

# STATE GOVERNMENT

## CHAPTER 471

### SENATE BILL NO. 2311

(Senators J. Lee, Brown)  
(Representatives Hawken, Thoreson)

## UNLAWFUL USE OF GREAT SEAL

AN ACT to amend and reenact subsection 2 of section 54-02-01 of the North Dakota Century Code, relating to unlawful use of the great seal.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 54-02-01 of the North Dakota Century Code is amended and reenacted as follows:

2. It is a class B misdemeanor for any person to:
  - a. Place or cause to be placed the great seal, or any reproduction of the great seal, on any political badge, button, insignia, pamphlet, folder, display card, sign, poster, billboard, or on any other public advertisement, or to otherwise use the great seal for any political purpose, as defined in section 16.1-10-02.
  - b. Place or cause to be placed on the great seal, or any reproduction thereof, any advertisement.
  - c. Expose the great seal, or any reproduction thereof, to public view with any advertisement attached thereto.
  - d. Utilize the great seal, or a copy or reproduction thereof, for any commercial purpose or except as provided in subsection 1, to utilize or place a copy or reproduction of the great seal on any stationery or business calling card of any person.

As used in this subsection, "advertisement" means any printed matter, device, picture, or symbol, no matter how presented to the senses, which informs the public that a good or service is available; and "commercial purpose" means with intent to produce a pecuniary gain through sale of a good or service. Notwithstanding any other provision of law, the secretary of state may grant a written request by a private vendor to reproduce official state forms and documents, containing a reproduction of the great seal, for resale to persons intending to submit the forms or documents to any state entity in the regular course of business. The secretary of state may also grant a written request by a

publisher, educational institution, or author to reproduce the great seal in any research, reference, or educational publication containing a compilation of the great seals of other states.

Approved March 30, 2005  
Filed March 31, 2005

**CHAPTER 472****SENATE BILL NO. 2059**

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

**LEGISLATIVE ASSEMBLY LODGING REIMURSEMENT**

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to lodging expense reimbursement for members of the legislative assembly; to provide for retroactive application; and to declare an emergency.

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

<sup>232</sup> **SECTION 1. AMENDMENT.** Section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-20. Compensation and expense reimbursement of members of the legislative assembly.** Each member of the legislative assembly of the state of ~~North Dakota~~ is entitled to receive as compensation for services the sum of one hundred twenty-five dollars for each calendar day during any organizational, special, or regular legislative session and for each day that member attends a meeting of a legislative committee between the organizational session and the regular session as authorized by legislative rule. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of ~~six~~ nine hundred ~~fifty~~ dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may be only at the cost of coach fare and may not exceed one and one-half times the amount the member would be entitled to receive as mileage reimbursement for travel by motor vehicle. A member of the legislative assembly who does not receive reimbursement for lodging and whose place of residence in the legislative district that the member represents is not within the city of Bismarck is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that the total reimbursement may not exceed ~~six~~ nine hundred ~~fifty~~ dollars per month. The amount to which each legislator is entitled must be paid following the organizational session in December and following each month during a regular or special session.

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<sup>232</sup> Section 54-03-20 was also amended by section 17 of House Bill No. 1015, chapter 15, and section 10 of Senate Bill No. 2001, chapter 29.

If during a special session, the legislative assembly adjourns for more than three days, a member of the legislative assembly is entitled to receive compensation during those days only while in attendance at a standing committee if the legislator is a member of that committee, a majority or minority leader, or a legislator who is not on that committee but who has the approval of a majority or minority leader to attend. A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session or a legislative committee meeting must be included as a calendar day during a legislative session or as a day of a legislative committee meeting for the purposes of this section.

In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of two hundred fifty dollars a month, which is payable every six months or monthly, at the member's option. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member. The majority and minority leaders of the house and senate and the chairman of the legislative council, if the chairman is not a majority or minority leader, are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred fifty dollars per month during the biennium for their execution of public duties.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].

**SECTION 2. RETROACTIVE APPLICATION.** This Act is retroactive in application to January 1, 2005.

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

Approved April 25, 2005  
Filed April 26, 2005

**CHAPTER 473****SENATE BILL NO. 2039**  
(Legislative Council)  
(Legislative Management Committee)**LEGISLATIVE ORGANIZATIONAL SESSION MEETING**

AN ACT to amend and reenact section 54-03.1-02 of the North Dakota Century Code, relating to the meeting of the legislative organizational session.

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

**SECTION 1. AMENDMENT.** Section 54-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-03.1-02. Time and place of meeting - Who must attend.** In each even-numbered year on the ~~first Tuesday after the~~ first Monday in the month of December or on a date selected by the legislative council but not earlier than December first nor later than December fifteenth, all persons elected at the previous November general election as members of the succeeding legislative session, and members whose terms do not expire until the first day of December following the next November general election, shall meet in the state capitol in the city of Bismarck, or at such other place as may be designated, at ~~the hour of nine a.m. a~~ time designated by the legislative council for the purpose of conducting an organizational session. The legislative council shall call the organizational session and make such arrangements as may be necessary for its operation.

Approved March 16, 2005  
Filed March 17, 2005

**CHAPTER 474****SENATE BILL NO. 2303**

(Senators Fairfield, Bercier, Seymour, Warner)  
(Representatives Gulleson, Kaldor)

**LOBBYIST REGISTRATION AND REPORTING**

AN ACT to amend and reenact sections 54-05.1-03 and 54-05.1-04 of the North Dakota Century Code, relating to lobbyist registration and reporting requirements and the authority of the secretary of state; and to provide a penalty.

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

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

**54-05.1-03. Registration as a lobbyist - Fee - Filing of information - Public inspection - Certificate of registration.**

1. a. ~~Any person who shall engage or be engaged by any other person either on a part-time or on a full-time basis for~~ Before engaging in any of the activities listed in section 54-05.1-02, ~~an individual shall, before doing anything in furtherance of such purposes,~~ register with the secretary of state and receive a certificate of registration and a distinctive lobbyist identification badge that must be prominently worn by the lobbyist when engaged in any of the activities listed in section 54-05.1-02 while on the capitol grounds. In lieu of wearing the official badge provided by the secretary of state, a lobbyist may wear a reasonable reproduction of the official badge that contains the name of the lobbyist and any of the following: the word lobbyist, the registration number of the lobbyist, or the organization name of the lobbyist in characters no smaller than one-quarter inch [6.35 millimeters].
- b. The registrant shall state in writing ~~the~~:
  - (1) The registrant's full name and business address, ~~the~~; and
  - (2) The name and address of ~~the any person or persons~~ upon whose behalf the registrant appears, ~~all persons, corporations, limited liability companies, associations, groups, or organizations~~ any person in whose interest the registrant appears or works, the duration of ~~such~~ the employment or appearances, and by whom the registrant is paid or is to be paid.
- c. The registration period commences on July first and expires on June thirtieth of the following calendar year unless an earlier expiration date is requested by the registrant. ~~Lobbyists required to be registered~~

- d. Each lobbyist shall file with the secretary of state, ~~prior to~~ before the issuance of a certificate of registration, a written authorization to act as a lobbyist. ~~Such~~ The authorization must be signed by the ~~person or~~ official of the corporation, limited liability company, association, group, or organization employing ~~such~~ the lobbyist and may be filed by facsimile transmission.
- e. The secretary of state shall charge a fee of ~~twenty~~ twenty-five dollars for registering each lobbyist and the first person ~~or entity~~ represented by the lobbyist and an additional fee of five dollars for each subsequent person ~~or entity~~ represented by the lobbyist.
2. Each ~~person registering to act as~~ a lobbyist shall file, on or before August first following the expiration of the registration period, with the secretary of state a detailed report. The report must include a statement as to each expenditure, if any, of ~~fifty sixty~~ dollars or more expended on any single occasion ~~during the legislative session or the interim, as the case may be,~~ on any individual, including the spouse or other family member of a member of the legislative assembly or the governor, in carrying out the lobbyist's work or include a statement that no reportable expenditures were made during the reporting period. The statement of each expenditure must include a description of the nature of the expenditure, the amount of the expenditure, the date of the expenditure, and the name of the recipient of the expenditure. A state official or agency may not require reporting of lobbyist expenditures other than is required under this subsection. The secretary of state shall provide a prescribed form for reporting ~~pursuant to~~ under this chapter. The secretary of state shall charge and collect fees for late filing of the detailed expenditure report as follows:
- a. Within sixty days after the date provided in this subsection for filing the detailed expenditure report, twenty-five dollars; and
- b. Thereafter, fifty dollars; and
- e.
3. If ~~any currently registered a~~ lobbyist fails to file a detailed expenditure report and pay any late fee by October first, the lobbyist's registration is automatically revoked. The lobbyist's registration may be reinstated if the lobbyist thereafter files the detailed expenditure report and pays any outstanding late fee.
- ~~3.~~ 4. All information required to be filed under ~~the provisions of~~ this section with the secretary of state and that previously filed must be compiled by the secretary of state within forty days after the close of the period for which ~~such the~~ information is filed and ~~such the~~ files must be open and accessible for public inspection during the normal working hours.

**SECTION 2. AMENDMENT.** Section 54-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-05.1-04. Powers of secretary of state - Granting and revoking of certificates - Referrals and reports to the attorney general.**

1. ~~It is the duty and responsibility of the~~ The secretary of state shall:

- a. ~~To grant~~ Grant a certificate of registration and ~~to design and furnish~~ design and furnish a distinctive lobbyist identification badge to any ~~person~~ individual registering under section 54-05.1-03 who supplies the required information therein required.
  - b. ~~To revoke~~ Revoke the certificate of registration of any ~~person~~ individual who has been convicted of violating any of ~~the provisions~~ provision of this chapter.
  - c. ~~To refer~~ Refer on the secretary of state's own motion or on the verified complaint of any ~~member of the legislative assembly or on the verified complaint of any state official, board, commission, department, or agency, or on the verified complaint of any other~~ person, to the attorney general for investigation, the activities of any ~~person~~ individual who the secretary of state has reason to believe has been acting as a lobbyist and who may be in violation of ~~the requirements~~ of this chapter.
  - d. ~~To make~~ Make available upon request of any citizen expenditures by categories reported by registered lobbyists to have been expended on each individual in carrying out that ~~person's~~ registrant's work.
  - e. ~~To supply~~ Supply a current list of registered lobbyists for each legislator upon request.
2. ~~In addition, the~~ The secretary of state may revoke the certificate of registration issued ~~pursuant to~~ under this chapter for failure to file the reports required by this chapter when due, but no certificate may be revoked if, ~~prior to~~ before the last day for filing ~~such the~~ reports, the secretary of state has been informed in writing of extenuating circumstances justifying ~~such the~~ failure.
  3. The secretary of state shall compile and make available to the public a report of the total amount of expenditures reported by registrants.
  4. The secretary of state may establish procedures for registration of lobbyists and filing of lobbyist expenditure reports through the internet or other electronic means, and may make lobbyist expenditure reports available on the secretary of state's internet web site.

Approved April 18, 2005  
Filed April 20, 2005

**CHAPTER 475****SENATE BILL NO. 2058**

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

**STATE EMPLOYEE MILEAGE AND TRAVEL  
REIMBURSEMENT**

AN ACT to amend and reenact subsections 1 and 5 of section 54-06-09 of the North Dakota Century Code, relating to mileage and travel expense reimbursement for state officials and employees.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 5 of section 54-06-09 of the North Dakota Century Code are amended and reenacted as follows:

1. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, must be allowed and paid for mileage and travel expense the following amounts:
  - a. The sum of ~~thirty-one~~ thirty-seven and one-half cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by motor vehicle or ~~twenty-seven cents per mile [1.61 kilometers]~~ if the travel is by truck, the use of which is required by the employing entity. The sum of seventy cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by private airplane. Mileage by private aircraft must be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage must be based on the road mileage between the geographical points. Reimbursement for private airplane travel must be calculated as follows:
    - (1) If reimbursement is for one properly authorized and reimbursable passenger, reimbursement must be paid on a per mile basis as provided in this subsection.
    - (2) If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular coach fare on a commercial flight, if one is scheduled between the point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.
  - b. Except as provided in subdivision a, when travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the amount

actually and necessarily expended therefor in the performance of official duties.

5. Notwithstanding the other provisions of this section, state employees permanently located outside the state or on assignments outside the state for an indefinite period of time, exceeding at least thirty consecutive days, must be allowed and paid ~~thirty-one~~ thirty-seven and one-half cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle, and the three-hundred-mile [482.80-kilometer] restriction imposed by subsection 3 does not apply.

Approved March 30, 2005

Filed March 31, 2005

**CHAPTER 476****SENATE BILL NO. 2298**

(Senators Christmann, Dever, Kilzer)  
(Representatives Pollert, Sitte, Thoreson)

**ORGAN AND BONE MARROW DONATIONS**

AN ACT to provide for bone marrow donor education and leave of absence for state employees donating an organ or bone marrow.

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

**SECTION 1. Bone marrow donor education.** The state department of health shall provide information and educational materials to the public regarding bone marrow donation through the national marrow donor program. The department shall seek assistance from the national marrow donor program to establish a system to distribute materials, ensure that the materials are updated periodically, and address the education and recruitment of minority populations.

