the bureau of all charges filed, including all those added after the filing of a criminal court case, and whether charges were not filed in criminal cases for which the bureau has a record of an arrest.
3. After the court pronounces sentence for a reportable offense, and if the person being sentenced has not been fingerprinted with respect to that case, the prosecuting attorney shall ask the court to order a law enforcement agency to fingerprint that person. If the court determines that the person being so sentenced has not previously been fingerprinted for the same case, the court shall order the fingerprints taken. The law enforcement agency shall forward the fingerprints to the bureau.
4. The prosecuting attorney having jurisdiction over a reportable offense shall furnish the bureau all final dispositions of criminal cases for which the bureau has a record of an arrest or a record of fingerprints reported under subsection 3. For each charge, this information must include at least the following:
 - a. Judgments of not guilty, judgments of guilty including the sentence pronounced by the court, discharges, and dismissals in the trial court;
 - b. Reviewing court orders filed with the clerk of the court which reverse or remand a reported conviction or which vacate or modify a sentence; and
 - c. Judgments terminating or revoking a sentence to probation and any resentencing after such a revocation.
5. The North Dakota state penitentiary, pardon clerk, parole board, and local correctional facility administrators shall furnish the bureau with all information concerning the receipt, escape, death, release, pardon, conditional pardon, reprieve, parole, commutation of sentence, or discharge of an individual who has been sentenced to that agency's custody for any reportable offense which is required to be collected, maintained, or disseminated by the bureau. In the case of an escape from custody or death while in custody, information concerning the receipt and escape or death must also be furnished.

SECTION 3. AMENDMENT. Section 12-60-16.9 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.9. Criminal history record information - Fee for record check.

The bureau shall impose a fee of ~~twenty~~ thirty dollars for each record check. The bureau shall waive the fee for any criminal justice agency or court, and shall impose a fee of three dollars for each record check for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of minors.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 507

SENATE BILL NO. 2393

(Senators Robinson, Grindberg, Nelson)
(Representatives Glassheim, Price)

WORKFORCE DEVELOPMENT DUTIES

AN ACT to create and enact a new section to chapter 54-60 of the North Dakota Century Code, relating to duties of the department of commerce division of workforce development; and to amend and reenact section 54-60-04 of the North Dakota Century Code, relating to duties of the North Dakota economic development foundation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-60-04 of the North Dakota Century Code is amended and reenacted as follows:

54-60-04. North Dakota economic development foundation - Executive committee - Purpose Duties. The North Dakota economic development foundation is created.

1. The foundation is composed of a minimum of fifteen and a maximum of thirty members appointed by the governor for two-year terms, except the governor shall appoint approximately one-half of the initial foundation members to one-year terms in order to initiate a cycle of staggered terms. Appointment of the foundation members must ensure a cross section of business, tourism, and economic development representation, and must ensure that at least one member represents rural concerns.
2. The foundation members shall elect an executive committee with a minimum of five and a maximum of seven foundation members. The executive committee members shall elect a chairman, vice chairman, and a secretary.
3. The foundation shall seek funding for administrative expenses from private sector sources and shall seek and distribute private sector funds for use in commerce-related activities in the state.
4. The ~~purpose of the~~ foundation is to shall:
 - a. Provide the governor advice and counsel in selecting the commissioner;_
 - b. Serve in an advisory role to the commissioner;_
 - c. Develop a strategic plan for economic development in the state and set accountability standards, measurements, and benchmarks to evaluate the effectiveness of the department in implementing the strategic plan;_

- d. Develop a strategic plan for the development of value-added agriculture in the state; ~~and~~.
- e. Monitor tourism and economic development activities and initiatives of the department.
- f. Recommend state and federal legislation relating to strengthening the state's economy and increasing the state's population.
- g. Monitor state and federal legislation and initiatives that may impact the state's economy and population.
- h. Serve as a source of expertise for developing public and private initiatives to strengthen the state's economy and increase the state's population.

SECTION 2. A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

Division of workforce development - Duties. The division of workforce development shall actively monitor local, regional, and national private and public workforce development initiatives.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 508

HOUSE BILL NO. 1334

(Representatives Eckre, Skarphol, Thoreson)
(Senators Grindberg, Heitkamp, Wardner)

WORKERS' COMPENSATION DATA AND REPORTS

AN ACT to create and enact a new section to chapter 54-60 of the North Dakota Century Code, relating to commerce data; and to amend and reenact section 65-04-15 and subsection 4 of section 65-04-33 of the North Dakota Century Code, relating to reporting of employee and employer zip codes for commerce purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

Workers' compensation commerce data. The department shall publish in aggregate form employers' and employees' nine-digit zip codes provided to the bureau by employers.