**SECTION 2. State employee leave for organ or bone marrow donation.** The executive officer in charge of a state agency may grant a leave of absence, not to exceed twenty workdays, to an employee for the purpose of donating an organ or bone marrow. Notwithstanding the limitations for the donation and use of donated leave under sections 54-06-14.1 and 54-06-14.2, an employee may request and use donated annual leave or sick leave for the purpose of donating an organ or bone marrow. If an employee requests donations of sick leave or annual leave, but does not receive the full amount needed for the donation of an organ or bone marrow, the executive officer of the state agency may grant a paid leave of absence for the remainder of the leave up to the maximum total of twenty workdays. The executive officer of the state agency may require verification by a physician regarding the purpose of the leave requested and information from the physician regarding the length of the leave requested. Any paid leave of absence granted under this section may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

Approved April 20, 2005  
Filed April 25, 2005

**CHAPTER 477****SENATE BILL NO. 2069**

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

**STATE AUDITOR RECORDS ACCESS**

AN ACT to amend and reenact sections 54-10-02 and 54-10-22.1 of the North Dakota Century Code, relating to the state auditor's access to records.

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

**SECTION 1. AMENDMENT.** Section 54-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-02. Auditor to have access to all state offices.** ~~The~~ Except for active investigatory work product of the attorney general as defined in section 44-04-19.1, the state auditor shall have access to all state offices during business hours for the purpose of inspecting such books, papers, and accounts, and records therein as may concern the state auditor's duties. Except for active investigatory work product of the attorney general as defined in section 44-04-19.1 and tax records as described in section 54-10-24, access includes inspection of any books, papers, accounts, or records that the state auditor may deem relevant to an ongoing audit of any other state agency or computer system audit.

**SECTION 2. AMENDMENT.** Section 54-10-22.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-22.1. State auditor's access to information relating to operations of governmental entities subject to audit.** Notwithstanding any other specific sections of law, the state auditor and persons employed by the state auditor, when necessary in conducting an audit, shall have access to all information relating to operations of all governmental units subject to audit except active investigatory work product of the attorney general as defined in section 44-04-19.1. Except for active investigatory work product of the attorney general as defined in section 44-04-19.1 and tax records as described in section 54-10-24, the state auditor may inspect any state agency's books, papers, accounts, or records that may be relevant to an ongoing audit of any other state agency or computer system audit. The state auditor and persons employed by the state auditor examining any information, which is confidential by law, shall guard the secrecy of such information except when otherwise directed by judicial order or as is otherwise provided by law.

Approved March 16, 2005  
Filed March 17, 2005

**CHAPTER 478****HOUSE BILL NO. 1075**  
(Political Subdivisions Committee)  
(At the request of the State Auditor)**POLITICAL SUBDIVISION AUDIT FEES**

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to payment of audit fees by political subdivisions.

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

<sup>233</sup> **SECTION 1. AMENDMENT.** Section 54-10-14 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports.** The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firefighters relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison Diversion Conservancy District.
10. Rural fire protection districts.
11. Special education districts.
12. Area career and technology centers.
13. Correction centers.
14. Recreation service districts.

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<sup>233</sup> Section 54-10-14 was also amended by section 1 of House Bill No. 1300, chapter 479.

15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.
18. Southwest water authority.
19. Regional planning councils.
20. Soil conservation districts.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. ~~The political subdivision audited shall pay to the state treasurer the fees for the audit performed by the state auditor. The state treasurer shall deposit the fees~~ must be deposited in the state auditor operating account. The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

In lieu of conducting an audit every two years, the state auditor may require annual reports from school districts with less than one hundred enrolled students, cities with less than three hundred population, park districts with less than two hundred thousand dollars of annual receipts, and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts. The reports must contain the financial information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

A political subdivision, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit report to determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the report and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain

twenty percent of any progress payment until the audit report is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections shall result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

Approved March 9, 2005

Filed March 9, 2005

**CHAPTER 479****HOUSE BILL NO. 1300**

(Representatives Weisz, DeKrey, Pollert)  
(Senators Erbele, Klein)

**POLITICAL SUBDIVISION AUDIT EXEMPTIONS**

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to exemptions from audit requirements for certain political subdivisions.

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

<sup>234</sup> **SECTION 1. AMENDMENT.** Section 54-10-14 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports.** The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firefighters relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison Diversion Conservancy District.
10. Rural fire protection districts.
11. Special education districts.
12. Area career and technology centers.
13. Correction centers.
14. Recreation service districts.

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<sup>234</sup> Section 54-10-14 was also amended by section 1 of House Bill No. 1075, chapter 478.

15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.
18. Southwest water authority.
19. Regional planning councils.
20. Soil conservation districts.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. The political subdivision audited shall pay to the state treasurer the fees for the audit performed by the state auditor. The state treasurer shall deposit the fees in the state auditor operating account. The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

In lieu of conducting an audit every two years, the state auditor may require annual reports from school districts with less than one hundred enrolled students; cities with less than three hundred population; park districts and soil conservation districts with less than two hundred thousand dollars of annual receipts; and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts, excluding any federal funds passed through the political subdivision to another entity. If any federal agency performs or requires an audit of a political subdivision that receives federal funds to pass through to another entity, the political subdivision shall provide a copy to the state auditor upon request by the state auditor. The reports must contain the financial information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

A political subdivision, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit report to determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the report and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections shall result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

Approved March 9, 2005  
Filed March 9, 2005

**CHAPTER 480****SENATE BILL NO. 2072**

(Political Subdivisions Committee)

(At the request of the State Auditor)

**COUNTY ACCOUNTING MANUAL REPEAL**

AN ACT to repeal section 54-10-17 of the North Dakota Century Code, relating to the maintenance of a county accounting manual by the state auditor.

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

**SECTION 1. REPEAL.** Section 54-10-17 of the North Dakota Century Code is repealed.

Approved March 8, 2005

Filed March 8, 2005

**CHAPTER 481****SENATE BILL NO. 2071**

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

**STATE AUDITOR DUTIES**

AN ACT to amend and reenact subsection 5 of section 54-10-28 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.** Subsection 5 of section 54-10-28 of the North Dakota Century Code is amended and reenacted as follows:

5. Present results of information technology compliance reviews to the information technology committee and the ~~information technology department's enterprise architecture~~ state information technology advisory committee.

Approved March 21, 2005  
Filed March 21, 2005

**CHAPTER 482****HOUSE BILL NO. 1074**

(Appropriations Committee)  
(At the request of the State Auditor)

**COMPUTER SYSTEM AUDITS**

AN ACT to create and enact a new section to chapter 54-10 of the North Dakota Century Code, relating to audits of computer systems by the state auditor; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 54-10 of the North Dakota Century Code is created and enacted as follows:

**Audits of computer systems - Penalty.**

1. The state auditor may:
  - a. Pursuant to the powers and duties outlined in this chapter, conduct a review and assessment of computer systems and related security systems. Computer systems subject to this section include the computer systems of a state agency or political subdivision that is subject to audit by the state auditor. Tests conducted in connection with this review and assessment may include an assessment of system vulnerability, network penetration, potential security breach, and susceptibility to cyber attack or cyber fraud.
  - b. Disclose any findings to the chief information officer of the state or to any state official or legislative committee. Working papers and preliminary drafts of reports created in connection with the review of computer systems and the security of the systems are exempt from section 44-04-18. Those parts of findings and working papers that identify the methods of the state auditor or that may cause or perpetuate vulnerability of the computer system reviewed are exempt from section 44-04-18 and protected from disclosure until the state auditor directs otherwise.
  - c. Procure the services of a specialist in information security systems or other contractors deemed necessary in conducting a review under this section. The procurement of these services is exempt from the requirements of chapter 54-44.4.
2. An outside contractor hired to provide services in the review of the security of a computer system is subject to the confidentiality provisions of this section and section 44-04-27. Any individual who knowingly discloses confidential information is subject to the provisions of section 12.1-13-01.
3. The state auditor shall notify the executive officer of any state agency or the governing body of any political subdivision of the date, time, and location of any test conducted in connection with a review and

assessment of computer systems or related security systems. The executive officer or a deputy executive officer or a member of the governing body of a political subdivision shall attend and observe any test during which confidential information may be accessed or controlled. An executive officer, a deputy executive officer, or a member of the governing body of a political subdivision receiving notice of any test conducted under this section may not inform any other individual of the scheduling and conduct of the test.

4. The state auditor shall notify the attorney general of the date, time, and location of any test conducted in connection with a review and assessment of computer systems or related security systems. The attorney general may designate an individual to participate in the test. The designee of the attorney general may order the test to be terminated if the individual believes a sensitive system is being breached, a sensitive system may be breached, or sensitive information may be revealed.
5. Notwithstanding any provision in chapter 32-12.2 to the contrary, if the attorney general and the director of the office of management and budget determine it is in the best interest of the state, the state auditor may agree to limit the liability of a contractor performing a review and assessment under this section. The liability limitation must be approved by the attorney general and director of the office of management and budget in writing. For any uninsured losses, the director of the office of management and budget may approve the risk management fund to assume all or part of the contractor's liability to the state in excess of the limitation.

Approved April 25, 2005  
Filed April 26, 2005

**CHAPTER 483****HOUSE BILL NO. 1046**

(Representative Wald)

**STATE TREASURER DISTRIBUTION CORRECTION**

AN ACT to create and enact a new subsection to section 54-11-01 of the North Dakota Century Code, relating to the correction of erroneous distributions by the state treasurer; and to declare an emergency.

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

**SECTION 1.** A new subsection to section 54-11-01 of the North Dakota Century Code is created and enacted as follows:

Correct any underpayment, overpayment, or erroneous payment of tax distribution funds by the state treasurer.

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

Approved March 15, 2005

Filed March 16, 2005

**CHAPTER 484****HOUSE BILL NO. 1034**

(Legislative Council)  
(Emergency Services Committee)

**ATTORNEY GENERAL COUNSEL TO HEALTH BOARD**

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to authorizing the attorney general to provide legal counsel to boards of health.

**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:

**Attorney general may provide counsel to boards of health.** The attorney general, upon the request of a board of health established under chapter 23-35, may provide legal counsel or a written legal opinion to the board of health. The attorney general may enter an agreement with a board of health for reimbursement of expenses incurred by the attorney general in providing legal counsel to the board of health.

Approved March 8, 2005  
Filed March 8, 2005

**CHAPTER 485****SENATE BILL NO. 2098**

(Political Subdivisions Committee)  
(At the request of the Secretary of State)

**EMERGENCY COMMISSION PETITION FILING**

AN ACT to amend and reenact sections 54-16-03.1 and 54-16-11.1 of the North Dakota Century Code, relating to filing of petitions with the emergency commission.

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

**SECTION 1. AMENDMENT.** Section 54-16-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-03.1. Submission of petition to emergency commission.** When an emergency exists, a state officer may present to the emergency commission an itemized, ~~verified~~ petition requesting approval to transfer money and spending authority between funds or line items pursuant to section 54-16-04; accept and expend federal funds pursuant to section 54-16-04.1; accept and expend state contingency funds pursuant to section 54-16-09; or accept and expend other funds pursuant to section 54-16-04.2.

**SECTION 2. AMENDMENT.** Section 54-16-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-11.1. Emergency commission may increase revenues and appropriation authority for intergovernmental service fund agencies.** Upon presentation of a ~~verified~~ petition establishing that an emergency exists and the necessity for increased appropriation authority, the emergency commission shall meet to determine if additional demand from state agencies requires an increase in appropriation authority and revenue receipts for the information technology department, central duplicating, surplus property, or roughrider industries division of the department of corrections and rehabilitation.

Approved March 16, 2005

Filed March 17, 2005

**CHAPTER 486****HOUSE BILL NO. 1278**

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

**FEDERAL FUNDS DEPOSIT**

AN ACT to amend and reenact section 54-16-04.1 of the North Dakota Century Code, relating to the appropriation of federal funds.

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

**SECTION 1. AMENDMENT.** Section 54-16-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-04.1. May authorize acceptance and disbursement of federal funds.**

1. The emergency commission, upon the advice and counsel of the office of management and budget, may authorize the state treasurer to receive any moneys not appropriated by the legislative assembly which are made available by any federal agency and which the legislative assembly has not indicated an intent to reject.
2. The emergency commission may authorize passthrough federal funds from one state agency to another state agency.
3. The emergency commission, with approval of the budget section of the legislative council if the amount under consideration exceeds fifty thousand dollars, may authorize any state officer to receive and expend federal moneys from the date such moneys become available until June thirtieth following the next regular legislative session.
4. Any federal funds made available to this state which are not for a specific purpose or program and which are not required to be spent prior to the next regular legislative session, upon the approval for acceptance by the emergency commission and the budget section of the legislative council, must be deposited into a special fund until the legislative assembly appropriates the funds.
5.
  - a. Approval by the budget section of the legislative council is not required for the acceptance of federal funds if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state.
  - b. Budget section approval is required before the expenditure of any funds accepted under these conditions.
6. The expenditures must be consistent with state law and with the terms of the grant and the program may not commit the legislative assembly for matching funds in the future unless the program has first been approved by the legislative assembly.

7. A state officer may not expend funds received from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter.
8. A state officer shall submit an expenditure plan with a request for approval under this section of expenditure of federal funds combined with or as part of a block grant for a new or existing program.

Approved March 23, 2005

Filed March 23, 2005

**CHAPTER 487****SENATE BILL NO. 2130**

(Political Subdivisions Committee)  
(At the request of the Industrial Commission)

**INDUSTRIAL COMMISSION ADVISORY BOARD  
COMPENSATION**

AN ACT to amend and reenact sections 6-09-02.1, 54-17-03, 54-17.5-02, and 54-17.6-05 of the North Dakota Century Code, relating to the industrial commission's authority to set the compensation for various advisory boards.

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

**SECTION 1. AMENDMENT.** Section 6-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**6-09-02.1. Declaration and finding of public purpose - Bank of North Dakota advisory board of directors.** To enlist the help of private enterprise and to encourage more active use of the purposes for which the Bank of North Dakota was created, the governor shall appoint an advisory board of directors to the Bank of North Dakota consisting of seven persons, at least two of whom must be officers of banks, the majority of the stock of which is owned by North Dakota residents, and at least one of whom must be an officer of a state or federally chartered financial institution. The governor shall appoint a chairman, vice chairman, and secretary from the advisory board of directors. The term of the directors is four years. The industrial commission shall define the duties ~~and fix the compensation~~ of the advisory board of directors.

<sup>235</sup> **SECTION 2. AMENDMENT.** Section 54-17-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-17-03. Chairman and attorney - Secretary - Employees - Compensation - Bonds.** The governor is the chairman of the industrial commission, and its attorney is the attorney general. In the transaction of its general business, the commission shall appoint a secretary and may employ other subordinate officers, employees, and agents, on such terms as it may deem proper and as, in its judgment, the public interests may require. The commission may require suitable bonds of its secretary or other subordinate officers, employees, or agents. It shall fix the amount of the compensation of each person so engaged. The compensation, together with other expenditures for operation and maintenance of the general business of the commission, must remain within the appropriation available in each year for such purpose. The commission may set the compensation, within the limits of legislative appropriation, for members of a board, committee, or council that advises the commission. Notwithstanding any other provision of law, the compensation for any board, committee, or council member may include

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<sup>235</sup> Section 54-17-03 was also amended by section 29 of Senate Bill No. 2014, chapter 42.

reimbursement for expenses, a salary, a per diem, or a combination of the three, as set by the commission.

**SECTION 3. AMENDMENT.** Section 54-17.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.5-02. Lignite research council - Compensation.** The industrial commission shall consult with the lignite research council established by executive order in matters of policy affecting the administration of the lignite research fund. ~~Members of the lignite research council may receive reimbursement from the lignite research fund for actual and necessary expenses incurred in the performance of their duties, if authorized by the industrial commission.~~

**SECTION 4. AMENDMENT.** Section 54-17.6-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.6-05. Oil and gas research council - Members.**

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~~ petroleum council. The governor may reject the list and request the ~~association~~ council 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 6~~, 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 chapter.

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.

Approved March 16, 2005  
Filed March 17, 2005

**CHAPTER 488****HOUSE BILL NO. 1526**

(Representatives Berg, Boucher, Charging, Vigesaa)

(Senators Stenehjem, O'Connell)

(Approved by the Delayed Bills Committee)

**TRIBAL-STATE GUARANTY PROGRAM**

AN ACT to create and enact a new section to chapter 54-17 of the North Dakota Century Code, relating to creation of an industrial commission tribal-state guaranty program; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

**Tribal-state guaranty program.**

1. The industrial commission shall establish at the Bank of North Dakota a guaranty program for a business located in the state which contracts with a business located in the state which is either owned by one of the five North Dakota Indian tribes or which is an American Indian-owned small business located in this state. The industrial commission shall establish program guidelines and shall establish program application forms. The industrial commission shall adopt policies and procedures as necessary to implement this program. The Bank of North Dakota may charge fees to participants in the program. The industrial commission shall limit participation in the program so that the cumulative value of the guaranteed portion of the receivables under the program does not exceed five million dollars at any one time.
2. In the case of a payment dispute, the program must provide a participating North Dakota business with sure and certain payment of receivable owing under the contract between the North Dakota business and the tribal-owned or Indian-owned business. Any litigation over a payment dispute must be conducted by the participating businesses and is not the responsibility of the industrial commission, the Bank of North Dakota, or this guaranty program. The industrial commission shall establish a guaranty reserve board. The board membership, which may not exceed twelve members, consists of the attorney general or the attorney general's representative, who serves as chairman of the board; the president of the Bank of North Dakota or the president's representative; one representative for each participating tribal government; and representatives of private business equal to the number of tribal government representatives serving on the board. Each North Dakota Indian tribe that participates in the program may appoint one board member to serve a two-year term. A tribally appointed member serves at the pleasure of the appointing tribal government. The board members representing private business serve two-year terms to run concurrently with the corresponding tribally appointed member. The members of the industrial commission shall take turns appointing the board members representing private business,

in the following order: governor, attorney general, and agriculture commissioner. Each member representing private business serves at the pleasure of the industrial commission and any vacant position must be filled by an individual appointed by the member of the industrial commission making the original appointment. The board must meet annually, or more often as may be determined necessary by the chairman, for the purpose of reviewing participation in the program and conducting the business of the board.

3. To participate in the program, all parties must agree that for purposes of the program and related business contract issues any claim or dispute between any of the parties are governed by the laws of the state of North Dakota and any claim or dispute between the parties must be brought in Burleigh County district court in Bismarck or by agreement of the parties may be brought to a mutually agreed-upon arbitrator. To participate in the program, the business owned by a North Dakota Indian tribe or the Indian-owned small business must have secured the pledge of a North Dakota Indian tribe or a tribally approved entity to guarantee repayment to the guaranty program for any payments made due to payment disputes. This repayment guarantee must be consistent with the policies and procedures established by the industrial commission to implement this program.
4. If the Bank of North Dakota provides a North Dakota business with a payment due to a payment dispute, as a guarantor the board is an assignee and as such may seek reimbursement from a third party or from the North Dakota business for any payment made under the program.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2007, and after that date is ineffective.

Approved April 22, 2005  
Filed April 25, 2005

## CHAPTER 489

### SENATE BILL NO. 2150

(Industry, Business and Labor Committee)  
(At the request of the Industrial Commission)

## BUILDING AUTHORITY PROJECT FINANCING

AN ACT to amend and reenact sections 54-17.2-01, 54-17.2-02.1, and 54-17.2-02.2, subsections 1 and 7 of section 54-17.2-03, and sections 54-17.2-04, 54-17.2-06, 54-17.2-07, 54-17.2-08, 54-17.2-09, 54-17.2-10, 54-17.2-11, 54-17.2-16, and 54-17.2-19 of the North Dakota Century Code, relating to financing by the building authority of projects authorized by the legislative assembly.

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

**SECTION 1. AMENDMENT.** Section 54-17.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-01. Definitions.** As used in this chapter, unless the context or subject matter requires otherwise:

1. "Commission" means the industrial commission acting as the North Dakota building authority created under this chapter.
2. "Evidences of indebtedness" means bonds, notes, debentures, and other evidences of indebtedness issued by the commission on behalf of the state of North Dakota to evidence money owed or borrowed.
3. "Financing agreement" means a written agreement between the commission and the state with respect to a project, whereby the state agrees to pay to the commission, when due, the principal of, premium, if any, and interest on bonds issued by the commission with respect to that project. A financing agreement may be in the form of a lease, mortgage, direct or installment sale contract, loan agreement, or take-or-pay or similar agreement, and be secured in a manner the parties agree to or be unsecured.
4. "Project" or "projects" means any:
  - a. Legislatively authorized building or buildings primarily for the use of the state, including related structures, parking facilities, equipment, improvements, real and personal property or any interest therein, including lands under water, space rights and air rights, and other appurtenances and facilities necessary or convenient to the use or operation of the building or buildings, acquired, owned, constructed, reconstructed, extended, rehabilitated, or improved by the commission; or
  - b. Any other undertaking authorized by the legislative assembly.
4. 5. "Project cost" means the total cost of ~~acquisition and construction~~ of a project or projects and all costs of issuance, financing, and interest

during project construction or implementation included in the principal amount of evidences of indebtedness issued.

- 5- 6. "State" means any branch of North Dakota government or any office, department, board, commission, bureau, division, public authority or corporation, agency, or instrumentality of the state.

**SECTION 2. AMENDMENT.** Section 54-17.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-02.1. Evidences of indebtedness conditions - Continued authority.** The commission may issue evidences of indebtedness subject to the condition that ~~lease rental~~ payments under financing agreements shall begin no earlier than the first business day of the biennium following the biennium of issuance. Although the authority to issue evidences of indebtedness for specific projects may terminate, the commission may exercise all other powers granted to the commission under this chapter and may comply with any covenants entered into before the applicable termination date.

**SECTION 3. AMENDMENT.** Section 54-17.2-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-02.2. Continuing appropriation.** The moneys received by the industrial commission from the sale of evidences of indebtedness ~~and lease rental payments~~, and moneys received by the industrial commission or the state agencies and institutions from revenue generated by projects authorized by the legislative assembly, are hereby appropriated as a continuing appropriation for the acquisition of these authorized projects and the payment of lease rentals for these construction or implementation of the authorized projects and payment of debt service on any evidences of indebtedness issued to finance the projects.

**SECTION 4. AMENDMENT.** Subsections 1 and 7 of section 54-17.2-03 of the North Dakota Century Code are amended and reenacted as follows:

1. Enter into agreements, including financing agreements, with respect to its projects, operation, properties, and facilities, subject to agreements with holders of evidences of indebtedness.
7. Grant options to purchase any project or to renew any ~~lease financing agreement~~ agreement entered into by it in connection with any of its projects, on terms and conditions it deems advisable.

**SECTION 5. AMENDMENT.** Section 54-17.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-04. Purpose of commission.** The public purpose of the commission is to promote the general welfare of the citizens of this state by providing financing for projects for use primarily by the state in providing public services by altering, repairing, maintaining, or constructing buildings primarily for use by the state and making any improvements connected to those buildings or pertaining to those buildings and necessary to the use of those buildings in providing services to the public.

**SECTION 6. AMENDMENT.** Section 54-17.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-06. Lease of facilities and sites to Financing agreements with state agencies authorized - Commencement of payments under lease financing agreements.** The commission may ~~lease~~ enter into financing agreements for any project ~~to~~ with the state. The ~~leases~~ financing agreements may be entered into contemporaneously with any financing to be done by the commission and payments under the terms of the lease financing agreement shall begin at any time after execution of the ~~lease~~ financing agreement.

**SECTION 7. AMENDMENT.** Section 54-17.2-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-07. Terms, conditions, and rental payment under leases financing agreements - Automatic biennial extension provisions.** ~~Leases Financing agreements~~ may be entered into by the commission:

1. Upon terms, conditions, and ~~lease rentals~~ payment provisions, subject to available appropriations, as in the judgment of the commission are in the public interest; and
2. For an original term of not to exceed two years, with an automatic extension of the term of the lease financing agreement, unless specifically rejected by the legislative assembly, for a term of two years from the expiration of the original term of the lease financing agreement and for two years from the expiration of each extended term of the lease financing agreement, until the original term of the lease financing agreement has been extended for a total number of years to be agreed upon by the parties at a ~~lease rental~~ payment which, if paid for the original term and for each of the full number of years for which the term of the lease financing agreement may be extended, will amortize the total project cost of the project.

The ~~lease rental~~ payment must be paid at the times agreed upon by the parties to the lease financing agreement.

**SECTION 8. AMENDMENT.** Section 54-17.2-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-08. State's option to purchase - Conveyance on exercise of option.** ~~The lease~~ A financing agreement must provide that the state may, at the expiration of the original or any extended term, purchase the project at a stated price, which must be the balance of the total project cost not amortized by the ~~payment of rents~~ payments previously made by the state. The lease financing agreement must provide that if the option to purchase the project has been exercised or if the lease financing agreement has been extended for the full number of years which it may be extended, and all ~~rents and~~ payments provided for in the lease financing agreement have been made and all project costs have been paid, the commission shall convey its interest in the project to the lessee.

**SECTION 9. AMENDMENT.** Section 54-17.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-09. Insurance and credit enhancements added to rental payments.** ~~The lease~~ A financing agreement may provide that the state shall provide insurance or, as additional ~~rent for the leased project~~ payment under a financing agreement, pay the cost of insuring the project against loss or damage in such sum agreed to by the parties. The lease financing agreement may also provide

for payment of the cost of such credit enhancements as in the judgment of the commission may be required for sale of the evidences of indebtedness, including bond insurance or letters of credit.

**SECTION 10. AMENDMENT.** Section 54-17.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-10. Appropriations and funds from which ~~rent~~ payments are payable and right to project upon nonpayment - Commission's power to use or sell facilities for other purposes on nonpayment of rent.** ~~The lease~~ A financing agreement must provide that ~~rents~~ payments due under the financing agreement are payable solely from appropriations to be made by the legislative assembly for ~~the such payment of the lease rent or,~~ money available to the ~~lessee state~~ not requiring appropriation, money generated from charges made for use of the project, any revenues derived by the commission from the operation of the project, or any combination of such moneys. The financing agreement may provide that the commission upon nonpayment of ~~lease rents~~ is immediately entitled to the peaceable possession, access, and occupancy of the project and all appurtenances and easements appertaining thereto, and may maintain and operate the project or execute leases for the project or sell the project to political subdivisions of the state or private persons or entities for any purpose.

**SECTION 11. AMENDMENT.** Section 54-17.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-11. Costs and reserves to be covered by rent and charges or other payments.** ~~Lease rentals~~ Payments under a financing agreement for a project must be sufficient at all times to pay ~~the~~ any maintenance and operation costs for the project, unless ~~the~~ maintenance and operation costs are otherwise provided for under a ~~lease~~ the financing agreement, the principal of and interest on any evidence of indebtedness, and a proportion of the administrative expenses of the commission as provided for by each ~~lease~~ financing agreement, and the reserves as may be provided in the resolutions authorizing the issuance of evidences of indebtedness.

**SECTION 12. AMENDMENT.** Section 54-17.2-16 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-16. Revenues, appropriations, funds, and income from which evidences of indebtedness payable.** Evidences of indebtedness are payable solely from:

1. Revenues to be derived by the commission from the operation of a project or projects;
2. ~~Income to be derived~~ Payments from ~~rentals paid~~ the state pursuant to ~~leases to the state~~ financing agreements, or from leases to others as provided by this chapter;
3. Funds appropriated by the legislative assembly; and
4. Any other legally available revenue, income, or funds available to the commission.