²³² **SECTION 2. AMENDMENT.** Section 65-04-15 of the North Dakota Century Code is amended and reenacted as follows:

65-04-15. Information in employer's reports confidential - Exceptions - Penalty if employee of bureau divulges information. The information contained in an employer's report is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota; is for the exclusive use and information of the bureau in the discharge of its the bureau's official duties; and is not open to the public nor usable in any court in any court action or proceeding pending therein unless the bureau is a party thereto to that court action or proceeding. The information contained in an employer's report may be provided to a federal or state law enforcement agency pursuant to a lawful order of a court upon a showing of necessity and prior notice to the bureau of an application for the order. The information contained in the report, however, may be tabulated and published by the bureau in statistical form for the use and information of the state departments and of the public. Upon request, the bureau shall disclose the rate classification of an employer to the requester; however, the bureau may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. At least annually, the bureau shall furnish the department of commerce with employers' and employees' nine-digit zip codes. Disclosure by a public servant of information contained in an employer's report, except as otherwise allowed by law, is a violation of section 12.1-13-01. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the bureau.

²³² Section 65-04-15 was also amended by section 4 of House Bill No. 1149, chapter 564.

The bureau may, upon request of the state tax commissioner or the secretary of state, furnish to them a list ~~or lists~~ of employers showing only the names, addresses, and bureau file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The bureau may provide the commissioner of labor or job service North Dakota with information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of the commissioner of labor or job service North Dakota. Whenever the bureau obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties. The bureau may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.

²³³ **SECTION 3. AMENDMENT.** Subsection 4 of section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

4. An employer who fails or refuses to furnish to the bureau the annual payroll report and estimate or who fails or refuses to furnish other information required by the bureau under this chapter is subject to a penalty established by the bureau of two thousand dollars. Upon the request of the bureau, the employer shall furnish the bureau any of that employer's payroll records, annual payroll reports, employer's and employees' nine-digit zip codes, and other information required by the bureau under this chapter and an estimate of payroll for the advance premium year. If the employer fails or refuses to provide the records within thirty days of a written request from the bureau, the employer is subject to a penalty not to exceed one hundred dollars for each day until the bureau receives the records, in addition to the two thousand dollar penalty set forth above. The bureau may reduce penalties for employers under this subsection. However, an employer may not appeal a bureau decision not to reduce a penalty. The bureau shall notify an employer by regular mail of the amount of premium and penalty due the bureau from the employer. If the employer fails to pay that amount within thirty days, the bureau may collect the premium, penalties, and interest due by civil action. In that action, the court may not review or consider the action of the bureau regarding the acceptance or payment of a claim filed when the employer was uninsured. No exemptions except absolute exemptions under section 28-22-02 are allowed against any levy under executions pursuant to a judgment recovered in the action.

Approved March 25, 2003
Filed March 25, 2003

²³³ Section 65-04-33 was also amended by section 7 of House Bill No. 1149, chapter 564, and section 1 of Senate Bill No. 2309, chapter 566.

CHAPTER 509

SENATE BILL NO. 2030

(Legislative Council)
(Commerce Committee)

INTERNET WEB SITE FOR CAREERS AND JOBS

AN ACT to create and enact a new section to chapter 54-60 of the North Dakota Century Code, relating to a department of commerce career guidance and job opportunities internet web site; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

Career guidance and job opportunities - Internet web site - Fees - Continuing appropriation. The department may provide career guidance and job opportunity services through an internet web site. If the department contracts with a third party for the provision of internet web site services under this section, upon the expiration of that contract the department shall request bids for the maintenance of this internet web site and shall give consideration to bids of North Dakota businesses. The department shall deposit in the department's operating fund any moneys received by the department as subscriptions, commissions, fees, or other revenue from the internet web site. Moneys deposited in the operating fund under this section of up to one hundred thirty thousand dollars per biennium are appropriated to the department on a continuing basis for payment of expenses related to administration of the internet web site. Any additional amounts deposited in the operating fund during a biennium under this section may be spent pursuant to legislative appropriations or with budget section approval. The department shall report annually to the budget section of the legislative council regarding moneys spent under this section.

Approved May 2, 2003
Filed May 2, 2003