**SECTION 13. AMENDMENT.** Section 54-17.2-19 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.2-19. Restrictions on obligation stated on face of evidences of indebtedness.** Evidences of indebtedness must state upon their face that they are payable solely from ~~revenues~~ moneys derived by the commission as provided in this chapter, including ~~revenues from the operation of projects acquired, constructed, completed, remodeled, or equipped in whole or in part with the proceeds of the sale of such evidences of indebtedness, including income to be derived from rental leases as provided by this chapter.~~ Evidences of indebtedness must state upon their face that they do not constitute an obligation of the state within the meaning of any statutory or constitutional provision.

Approved March 25, 2005

Filed March 25, 2005

**CHAPTER 490****SENATE BILL NO. 2087**

(Appropriations Committee)

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

**CAPITOL SECURITY BY HIGHWAY PATROL**

AN ACT to amend and reenact sections 44-08-18, 54-21-17.1, and 54-21-18 of the North Dakota Century Code, relating to the transfer of capitol security from the office of management and budget to the highway patrol.

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

**SECTION 1. AMENDMENT.** Section 44-08-18 of the North Dakota Century Code is amended and reenacted as follows:

**44-08-18. Officials and employees of agencies located in capitol building responsible for keys issued to them - Return upon termination of employment - Agency head responsibility.** Every elected and appointed state official and all state employees employed by or administering any agency, department, board, commission, or other governmental organization with offices located in the state capitol building are responsible for the safekeeping and return of keys allowing entrance to any of such offices or to the capitol building proper ~~which may have been issued to them by the office of management and budget~~. Each official or employee shall, upon or prior to termination of employment in the state capitol, return any and all keys which may have been issued to the official or employee by the ~~office of management and budget~~ highway patrol or by the legislative council to the person in charge of such keys in the office or department in which the official or employee was employed. The person in charge, or the person's designee, shall see to the return of the keys to the ~~office of management and budget~~ highway patrol in a manner provided by rules and regulations which must be promulgated by the ~~office of management and budget~~ highway patrol. Failure to return a key must be handled as provided in section 54-06-15.

**SECTION 2. AMENDMENT.** Section 54-21-17.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-21-17.1. ~~Director Superintendent to secure interior of capitol building - Issuance and return of keys.~~** The ~~director~~ superintendent of the ~~office of management and budget~~ highway patrol shall see to the security of the state capitol building, and shall have control over the issuance and return of keys allowing entry to the building proper, or any door located therein. Keys to doors in the legislative wing must be issued and controlled by the legislative council when so requested by the ~~office of management and budget~~ highway patrol. The ~~office of management and budget~~ highway patrol shall ~~promulgate rules and regulations regarding~~ determine the manner in which keys are to be issued and returned, including the procedure for receiving and recording the payment of fees in lieu of return of keys provided in section 54-06-15.

**SECTION 3. AMENDMENT.** Section 54-21-18 of the North Dakota Century Code is amended and reenacted as follows:

**54-21-18. Custody of office building - Considered part of capitol building - Director has control of public property - Rules - Penalty.** The director of the office of management and budget shall control, manage, and maintain the state office building. The building must be considered a part of the state capitol building within the meaning of statutes relating to the custody, maintenance, and control of the state capitol building and grounds, and within the meaning of statutes requiring state departments or agencies to maintain their offices in the state capitol building.

Except as otherwise provided by law, the director of the office of management and budget has charge and control of the executive mansion, the capitol, and the park and public grounds connected therewith. Except as provided by sections 39-10-48 ~~and~~, 39-10-50, 44-08-18, and 54-21-17.1, the director may adopt rules to promote the health, safety, and general welfare, to prohibit disturbances and disorderly assemblies, to keep the peace, and to regulate nuisances on the capitol grounds and in any of the buildings located on the capitol grounds. The rules may include regulation of public assemblies and accessibility to the buildings and grounds, obstructions, fees, insurance, forms, indemnification by users, and waiver of insurance and indemnity requirements by the director. A person who violates a rule adopted by the director under this section is guilty of an infraction.

Approved April 6, 2005  
Filed April 6, 2005

**CHAPTER 491****SENATE BILL NO. 2325**  
(Senators Kringstad, Lyson, Robinson)  
(Representatives Charging, Williams)**MANUFACTURED HOME INSTALLATION**

AN ACT to amend and reenact section 54-21.3-08 of the North Dakota Century Code, relating to installation of manufactured homes; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 54-21.3-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-21.3-08. Adoption of an installation program - Penalty.** 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~~ The rules may include standards, fees, and requirements for ~~licensing certification~~ and training of installers, inspections of installations, dispute resolution, ~~and penalties for noncompliance, and costs of processing complaints.~~ 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.~~ Manufactured homes may be installed in accordance with either standards adopted in the rules or the manufacturer's instructions. The rules must include provisions for the enforcement of these standards. Any person who violates this section or any rule adopted under this section is guilty of a class A misdemeanor.

Approved April 5, 2005  
Filed April 6, 2005

**CHAPTER 492****HOUSE BILL NO. 1079**

(Education Committee)

(At the request of the Superintendent of Public Instruction)

**STATE AID TO PUBLIC LIBRARIES**

AN ACT to amend and reenact section 54-24.2-06 of the North Dakota Century Code, relating to state aid to public libraries.

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

**SECTION 1. AMENDMENT.** Section 54-24.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-24.2-06. Use of funds - Reporting.** Funds appropriated under this chapter may be expended by public libraries for the purchase of library materials, supplies and equipment, salaries of library staff, and services. No funds may be used for land acquisition, construction, or investment.

Each public library receiving funds under the chapter shall submit to the state library an annual report detailing the expenditures of these funds and all other funds expended by the library within the ~~fiscal~~ calendar year. Such report is due within ninety days after the close of the ~~fiscal~~ calendar year.

Approved March 4, 2005

Filed March 4, 2005

**CHAPTER 493****HOUSE BILL NO. 1080**

(Education Committee)

(At the request of the Superintendent of Public Instruction)

**LIBRARY COORDINATING COUNCIL MEMBERS AND DUTIES**

AN ACT to amend and reenact sections 54-24.4-01 and 54-24.4-05 of the North Dakota Century Code, relating to the North Dakota library coordinating council.

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

**SECTION 1. AMENDMENT.** Section 54-24.4-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-24.4-01. North Dakota library coordinating council - Members - Term.**

The North Dakota library coordinating council consists of eleven members. The president of the North Dakota library association is an ex officio, voting member of the council. The state librarian is an ex officio nonvoting member of the council. The governor shall appoint nine members to the council, one of whom must represent special libraries, one of whom must represent public higher education institution libraries, one of whom must represent private higher education institution libraries, one of whom must represent school libraries, two of whom must represent public libraries, one of whom must represent disabled, economically disadvantaged, and minority populations, and two citizens at large. All appointed members, except citizens at large, must be practicing librarians. The governor shall take into account reasonable geographic considerations when appointing members of the council. The term of each member is three years. If at any time during a member's term, the member ceases to possess the qualifications required by this section, the member's office is deemed vacant and the governor shall appoint a qualified representative to complete the term of office. No member may be appointed to serve more than two consecutive three-year terms.

**SECTION 2. AMENDMENT.** Section 54-24.4-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-24.4-05. North Dakota library coordinating council - Duties.** The North Dakota library coordinating council shall:

1. Assist in planning, coordinating, and evaluating the services and programs of libraries in the state.
2. Serve as the state advisory council on libraries as required by Public Law No. 101-254.
3. Approve the distribution of grants to libraries, except for grants distributed under chapter 54-24.2.
4. Facilitate the development of a comprehensive statewide ~~data base~~ electronic data base online library catalog, ~~generate~~ promote statewide resource

sharing, and encourage electronic networking among all types of libraries.

5. ~~Strengthen and support~~ the state library in its role of coordinating ~~the extension and improvement of~~ and enriching library services ~~service~~ in the state.
6. ~~Strengthen and support regional library cooperatives in~~ Support and strengthen library cooperative ventures, including consortia, regional associations, and partnerships, in their role of extending and improving library services in the state.
7. ~~Inform the public and governing bodies of the goals and objectives of the council and of the role of libraries in assuring equitable access to information technology and basic library services.~~ Promote equitable access to information resources and library services to persons throughout the state.
8. ~~Support literacy projects for all ages.~~ Promote the services of libraries and librarians.
9. ~~Facilitate the coordination of statewide library services.~~
40. Take action necessary to carry out chapter 54-24.3 and this chapter.

Approved March 8, 2005

Filed March 8, 2005

**CHAPTER 494****HOUSE BILL NO. 1085**

(Political Subdivisions Committee)

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

**COUNTY TREASURER TAX TRANSMITTAL**

AN ACT to amend and reenact section 54-27-04 of the North Dakota Century Code, relating to transmission of state taxes by county treasurers.

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

**SECTION 1. AMENDMENT.** Section 54-27-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-27-04. County treasurers to transmit state taxes collected and to furnish office of management and budget monthly statements of taxes collected.** ~~The county treasurer, as an agent of the state, shall, on or before the fifteenth of each month, transmit in full to the state treasurer all state taxes collected in the previous month together with a report thereon in duplicate. The original of said report must be forwarded with the remittance to the state treasurer and the duplicate thereof to the office of management and budget.~~

The state treasurer shall ~~forthwith~~ furnish a receipt to the county treasurer for the funds received, send a duplicate of the receipt to the county auditor, and cover ~~said the~~ amounts to the state taxes distribution fund.

The director of the office of management and budget, on or before the last day of same month shall, by drawing appropriate warrants on the state taxes distribution fund, transfer ~~such the~~ funds to the general fund and other funds in accordance with the purposes for which the taxes were levied and collected.

Approved March 4, 2005

Filed March 4, 2005

**CHAPTER 495****SENATE BILL NO. 2080**  
(Finance and Taxation Committee)  
(At the request of the State Treasurer)**HIGHWAY TAX DISTRIBUTION FUND ALLOCATION**

AN ACT to amend and reenact section 54-27-19 of the North Dakota Century Code, relating to allocation of the highway tax distribution fund.

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

**SECTION 1. AMENDMENT.** Section 54-27-19 of the North Dakota Century Code is amended and reenacted as follows:

**54-27-19. Highway tax distribution fund - State treasurer to make allocation to state, counties, and cities.** A highway tax distribution fund is hereby created as a special fund in the state treasury into which must be deposited the moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes. Any moneys in the highway tax distribution fund must be allocated and transferred monthly by the state treasurer, as follows:

1. Sixty-three percent of such moneys must be transferred monthly to the state department of transportation and placed in a state highway fund.
2. Thirty-seven percent of such moneys must be allocated to the counties of this state in proportion to the number of motor vehicle registrations credited to each county. Each county must be credited with the certificates of title of all motor vehicles registered by residents of such county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly ~~twenty-seven percent of the sums allocated to each county to the incorporated cities within such each county according to the formula in this subsection~~ on the basis of the per capita population of all of the incorporated cities situated within ~~such each~~ county as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census. Provided, however, that in each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
  - a. ~~Twenty-seven~~ A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of

the counties under this subsection ~~must be the incorporated cities' share and must be~~ divided by the total population of all of the incorporated cities in the state ~~to determine the statewide per capita average.~~

- b. The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under subdivision a.
- c. The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under subdivision a.
- d. The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under subdivisions b and c for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under subdivision a and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.

The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11 of article X of the Constitution of North Dakota; provided, that any incorporated city may use such fund for the construction, reconstruction, repair, and maintenance of public highways within or outside such city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08.

Approved March 7, 2005  
Filed March 8, 2005

**CHAPTER 496****HOUSE BILL NO. 1185**  
(Representatives Froseth, Ekstrom)  
(Senator Andrist)**RURAL GROWTH INCENTIVE GRANT PROGRAM  
EXTENSION**

AN ACT to amend and reenact section 54-34.3-13 of the North Dakota Century Code, relating to continuation of the rural growth incentive grant program.

**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. (Effective through July 31, 2005) 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. If the department designates a city as a rural growth incentive city 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 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 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. 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.

**(Effective after July 31, 2005) 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. The department shall designate an applicant city as a rural growth incentive city 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 may be any combination of public and private funds.~~
2. ~~If the department designates a city as a rural growth incentive city:
  - a. ~~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. 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, 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. 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 city with training to assist the city in expanding primary sector businesses and working with state economic development programs.

Approved March 28, 2005

Filed March 28, 2005

**CHAPTER 497****HOUSE BILL NO. 1528**

(Representatives Metcalf, Boucher, Nottestad)

(Senators Dever, Lyson, Thane)

(Approved by the Delayed Bills Committee)

**VETERANS' MEMORIAL INSPECTION**

AN ACT to provide for inspection and repair recommendations for the veterans' memorial on the capitol grounds.

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

**SECTION 1. Legislative management committee - Inspection and recommendation on veterans' memorial.** Before September 1, 2005, the legislative management committee of the legislative council shall visit and inspect the veterans' memorial on the capitol grounds and make recommendations for repairs and updates to the facility management division of the office of management and budget.

Approved April 5, 2005

Filed April 6, 2005

**CHAPTER 498****HOUSE BILL NO. 1434**

(Representatives R. Kelsch, Berg, Wall)  
(Senators Cook, Freborg, Stenehjem)

**NCLB ACCOUNTABILITY PLAN AND COMMITTEE**

AN ACT to create and enact a new section to chapter 15.1-02 of the North Dakota Century Code, relating to amendment of the state accountability plan under the No Child Left Behind Act; and to amend and reenact section 54-35-21 of the North Dakota Century Code, relating to the interim no child left behind committee.

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

**SECTION 1.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**State accountability plan - Legislative review.** Before the superintendent of public instruction may submit to the United States secretary of education any proposed changes in the state accountability plan required under the No Child Left Behind Act of 2001 [Pub. L. 107-110; 115 Stat. 1425; 20 U.S.C. 6301, et seq.], the superintendent shall present the proposed changes to the interim no child left behind committee. The committee shall review the proposed changes; accept testimony and documentary evidence regarding the impact of the proposed changes on the students, schools, school districts, and taxpayers of this state; and provide advice and recommendations regarding the proposed changes to the superintendent.

**SECTION 2. AMENDMENT.** Section 54-35-21 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-21. No Child Left Behind Act of 2001 - ~~Select~~ Interim committee - Appointment - Duties.**

1. The legislative council shall appoint a ~~select an interim~~ 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 committee shall study~~ 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 including amendments to the Act, changes to 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 Act, and any policy changes and letters of guidance issued by the United States secretary of education.~~
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 ~~that~~ the committee ~~has the power to~~ may 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. The committee shall work with and encourage the testimony of public and private officials, including the superintendent of public instruction, the education standards and practices board, the state board of higher education, the North Dakota council of educational leaders, the North Dakota education association, the North Dakota school boards association, and the North Dakota Indian affairs commission. In addition, the committee shall actively seek the participation of students, parents, classroom teachers, school administrators, and other citizens of this state. The committee shall direct its efforts to ensuring that no child in this state is left behind and to further ensuring that no law or rule, be it federal or state, hinders or otherwise impedes the ability of this state's teachers, schools, and school districts to achieve this goal.~~
5. ~~The committee shall report to the fifty-ninth its findings and recommendations, together with any legislation required to implement the recommendations, to the legislative assembly if the committee determines the state is not in compliance with any requirement of the No Child Left Behind Act of 2001.~~

Approved April 18, 2005  
Filed April 20, 2005

**CHAPTER 499****HOUSE BILL NO. 1523**

(Representatives Berg, N. Johnson)

(Senators Stenehjem, Klein, Mutch)

(Approved by the Delayed Bills Committee)

**WORKERS' COMPENSATION REVIEW COMMITTEE**

AN ACT to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to creation of a legislative council workers' compensation review committee; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

**Workers' compensation review committee.**

1. During each interim, a legislative council interim workers' compensation review committee must be appointed as follows: two members of the senate appointed by the majority leader of the senate of the legislative assembly; one member of the senate appointed by the minority leader of the senate of the legislative assembly; two members of the house of representatives appointed by the majority leader of the house of representatives; and one member of the house of representatives appointed by the minority leader of the house of representatives. The chairman of the legislative council shall designate the chairman of the committee. The committee shall operate according to the laws and procedures governing the operation of other legislative council interim committees. The committee may recommend legislation relating to workers' compensation. The committee shall meet once each calendar quarter or less often if the committee chairman determines a meeting that quarter is not necessary because there are no claims to review.
2. The committee shall review workers' compensation claims that are brought to the committee by injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation. A claim may not be reviewed by the committee unless the organization has issued a final determination and either the injured worker has exhausted the administrative and judicial appeals process or the period for appeal has expired. In order for the committee to review a claim, the injured worker must first sign a release of information for constituent authorization to allow the committee and legislative council staff to review the injured worker's workforce safety and insurance records and to allow the committee members and workforce safety insurance representatives to discuss the records in an interim committee hearing. Notwithstanding any open meeting requirements, except as otherwise provided under this section, the workforce safety and insurance records of an injured worker whose case is reviewed by the committee are confidential, however, pursuant to the constituent's authorization, information contained in the records

may be discussed by the committee members and workforce safety and insurance representatives in an interim committee hearing.

3. The committee shall accept testimony of an injured worker and of a representative designated by the injured worker. After the committee has received the testimony of the injured worker and the injured worker's representative, the committee shall request that the organization provide testimony.

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

Approved April 14, 2005

Filed April 18, 2005

**CHAPTER 500****HOUSE BILL NO. 1524**

(Representatives Berg, Boucher)

(Approved by the Delayed Bills Committee)

**TRIBAL AND STATE RELATIONS COMMITTEE**

AN ACT to provide for a tribal and state relations committee; and to provide an expiration date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Committee on tribal and state relations - Membership - Duties.**

1. The committee on tribal and state relations is composed of seven members as follows:
  - a. The chairman of the legislative council or the chairman's designee;
  - b. Three members of the house of representatives, two of whom must be selected by the leader representing the majority faction of the house of representatives and one of whom must be selected by the leader representing the minority faction of the house of representatives; and
  - c. Three members of the senate, two of whom must be selected by the leader representing the majority faction of the senate and one of whom must be selected by the leader representing the minority faction of the senate.
2. The chairman of the legislative council, or the chairman's designee, shall serve as chairman of the committee.
3. The committee shall meet at such times and places as determined by the chairman. The legislative council shall provide staffing for the committee.
4. The committee shall conduct joint meetings with the native American tribal citizens' task force to study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development. After the joint meetings have concluded, the committee shall meet to prepare a report on its findings and recommendations, together with any legislation required to implement those recommendations, to the legislative council.
5. The members of the committee are entitled to compensation from the legislative council for attendance at committee meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

6. The native American tribal citizens' task force is composed of six members as follows:
  - a. The executive director of the Indian affairs commission, or the executive director's designee;
  - b. The chairman of the Standing Rock Sioux Tribe, or the chairman's designee;
  - c. The chairman of the Spirit Lake Tribe, or the chairman's designee;
  - d. The chairman of the Three Affiliated Tribes, or the chairman's designee;
  - e. The chairman of the Turtle Mountain Band of Chippewa Indians, or the chairman's designee; and
  - f. The chairman of the Sisseton-Wahpeton Sioux Tribe, or the chairman's designee.

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

Approved April 25, 2005  
Filed April 26, 2005

**CHAPTER 501****HOUSE BILL NO. 1473**  
(Representatives Glassheim, DeKrey)  
(Senators Lyson, Triplett, Warner)**COMMISSION ON ALTERNATIVES TO  
INCARCERATION**

AN ACT to provide for a commission on alternatives to incarceration; to provide an expiration date; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Commission on alternatives to incarceration.**

1. The commission on alternatives to incarceration is composed of:
  - a. Three members appointed by the governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
  - b. The attorney general or the attorney general's designee;
  - c. Two members appointed by the chief justice of the supreme court;
  - d. The director of the department of corrections and rehabilitation;
  - e. The director of the department of human services;
  - f. Two local law enforcement officers appointed by the attorney general;
  - g. One state's attorney appointed by the North Dakota state's attorney's association;
  - h. Three members of the house of representatives, two of whom must be selected by the leader representing the majority faction of the house of representatives and one of whom must be selected by the leader representing the minority faction of the house of representatives;
  - i. Three members of the senate, two of whom must be selected by the leader representing the majority faction of the senate and one of whom must be selected by the leader representing the minority faction of the senate; and
  - j. One representative of the North Dakota association of counties appointed by the association of counties.
2. The chairman of the legislative council shall select the chairman and vice chairman of the commission from the legislative members of the commission.

3. The commission shall meet at the times and places as determined by the chairman. The legislative council shall provide staffing for the commission.
4. The commission shall study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. If the commission determines that consultant services are necessary to assist the commission in conducting its assigned studies, the commission may request funding for consultant services from the legislative council and other interested entities. The commission shall provide to the governor information and recommendations for the governor's consideration in time for inclusion of the recommendations in the biennial executive budget. The commission shall report its findings and recommendations together with any legislation required to implement those recommendations to the legislative council.
5. The members of the commission who are not state employees or members of the legislative assembly are entitled to mileage and expenses as provided by law for state officers and employees. Unless otherwise provided in this subsection, the expenses of appointed members are to be paid by the legislative council. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency. The members of the commission who are members of the legislative assembly are entitled to compensation from the legislative council for attendance at commission meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

**SECTION 2. EXPIRATION DATE.** Section 1 of this Act is effective through June 30, 2009, and after that date is ineffective.

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

Approved April 12, 2005  
Filed April 13, 2005

**CHAPTER 502****HOUSE BILL NO. 1035**

(Legislative Council)

(Government Performance and Accountability Committee)

**GOVERNMENT PERFORMANCE AND  
ACCOUNTABILITY SYSTEM**

AN ACT to provide for a state government performance and accountability system pilot project.

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

**SECTION 1. LEGISLATIVE COUNCIL - GOVERNMENT PERFORMANCE AND ACCOUNTABILITY SYSTEM PILOT PROJECT.** The legislative council shall assign, to an interim committee, responsibility to establish a government performance and accountability system pilot project involving up to three executive branch agencies during the 2005-06 interim. The interim committee may include representatives of the office of management and budget and the state auditor's office. The legislative council shall report its findings and recommendations, along with any legislation necessary to implement its recommendations to the pilot project, to the sixtieth legislative assembly.

**SECTION 2. GOVERNMENT PERFORMANCE AND ACCOUNTABILITY SYSTEM PILOT PROJECT - GUIDELINES AND CRITERIA.** Each executive branch agency selected for inclusion in the pilot project shall, with input from the legislative council's interim committee:

1. Prepare biennial goals and objectives and related performance measurement indicators for major programs of the agency or department. The performance measures must provide, to the extent possible, the data necessary to assess the performance of major activities of an agency, including a program's efficiency and effectiveness; and provide a comparison, to the extent appropriate, to other states' performance measures.
2. Establish, to the extent possible, a three-year to five-year strategic plan to guide its operations and activities. The strategic plan must include:
  - a. The mission, goals, and objectives of the agency or department.
  - b. Identification of the groups of people served by the agency and the results of any methodology used to assess and improve services.
  - c. The strategies and activities utilized to meet agency or department goals and objectives.
  - d. A general description of the agency's or department's sources and uses of funds.
  - e. Estimated future service requirements and the resources that may be necessary to meet those requirements.

- f. External factors affecting services of the agency or department.
  - g. The performance measurement indicators developed under this Act used to evaluate and assess the agency's or department's performance.
3. Prepare, to the extent possible, a biennial performance report that summarizes its goals and objectives, compares performance results to performance targets, provides explanations of any major variances between performance results and targets, presents multiyear trends in performance results, and, to the extent possible, provides comparisons to other states' performance results and national benchmarks.

Approved May 4, 2005  
Filed May 4, 2005

**CHAPTER 503****HOUSE BILL NO. 1198**

(Representative Keiser)

**REEMPLOYMENT PROCESS AND COST STUDY**

AN ACT to provide for a legislative council study of reemployment processes and costs and an appropriate method for providing a limitation on the total average number of job-attached unemployment insurance claimants.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. LEGISLATIVE COUNCIL STUDY - REEMPLOYMENT POLICIES, PRACTICES, AND COSTS AND MEANS OF LIMITING JOB-ATTACHED CLAIMANTS - REPORT.**

1. During the 2005-06 interim, the legislative council, with the participation of job service North Dakota, shall study:
  - a. The costs and effectiveness of the current reemployment processes utilized by job service North Dakota and the appropriate methods for providing those services to a substantially greater number of claimants;
  - b. An appropriate method for limiting the number of job-attached claimants to those employees who are critical to the business processes of the employers that temporarily laid off those employees; and
  - c. An appropriate means of funding any additional costs that might be incurred as a result of implementation of the study's recommendations.
2. During the 2005-06 interim, job service North Dakota shall report to the legislative council on the progress of, and results from, the reemployment demonstration project to be carried out by job service North Dakota during the 2005-06 interim.
3. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 15, 2005  
Filed March 16, 2005

**CHAPTER 504****HOUSE BILL NO. 1260**

(Representatives Carlson, Hawken, Timm, Wald)  
(Senators Espegard, Kringstad)

**PUBLIC IMPROVEMENT CONTRACT AND BID STUDY**

AN ACT to provide for a legislative council study of public improvement contracts and issues relating to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY.** The legislative council shall study public improvement contracts and issues relating to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 15, 2005  
Filed March 16, 2005

**CHAPTER 505****HOUSE BILL NO. 1370**

(Representatives Brandenburg, Boe, Headland, Nicholas)  
(Senators Erbele, Warner)

**RAILROAD FUEL SURCHARGE STUDY**

AN ACT to provide for a legislative council study of railroad fuel surcharges.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - RAILROAD FUEL SURCHARGES.** The legislative council shall consider studying railroad fuel surcharges during the 2005-06 interim. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 22, 2005

Filed April 25, 2005

**CHAPTER 506****HOUSE BILL NO. 1396**

(Representatives Ruby, Bellew, Brandenburg, Zaiser)  
(Senators Andrist, Erbele)

**DUI STUDY**

AN ACT to provide for a legislative council study.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - DRIVING UNDER THE INFLUENCE OFFENSES.** The legislative council shall consider studying, during the 2005-06 interim, driving under the influence, repeat offenses, prevention, enforcement, and penalties. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 9, 2005

Filed March 9, 2005

**CHAPTER 507****HOUSE BILL NO. 1453**

(Representative Maragos)

**COAT OF ARMS USE AND EMBLEM STUDY**

AN ACT to create and enact a new subsection to section 54-41-03 of the North Dakota Century Code, relating to authorized use of the coat of arms of the state; and to provide for a legislative council study.

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

**SECTION 1.** A new subsection to section 54-41-03 of the North Dakota Century Code is created and enacted as follows:

The legislative assembly.

**SECTION 2. NORTH DAKOTA LEGISLATIVE ASSEMBLY EMBLEM - LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of creating an emblem for the sole use of the North Dakota legislative assembly, members of the legislative assembly, and the legislative council. The legislative council shall report its findings and recommendations of designs and usage, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 18, 2005

Filed April 20, 2005

**CHAPTER 508****HOUSE BILL NO. 1530**

(Representatives Berg, Drovdal, Kempenich, Norland, Rennerfeldt, Skarphol)  
(Approved by the Delayed Bills Committee)

**OIL AND GAS STRUCTURE STUDY**

AN ACT to provide for a legislative council study of North Dakota's oil and gas tax structure.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - OIL AND GAS TAX STRUCTURE - COMPARISON TO OTHER STATES - SIMPLIFICATION.** The legislative council shall consider studying, during the 2005-06 interim, North Dakota's oil and gas tax structure, including comparison to the oil and gas tax structure of other producing states and consideration of the feasibility and desirability of simplification of North Dakota's oil and gas tax structure. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 25, 2005  
Filed April 26, 2005

**CHAPTER 509****SENATE BILL NO. 2113**

(Senators Lyson, Fischer)  
(Representatives Ruby, Onstad)

**NONRESIDENT HUNTER STUDY**

AN ACT to provide for a legislative council study of hunting and fishing privileges for nonresidents and nonresidents who are former residents.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. LEGISLATIVE COUNCIL - NONRESIDENT HUNTER STUDY.**

The legislative council shall consider studying, during the 2005-06 interim, issues related to hunting and fishing by nonresidents and nonresidents who are former residents. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 21, 2005  
Filed March 21, 2005

**CHAPTER 510****SENATE BILL NO. 2115**

(Natural Resources Committee)

(At the request of the State Water Commission and State Engineer)

**RESERVED WATER RIGHTS STUDY**

AN ACT to provide for a legislative council study of the process to negotiate and quantify reserved water rights.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - RESERVED WATER RIGHTS.** The legislative council shall consider studying, during the 2005-06 interim, the process to negotiate and quantify reserved water rights. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 31, 2005

Filed March 31, 2005

**CHAPTER 511****SENATE BILL NO. 2160**

(Senators J. Lee, Warner)  
(Representatives Ekstrom, Kreidt)

**STATE BUILDING CODE STUDY**

AN ACT to provide for a legislative council study of administration and enforcement of the state building code.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. LEGISLATIVE COUNCIL STUDY - STATE BUILDING CODE.**

The legislative council shall consider studying, during the 2005-06 interim, the administration and enforcement of the state building code and its relationship to local standards and enforcement. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 16, 2005

Filed March 17, 2005

**CHAPTER 512****SENATE BILL NO. 2171**

(Senators Holmberg, Brown, Fischer, J. Lee)  
(Representative Svedjan)

**ACUPUNCTURIST LICENSING STUDY**

AN ACT to provide for a legislative council study of the licensing of acupuncturists.

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

**SECTION 1. STATE LICENSING OF ACUPUNCTURISTS - LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2005-06 interim, the licensure and regulation of acupuncturists practicing in the state, as well as the possibility of multistate joint licensure and regulation programs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 9, 2005  
Filed March 9, 2005

**CHAPTER 513****SENATE BILL NO. 2215**

(Senator Mathern)

**PRIVATE SECTOR HEALTH INSURANCE POOL  
STUDY**

AN ACT to provide for a legislative council study relating to private sector employers securing health insurance through health insurance pools.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - PRIVATE SECTOR EMPLOYERS SECURING HEALTH INSURANCE THROUGH HEALTH INSURANCE POOLS.** The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of private sector employers and self-employed individuals securing health insurance for permanent and temporary employees or themselves through a health insurance pool. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 6, 2005  
Filed April 6, 2005

**CHAPTER 514****SENATE BILL NO. 2257**

(Senators Trenbeath, Lyson, Traynor)  
(Representatives Delmore, Hawken, Klemm)

**BAD CHECK DIVERSION PROGRAM STUDY**

AN ACT to provide for a legislative council study of the feasibility and desirability of creating a diversion program for people who have written bad checks.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - BAD CHECK DIVERSION PROGRAM.** During the 2005-06 interim, the legislative council shall consider studying the feasibility and desirability of creating a diversion program for people who have written bad checks as an alternative to prosecution. In performing the study, the legislative council shall seek input from interested persons, including the judicial branch, state's attorneys, and the North Dakota trial lawyers association. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 16, 2005  
Filed March 17, 2005

**CHAPTER 515****SENATE BILL NO. 2268**

(Senators Krebsbach, O'Connell, Seymour)  
(Representatives Ekstrom, Froseth, Kerzman)

**WASTE RUBBER STUDY**

AN ACT to provide for a legislative council study of waste rubber recycling and remediation.

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

**SECTION 1. LEGISLATIVE COUNCIL - WASTE RUBBER RECYCLING AND REMEDIATION STUDY.** The legislative council shall consider studying, during the 2005-06 interim, issues related to waste rubber recycling, abatement and remediation of waste rubber tire stockpiles, and the recovery of components of petroleum-based products. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 30, 2005

Filed March 31, 2005

**CHAPTER 516****SENATE BILL NO. 2272**

(Senators Erbele, Klein, Taylor)  
(Representatives Brandenburg, Froelich, Kempenich)

**AGRICULTURAL PROPERTY TAX AND INCOME TAX  
CREDIT STUDIES**

AN ACT to provide for a legislative council study of circumstances in which property should cease to be considered agricultural property for property tax purposes and a legislative council study of transferability of income tax credits for installation of geothermal, solar, or wind energy devices.

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

**SECTION 1. LEGISLATIVE COUNCIL AGRICULTURAL PROPERTY STATUS FOR PROPERTY TAX PURPOSES STUDY.** The legislative council shall consider studying, during the 2005-06 interim, circumstances in which property should cease to be considered agricultural property for property tax purposes. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

**SECTION 2. LEGISLATIVE COUNCIL INCOME TAX CREDIT TRANSFERABILITY STUDY.** The legislative council shall consider studying, during the 2005-06 interim, issues related to transferability of income tax credits for installation of geothermal, solar, or wind energy devices. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 8, 2005  
Filed April 12, 2005

**CHAPTER 517****SENATE BILL NO. 2372**

(Senators Lindaas, Andrist)  
(Representatives Aarsvold, Price)

**DESTRUCTIVE BEHAVIOR STUDY**

AN ACT to provide for a legislative council study relating to efforts to discourage alcohol and drug abuse and tobacco use.

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

**SECTION 1. LEGISLATIVE COUNCIL COORDINATION OF EFFORTS TO DISCOURAGE DESTRUCTIVE BEHAVIOR STUDY.** The legislative council shall study, during the 2005-06 interim, the feasibility and desirability of establishing an organization or ombudsman to support and coordinate federal, tribal, state, including institutions of higher education, and local government and private efforts to discourage destructive behavior, including alcohol and drug abuse and tobacco use. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 22, 2005  
Filed April 25, 2005

**CHAPTER 518****SENATE BILL NO. 2390**

(Senators Heitkamp, Mathern)  
(Representative Guleson)

**CITY DEVELOPMENT IMPACT FEES STUDY**

AN ACT to provide for a legislative council study of city and county development impact fees.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - CITY DEVELOPMENT IMPACT FEES.** The legislative council shall consider studying, during the 2005-06 interim, city and county development impact fees. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 16, 2005

Filed March 17, 2005

**CHAPTER 519****SENATE BILL NO. 2393**  
(Senators Cook, Stenehjem, Urlacher)**TAX EXEMPTIONS AND RATE REDUCTIONS STUDY**

AN ACT to provide for a legislative council study of sales, use, and gross receipts tax exemptions and rate reductions.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying sales, use, and gross receipts tax exemptions and reductions, with emphasis on those that are available for only certain purchasers, including, for each exemption or reduction, a detailed analysis of the fiscal impact to the state, benefits to the state economy from eliminating the exemption or rate reduction, benefits to the state economy of retaining the exemption or rate reduction, relationship of the exemption or rate reduction to tax policies of other states and to federal or state laws or regulations, and who are the beneficiaries of each exemption or rate reduction, specifically including the extent to which the benefits flow to out-of-state concerns. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 6, 2005

Filed April 6, 2005

**CHAPTER 520****SENATE BILL NO. 2404**

(Senators O'Connell, Robinson)  
(Representatives Haas, Metcalf, Sitte, Wieland)

**EDUCATION FUNDING STUDY**

AN ACT to direct a study of education funding by the legislative council.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY OF EDUCATION FUNDING.**

1. The legislative council shall study enhanced funding for elementary and secondary education and methods, including sales tax, income tax, and tax exemptions, by which the state's reliance on property taxes to fund elementary and secondary education could be reduced.
2. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 16, 2005

Filed March 17, 2005

**CHAPTER 521****HOUSE BILL NO. 1081**

(Education Committee)

(At the request of the Superintendent of Public Instruction)

**SCHOOL DISTRICT - TRIBAL AGREEMENTS**

AN ACT to amend and reenact sections 54-40.2-02, 54-40.2-03.1, and 54-40.2-03.2 of the North Dakota Century Code, relating to notification to the superintendent of public instruction regarding agreements contemplated between school districts and Indian tribes.

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

**SECTION 1. AMENDMENT.** Section 54-40.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-40.2-02. Authorization to enter agreements - General contents.**

1. Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any disputes, in accordance with this chapter or any other law that authorizes a public agency to enter an agreement. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.
2. The Indian affairs commission may propose agreements entered into pursuant to this chapter and may assist, at the request of any tribe affected by such an agreement, in the negotiation and development of such agreements.
3. If the public agency contemplating entering into an agreement under this chapter is a school district, the school district shall:
  - a. Provide written notice to the superintendent of public instruction that it is contemplating entering into an agreement under this chapter; and
  - b. Consider written recommendations that the superintendent makes regarding the agreement.
4. This chapter does not apply to agreements entered into under section 24-02-02.3 and chapter 54-38 or agreements entered with one or more tribal governments pursuant to a state or federally funded program or other activity, including any publicly announced offer of a grant, loan, request for proposal, bid, or other contract originating with a public agency, for which the tribal government is otherwise eligible under federal, state, or local law.

**SECTION 2. AMENDMENT.** Section 54-40.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-40.2-03.1. Agreement - Notice.**

1. After the parties to an agreement have agreed to its contents, the ~~state~~ public agency involved shall publish a notice containing a summary of the agreement in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice must also be published in any newspaper of general circulation for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must state that the ~~state~~ public agency will hold a public hearing concerning the agreement upon the request of any resident of the county in which the notice is published if the request is made within thirty days of the publication of the notice.
2. If the public agency contemplating entering into an agreement under this chapter is a school district, the school district must also provide the superintendent of public instruction a copy of the notice.

**SECTION 3. AMENDMENT.** Section 54-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-40.2-03.2. Public hearing - Notice.**

1. If the ~~state~~ public agency receives a request pursuant to section 54-40.2-03.1, the ~~state~~ public agency shall hold a public hearing prior to the submission of the agreement to the governor at which any persons interested in the agreement may be heard. Notice of the time, place, and purpose of the hearing must be published prior to the hearing in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice of the public hearing must also be published in any newspaper of general circulation published for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must describe the nature, scope, and purpose of the agreement and must state the times and places at which the agreement will be available to the public for inspection and copying.
2. If the public agency contemplating entering into an agreement under this chapter is a school district, the school district must also provide the superintendent of public instruction a copy of the notice.

Approved March 7, 2005  
Filed March 8, 2005

**CHAPTER 522****SENATE BILL NO. 2035**

(Legislative Council)  
(Higher Education Committee)

**UNIVERSITY SYSTEM BLOCK GRANT  
APPROPRIATIONS**

AN ACT to amend and reenact sections 54-44.1-04 and 54-44.1-06 of the North Dakota Century Code, relating to budget requests and block grant appropriations for the North Dakota university system; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-44.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-04. (Effective through June 30, 2005 2007) Budget estimates of budget units filed with the office of the budget - Deadline.** The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The budget estimates for the North Dakota university system must include block grants for the university system for a base funding component and for an initiative funding component for specific strategies or initiatives and a budget estimate for an asset funding component for renewal and replacement of physical plant assets at the institutions of higher education. The estimates so submitted must bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The director of the budget in the director's discretion may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director designates shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

**(Effective after June 30, 2005 2007) Budget estimates of budget units filed with the office of the budget - Deadline.** The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The estimates so submitted must bear the approval of

the board or commission of each budget unit for which a board or commission is constituted. The director of the budget may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director shall designate shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

**SECTION 2. AMENDMENT.** Section 54-44.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-06. (Effective through June 30, 2005 2007) Preparation of the budget data - Contents.** The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
  - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
  - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.

4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.
5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of proposed general and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act. The draft of the proposed appropriations act for the North Dakota university system must include block grants for a base funding appropriation and for an initiative funding appropriation for specific strategies or initiatives and an appropriation for asset funding for renewal and replacement of physical plant assets at the institutions of higher education.
8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include assets or services acquired in the

current biennium and anticipated assets or services to be acquired in the next biennium.

9. Any other information as the director of the budget determines desirable or as is required by law.

**(Effective after June 30, 2005 2007) Preparation of the budget data -**

**Contents.** The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
  - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
  - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.
4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on

any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.

5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of a proposed general appropriations act and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act.
8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include assets or services acquired in the current biennium and anticipated assets or services to be acquired in the next biennium.
9. Any other information as the director of the budget determines desirable or as is required by law.

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

Approved March 7, 2005  
Filed March 8, 2005

**CHAPTER 523****SENATE BILL NO. 2036**

(Legislative Council)  
(Higher Education Committee)

**UNIVERSITY SYSTEM UNEXPENDED  
APPROPRIATION CANCELLATION**

AN ACT to amend and reenact section 54-44.1-11 of the North Dakota Century Code, relating to the cancellation of unexpended appropriations for the North Dakota university system; and to declare an emergency.

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

<sup>236</sup> **SECTION 1. AMENDMENT.** Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-11. (Effective through June 30, 2005 2007) Office of management and budget to cancel unexpended appropriations - When they may continue.** Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.

**(Effective after June 30, 2005 2007) Office of management and budget to cancel unexpended appropriations - When they may continue.** The office of management and budget, thirty days after the close of each biennial period, shall

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<sup>236</sup> Section 54-44.1-11 was also amended by section 6 of House Bill No. 1023, chapter 23, section 1 of House Bill No. 1177, chapter 540, and section 1 of Senate Bill No. 2121, chapter 524.

cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.

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

Approved March 16, 2005

Filed March 17, 2005

**CHAPTER 524****SENATE BILL NO. 2121**

(Appropriations Committee)

(At the request of the Department of Transportation)

**ROADWAY MAINTENANCE UNEXPENDED  
APPROPRIATIONS**

AN ACT to amend and reenact section 54-44.1-11 of the North Dakota Century Code, relating to unexpended appropriations for roadway maintenance operations; and to declare an emergency.

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

<sup>237</sup> **SECTION 1. AMENDMENT.** Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-11. (Effective through June 30, 2005) Office of management and budget to cancel unexpended appropriations - When they may continue.** Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the

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<sup>237</sup> Section 54-44.1-11 was also amended by section 6 of House Bill No. 1023, chapter 23, section 1 of House Bill No. 1177, chapter 540, and section 1 of Senate Bill No. 2036, chapter 523.

equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.

**(Effective after June 30, 2005) Office of management and budget to cancel unexpended appropriations - When they may continue.** The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.

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

Approved March 25, 2005

Filed March 25, 2005

**CHAPTER 525****HOUSE BILL NO. 1053**

(Representative Delzer)

**BANK OF NORTH DAKOTA CONTINGENT TRANSFERS**

AN ACT to create and enact a new section to chapter 54-44.1 of the North Dakota Century Code, relating to contingent Bank of North Dakota transfers to the general fund.

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

**SECTION 1.** A new section to chapter 54-44.1 of the North Dakota Century Code is created and enacted as follows:

**Bank of North Dakota transfers to the general fund - Restoration.** Notwithstanding section 54-27.2-02 and subject to the availability of funds in the general fund, at the end of the biennium the director of the budget shall return to the Bank of North Dakota any funds transferred from the Bank to the general fund in response to a projected shortfall of general fund revenues pursuant to a contingent authorization by the legislative assembly. The amount returned to the Bank as required by this section must be the amount of the contingent transfer or the unobligated balance of the general fund at the end of the biennium, whichever is less. For purposes of this section "at the end of the biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.

Approved March 4, 2005  
Filed March 4, 2005

**CHAPTER 526****SENATE BILL NO. 2075**

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

**PERSONNEL BOARD REPORT FILING**

AN ACT to amend and reenact subsection 3 of section 54-44.3-07 of the North Dakota Century Code, relating to the filing of the personnel board's biennial report.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 54-44.3-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Submit a biennial report as prescribed by section 54-06-04 of its Ensure that the director includes the activities and the operation of this state's personnel system of the board in the office of management and budget's biennial report.

Approved March 16, 2005

Filed March 17, 2005

**CHAPTER 527****HOUSE BILL NO. 1170**

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

**OMB COOPERATIVE PURCHASING**

AN ACT to create and enact a new section to chapter 54-44.4 of the North Dakota Century Code, relating to cooperative purchasing by the office of management and budget; and to amend and reenact sections 15.1-09-34, 54-44.4-02, and 54-44.4-05 of the North Dakota Century Code, relating to the office of management and budget's purchasing services and to competitive, limited competitive, noncompetitive, and negotiated purchases.

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

**SECTION 1. AMENDMENT.** Section 15.1-09-34 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-09-34. Contracts by school boards - Bids - Penalty.**

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than twenty-five thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
  - a. The personal services of district employees.
  - b. Textbooks and reference books.
  - c. Articles not sold on the open market.
  - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
  - e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
  - f. Building construction projects under chapters 48-01.1 and 48-02.
  - g. School transportation services purchased under section 15.1-30-11.
  - h. Vehicle fuel purchased under section 15.1-09-34.1.
  - i. Heating fuel purchased under section 15.1-09-34.1.
  - j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.

- k. Cooperative purchases with the office of management and budget under chapter 54-44.4.
2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].
3. A board member who participates in a violation of this section is guilty of a class B misdemeanor.

**SECTION 2.** A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

**Cooperative purchasing.**

1. The office of management and budget shall purchase 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.
2. The office of management and budget and the agencies and institutions under the jurisdiction of the state board of higher education shall make joint purchases of like commodities or services of high common usage when the office of management and budget and the state board of higher education determine it is in the best interest of the state.
3. The director of the office of management and budget or the director's designee may agree to purchase commodities or services under contracts entered into by the United States general services administration or contracts of other government entities if it is determined to be in the best interest of the state after consideration of price, contractual terms and conditions, and the availability of competition from approved vendors under section 54-44.4-09.
4. The director of the office of management and budget or the director's designee may participate in, sponsor, or administer a cooperative purchasing agreement with one or more government entities or a nonprofit organization established on behalf of public entities for the procurement of commodities or services in accordance with an agreement entered into between the participants.
5. Cooperative purchasing may include open-ended contracts that are available to other government entities or nonprofit organizations established on behalf of public entities.
6. Before entering into a cooperative purchasing agreement under this section, the office of management and budget must determine that the contracts were awarded through full and open competition or source selection methods specified in section 54-44.4-05 and shall send notice to approved vendors of the office's intent to make a cooperative purchase in accordance with this chapter.

**SECTION 3. 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. 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. 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. Commodities and services costing less than a specified amount as determined by written directive by the director of the office of management and budget.
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 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 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 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.

<sup>238</sup> **SECTION 4. AMENDMENT.** Section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.4-05. Competitive, limited competitive, noncompetitive, and negotiated purchases - ~~Other government purchasing contracts~~ - Exempt records.**

1. Except as otherwise provided in sections 44-08-01 and 25-16.2-02, and in this 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 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. All bids 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 source.
  - b. ~~The commodity or service is available from another governmental entity's contract.~~
  - e. The commodity or service is to be purchased for experimentation or trial.

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<sup>238</sup> Section 54-44.4-05 was also amended by section 1 of House Bill No. 1341, chapter 528.

- ~~d.~~ c. No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.
  - ~~e.~~ d. Commodities are being purchased for over-the-counter resale.
  - ~~f.~~ e. Acceptable commodities or services are produced or provided by correctional institutions or other government agencies.
  - ~~g.~~ f. The anticipated cost of purchasing specified 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.~~ g. A used commodity is advantageous to the state and the commodity is available only on short notice.
  - ~~i.~~ h. 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.~~ i. Compatibility with equipment currently owned by the state is essential to the proper functioning of that equipment.
  - ~~k.~~ j. The agency provides documentation indicating that the services or the circumstances are of such a nature that deviation from the procurement procedure is appropriate.
- ~~3.~~ If the director of the office of management and budget determines it to be in the best interest of the state, the office of management and budget may agree to purchase according to contracts entered into by the United States general services administration or may enter into cooperative purchasing agreements with a cooperative purchasing group of other state governments.

Approved March 15, 2005  
Filed March 16, 2005

**CHAPTER 528****HOUSE BILL NO. 1341**

(Representatives Kasper, Dosch, Grande, Headland, Klein, Skarphol)

**APPROVED VENDORS FOR STATE BIDS**

AN ACT to amend and reenact subsection 2 of section 54-44.4-05 and subsection 1 of section 54-44.4-09 of the North Dakota Century Code, relating to purchasing contracts and approved vendors for state commodities and services contracts.

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

<sup>239</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

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 office of management and budget shall adopt rules related to sending notice of intent to make limited competitive, noncompetitive, and negotiated purchases in accordance with this chapter. The notice must describe the needed commodity or service and the intended procurement method and must state that vendors are permitted to submit bids or proposals for contracts to be awarded under this section. The circumstances that may permit limited competitive, noncompetitive, or negotiated purchases include:
  - a. The commodity or service is available from only one 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. 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 commodities or services are produced or provided by correctional institutions or other government agencies.
  - g. The anticipated cost of purchasing specified commodities or services is less than an amount determined by the office of

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<sup>239</sup> Section 54-44.4-05 was also amended by section 4 of House Bill No. 1170, chapter 527.

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.

<sup>240</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 54-44.4-09 of the North Dakota Century Code is 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 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 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. The office of management and budget or the purchasing agency shall use the list when sending notice of intent to make cooperative, limited competitive, noncompetitive, and negotiated purchases.

Approved March 16, 2005  
Filed March 17, 2005

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<sup>240</sup> Section 54-44.4-09 was also amended by section 2 of House Bill No. 1091, chapter 381, and section 18 of House Bill No. 1273, chapter 384.

**CHAPTER 529****HOUSE BILL NO. 1092**

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

**RECYCLED PAPER PRODUCT PURCHASE**

AN ACT to amend and reenact section 54-44.4-08 of the North Dakota Century Code, relating to the purchase of recycled paper products by state agencies and institutions.

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

**SECTION 1. AMENDMENT.** Section 54-44.4-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.4-08. Purchase of recycled paper products.** The office of management and budget, and any state agency or institution that has authority to purchase products, shall ensure that ~~beginning July 1, 1993, at least ten~~ beginning July 1, 1993, at least twenty percent of the total volume of paper and paper products being purchased for state agencies and institutions contain at least twenty-five percent recycled material; ~~beginning January 1, 1994, at least thirty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material;~~ beginning January 1, 1994, at least thirty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; ~~beginning January 1, 1996, at least forty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material;~~ beginning January 1, 1996, at least forty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; and ~~beginning January 1, 1998, at least sixty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material.~~ beginning January 1, 1998, at least sixty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material. The office of management and budget shall implement a methodology to track compliance with this section.

Approved April 14, 2005  
Filed April 18, 2005

**CHAPTER 530****SENATE BILL NO. 2201**

(Senators Wardner, Lyson)  
(Representatives Haas, Maragos)

**COMMUNITY ACTION AGENCY BLOCK GRANTS**

AN ACT to amend and reenact sections 54-44.5-01, 54-44.5-06, and 54-44.5-07 of the North Dakota Century Code, relating to federal block grants supporting community action agencies.

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

**SECTION 1. AMENDMENT.** Section 54-44.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.5-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Community action agency" means a not-for-profit corporation that has authority under its charter and bylaws to receive funds to administer community action programs and which was officially designated as a community action agency or a community action program under section 210 of the Economic Opportunity Act of 1964 [Pub. L. 88-452; 78 Stat. 508; 42 U.S.C. 2701 et seq.] or any federal law concerning a block grant program or other appropriate federal funding of social or community services, unless the community action agency or a community action program lost its designation as a result of failure to comply with the provisions of ~~the federal Act~~ law.
2. "Community action program" means a community-based and operated program that includes an intake assessment and referral capability in each of its counties and is designed to include a number of projects or components to provide a range of services and activities having a measurable and potentially major impact on causes and conditions of poverty in the community or those areas of the community where poverty is a particularly acute problem. These services and activities may include activities designed to provide opportunities for eligible persons to:
  - a. Secure and retain meaningful employment;
  - b. Attain an adequate education;
  - c. Make better use of available income;
  - d. Obtain and maintain adequate housing and suitable living environment;
  - e. Obtain emergency assistance through grants and loans to meet immediate and urgent individual and family needs, including the need for health services, nutritious food, housing, and employment-related assistance;

- f. Maximize the role community action agencies play in supportive mechanisms available to North Dakota families;
  - g. Remove obstacles and solve problems that block achievement of self-sufficiency;
  - h. Achieve greater participation in the affairs of the community; ~~and~~
  - i. Make more effective use of other programs; and
  - j. Engage in activities eligible for federal funding, including funding through a block grant for social or community services.
3. "Department" means the department of commerce.
  4. "Director" means the director of the division.
  5. "Division" means the department division of community services.

**SECTION 2. AMENDMENT.** Section 54-44.5-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.5-06. Community action agency board of directors - Qualifications - Powers - Duties.** Each community action agency must have a board of directors, as provided by the bylaws of the corporation, ~~of not less than nine nor more than fifty-one members. One-third of the members of the board must be elected public officials, currently holding office, or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board by appointive public officials may be counted in meeting the one-third requirement. At least one-third of the members must be persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served, and the remainder of the members must be officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community that is consistent with federal law concerning community action agencies that are eligible to receive federal funding through a block grant or other appropriate federal sources for social or community services.~~ The board shall determine personnel, fiscal, and program policies and shall approve proposals of financial assistance and the disbursement of funds.

**SECTION 3. AMENDMENT.** Section 54-44.5-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.5-07. Funding - Community action agency's share of funds - How determined.**

1. If the Congress of the United States approves a block grant system to fund social or community programs, the state may use, subject to legislative appropriation, the block grant funds or in-kind services to provide a level of financial assistance for community action agencies to carry out community action programs through the community services block grants pursuant to the federal Community Services Block Grant Act [Pub. L. 97-35; 95 Stat. 511; 42 U.S.C. 9903] ~~and or any other block grant~~ or other federal funding sources that may be appropriate.

2. The division shall distribute the federal community services block grant funds received under the federal Community Services Block Grant Act [Pub. L. 97-35; 95 Stat. 511; 42 U.S.C. 9903] or any other block grant or other appropriate federal funding source and shall allocate the funds as follows, unless a different amount is mandated by federal law:
  - a. At least ninety percent must be allocated to community action agencies;
  - b. The greater of fifty-five thousand dollars or five percent may be allocated for state administrative expenses; and
  - c. Not more than five percent may be allocated for state discretionary projects.
3. Each community action agency, in accordance with procedures established by the division, is entitled to receive a portion of available federal Community Services Block Grant Act [Pub. L. 97-35; 95 Stat. 511; 42 U.S.C. 9903] or any other block grant funds or other appropriate federal funding source, if it is consistent with federal law, based on that agency's poverty population relative to the state's total poverty population. The division shall determine poverty levels using criteria established by the United States office of management and budget.
4. Each community action agency is governed by procedures established by the division as it relates to the community services block grant program.

Approved March 25, 2005

Filed March 25, 2005

**CHAPTER 531****HOUSE BILL NO. 1069**

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

**PERS ADMINISTRATION**

AN ACT to create and enact a new section to chapter 39-03.1, a new section to chapter 54-52, a new section to chapter 54-52.1, a new subsection to section 54-52.6-02, and a new section to chapter 54-52.6 of the North Dakota Century Code, relating to military service retirement credit and temporary employee participation in the defined contribution retirement plan under the public employees retirement system and the acceptance and expenditure of funds by the retirement board for the uniform group insurance program from third parties; to amend and reenact section 39-03.1-10.1, subsection 9 of section 39-03.1-11, sections 39-03.1-11.2, 39-03.1-28, and 39-03.1-30, subsection 11 of section 54-52-01, subsection 3 of section 54-52-05, section 54-52-06, subsections 9 and 10 of section 54-52-17, sections 54-52-17.4 and 54-52-28, subsection 3 of section 54-52.6-01, and section 54-52.6-13 of the North Dakota Century Code, relating to the purchase of service credit for qualified military service, highway patrol retirement options, compliance with Internal Revenue Code provisions, confidentiality of records, purchase of sick leave, eligibility for the law enforcement retirement plan, temporary employee participation in the defined contribution retirement plan, and retirement benefit options under the public employees retirement system; to repeal sections 54-52-19.2 and 54-52.6-09.3 of the North Dakota Century Code, relating to prior service credit under the public employees retirement system and retirement contributions for military service; to provide a continuing appropriation; to provide an appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 39-03.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-10.1. Refund and repurchase of contributions.** Except as provided in ~~subsection 3~~ section 2 of this Act, a contributor whose employment has been terminated for at least thirty days is entitled to a refund of or to repurchase contributions as follows:

1. a. If the contributor has less than ten years of service at termination of employment, the refund is payable either on application of the contributor or, if within thirty days after termination the contributor has not provided a written statement to the board waiving the refund and requesting the contributor's account remain in the fund, automatically.
- b. If the contributor has at least ten years of service at the date of termination, the contributor may apply for a refund of accumulated deductions instead of retirement benefits. By receiving the refund of accumulated deductions under this subdivision, the contributor forfeits all months of service to the date of refund and cannot use those months for any future benefit calculations.

2. A contributor who was paid a refund under subdivision a of subsection 1 may, upon reemployment, elect to repurchase the forfeited past service for the retirement program and the retiree health benefits program in accordance with the rules adopted by the board.
3. ~~A member may elect to purchase qualified military service credit 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] at any time prior to retirement by submitting a valid application and paying the member portion pursuant to rules adopted by the board. It is the responsibility of the applicant to supply any documentation required by the board.~~

**SECTION 2.** A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

**Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.** ~~A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service 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 must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service.~~

<sup>241</sup> **SECTION 3. AMENDMENT.** Subsection 9 of section 39-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
  - a. ~~A~~ An actuarially equivalent joint and survivor one hundred percent option.
  - b. ~~Life~~ An actuarially equivalent life with ~~five-year or ten-year or twenty-year~~ certain options.
  - c. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.

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<sup>241</sup> Section 39-03.1-11 was also amended by section 1 of House Bill No. 1070, chapter 533.

Unless a contributor requests that the contributor 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 a fifty percent option to the surviving spouse.

**SECTION 4. AMENDMENT.** Section 39-03.1-11.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-11.2. 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 in effect on August 1, 2005, as it applies for governmental plans.

<sup>242</sup> **SECTION 5. AMENDMENT.** Section 39-03.1-28 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-28. Confidentiality of records.** All records relating to the retirement benefits of a member or a beneficiary under this chapter are confidential and are not public records. The information and records may be disclosed, under rules adopted by the board only to:

1. A person to whom the member has given written consent to have the information disclosed.
2. A person legally representing the member, upon proper proof of representation, and unless the member specifically withholds consent.
3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit and years of age. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal laws. Any information provided to the member's participating employer under this subsection must remain confidential except as provided under subsection 6.
5. The administrative staff of the retirement and investment office for purposes relating to membership and benefits determination.
6. State or federal agencies for purposes of reporting on a service provider's provision of services or when the employer must supply information to an agency to validate the employer's compliance with existing state or federal laws.
7. Member interest groups approved by the board on a third-party blind list basis, limited to information concerning the member's participation, name, and address.

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<sup>242</sup> Section 39-03.1-28 was also amended by section 14 of House Bill No. 1172, chapter 415.

8. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 39-03.1-14.2. The information disclosed under this subsection must be limited to information necessary for drafting the order.
9. 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.
10. Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.
11. 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.

**SECTION 6. AMENDMENT.** Section 39-03.1-30 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-30. Conversion of sick leave.** 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 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 employer and employee contribution, ~~plus one percent~~ the required contribution 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 that person's certified sick leave. All conversion payments must be made within sixty days of termination and before the member receives a retirement annuity unless the member has submitted an approved payment plan to the board.

**SECTION 7. AMENDMENT.** Subsection 11 of section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "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 and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

<sup>243</sup> **SECTION 8. 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, 54-52-06.2, and 54-52-06.3 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 6 5 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 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.

**SECTION 9. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06. Employer's contribution to retirement plan.** Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. For those members who elect to exercise their rights under ~~subsection 5 of section 54-52-17.4~~ section 12 of this Act, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to ~~subsection 5 of section 54-52-17.4~~ section 12 of this Act a lump sum, into the retirement fund from its funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to ~~subsection 5 of section 54-52-17.4~~ section 12 of this Act a lump sum, is subject to a

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<sup>243</sup> Section 54-52-05 was also amended by section 1 of House Bill No. 1266, chapter 532.

civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date they became due, penalty and interest to be paid on delinquent contributions may be waived. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

<sup>244</sup> **SECTION 10. AMENDMENT.** Subsections 9 and 10 of section 54-52-17 of the North Dakota Century Code are amended and reenacted as follows:

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 Actuarially equivalent life with five-year or ten-year or twenty-year certain options.
  - e. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.

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,

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<sup>244</sup> Section 54-52-17 was also amended by section 3 of House Bill No. 1070, chapter 533.

but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code.

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

**54-52-17.4. 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 prior employment in the armed forces of the United States, except as provided in ~~subsection 5~~ section 12 of this Act, for up to four years of credit.
  - b. Employment as a permanent employee by a public 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 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~~ section 12 of this Act, 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. 3450; 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 that period, times the number of months of credit being purchased. 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 the percentage required by section 54-52.1-03.2 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 of credit

~~being purchased. For credit before July 1, 1966, no contribution is required.~~

- ~~6.~~ 5. 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.
- ~~7.~~ 6. 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.

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

**Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.** A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service 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 must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service.

**SECTION 13. AMENDMENT.** Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-28. 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 in effect on August 1, 2005, as it applies for governmental plans.

**SECTION 14.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

**Acceptance and expenditure of third-party payments - Continuing appropriation.** The board may receive moneys from third parties, including the federal government, pursuant to one or more federal programs. Any money received from a third party by the board is appropriated to the board on a continuing basis for the board's use in paying benefits, premiums, or administrative expenses under the uniform group insurance program.

**SECTION 15. 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 North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan.

<sup>245</sup> **SECTION 16.** A new subsection to section 54-52.6-02 of the North Dakota Century Code is created and enacted as follows:

A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

**SECTION 17.** A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

**Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.** A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service 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 must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service.

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<sup>245</sup> Section 54-52.6-02 was also amended by section 2 of House Bill No. 1266, chapter 532.

**SECTION 18. AMENDMENT.** Section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-13. Distributions.**

1. A participating member is eligible to receive distribution of that person's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the board, the board, in a lump sum distribution, shall distribute the accumulated balance to a legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.
3. A former participating member ~~or refund beneficiary~~ may elect one or a combination of several of the following methods of distribution of the accumulated balance:
  - a. A lump sum distribution to the recipient.
  - b. A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.
  - c. Periodic distributions, as authorized by the board.
  - d. No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in subdivisions a, b, or c. A beneficiary who is not the surviving spouse may only choose a lump sum distribution of the accumulated balance.

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 one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

**SECTION 19. REPEAL.** Section 54-52-19.2 of the North Dakota Century Code is repealed.

**SECTION 20. REPEAL.** Section 54-52.6-09.3 of the North Dakota Century Code is repealed.

**SECTION 21. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from other funds derived from federal funds and other income, to the following departments for the

purpose of defraying the cost of paying military service retirement credit for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

AGENCY	GENERAL FUND	OTHER FUNDS
Office of management and budget	\$0	\$3,343
Judicial branch	3,144	0
Retirement and investment office	0	1,803
State department of health	5,920	10,738
Department of human services	7,614	0
Job service North Dakota	0	3,780
Highway patrol	3,824	0
Department of corrections and rehabilitation	29,778	3,053
Adjutant general	7,027	18,249
Game and fish department	0	1,932
Parks and recreation department	2,201	207
State water commission	0	2,512
Department of transportation	0	50,854
Total	\$59,508	\$96,471

**SECTION 22. EFFECTIVE DATE.** Sections 3 through 7, 10, 13 through 16, 18, and 19 become effective on August 1, 2005.

Approved April 8, 2005  
Filed April 12, 2005

**CHAPTER 532****HOUSE BILL NO. 1266**

(Representatives R. Kelsch, L. Meier, Sitte)  
(Senators Cook, O'Connell, Stenehjem)

**PERS RETURN TO EMPLOYMENT**

AN ACT to create and enact a new subsection to section 54-52.6-02 of the North Dakota Century Code, relating to returning to employment after retirement under the public employees retirement system defined contribution retirement plan; to amend and reenact subsection 1 of section 54-52-05 of the North Dakota Century Code, relating to returning to employment after retirement under the public employees retirement system defined benefit retirement plan; and to declare an emergency.

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

<sup>246</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.

<sup>247</sup> **SECTION 2.** A new subsection to section 54-52.6-02 of the North Dakota Century Code is created and enacted as follows:

A former participating member who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which

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<sup>246</sup> Section 54-52-05 was also amended by section 8 of House Bill No. 1069, chapter 531.

<sup>247</sup> Section 54-52.6-02 was also amended by section 16 of House Bill No. 1069, chapter 531.

does participate in any state-sponsored retirement plan may, before reenrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.

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

Approved April 11, 2005

Filed April 12, 2005

**CHAPTER 533****HOUSE BILL NO. 1070**

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

**PERS SUPPLEMENTAL PAYMENTS AND FINAL  
AVERAGE SALARY**

AN ACT to create and enact a new section to chapter 39-03.1 and a new section to chapter 54-52 of the North Dakota Century Code, relating to supplemental payments to retirees under the highway patrolmen's retirement system and the public employees retirement system; and to amend and reenact subsection 2 of section 39-03.1-11 and subsection 2 of section 54-52-17 of the North Dakota Century Code, relating to calculation of final average salary under the highway patrolmen's retirement system and the public employees retirement system.

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

<sup>248</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 39-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Retirement benefits are based on the contributor's final average salary. Final average salary is the average of the highest salary received by the contributor for any thirty-six ~~consecutive~~ months employed during the last one hundred twenty months of employment. For contributors who retire on or after July 1, 2009, final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred eighty months of employment. Months not employed or months in which employment was not as a permanent employee are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the contributor has worked for less than thirty-six months at the postponed retirement date, the final average salary is the average salary for all months of employment.

**SECTION 2.** A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

**Supplemental retiree benefit payment.** If the board determines that the fund has obtained a total return on investments of eleven and two-tenths percent or higher for the fiscal year ending June 30, 2005, or June 30, 2006, and that the fund has the necessary margin to pay for the benefit, the board shall authorize a payment to each retiree receiving benefit payments under this chapter as of the date of the fiscal yearend in the amount of fifty percent of the retiree's then current monthly benefit payment. The payment must be made the January following the fiscal yearend. The board may only make one payment under this section.

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<sup>248</sup> Section 39-03.1-11 was also amended by section 3 of House Bill No. 1069, chapter 531.

<sup>249</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. For members who retire on or after July 1, 2009, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred eighty months of employment. 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.

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

**Supplemental retiree benefit payment.** If the board determines that the fund has obtained a total return on investments of eleven and two-tenths percent or higher for the fiscal year ending June 30, 2005, or June 30, 2006, and that the fund has the necessary margin to pay for the benefit, the board shall authorize a payment to each retiree receiving benefit payments under this chapter as of the date of the fiscal yearend in the amount of fifty percent of the retiree's then current monthly benefit payment. The payment must be made the January following the fiscal yearend. The board may only make one payment to each retiree under this section.

Approved March 16, 2005  
Filed March 17, 2005

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<sup>249</sup> Section 54-52-17 was also amended by section 10 of House Bill No. 1069, chapter 531.

**CHAPTER 534****SENATE BILL NO. 2297**

(Senator J. Lee)  
(Representative Price)

**CHILDREN'S SERVICES COORDINATING COMMITTEE  
FUNCTIONS**

AN ACT to amend and reenact sections 54-56-03, 54-56-04, and 54-56-06 of the North Dakota Century Code, relating to the functions and duties of the children's services coordinating committee; to repeal section 54-56-07 of the North Dakota Century Code, relating to the operating fund balance of the children's services coordinating committee; to provide a continuing appropriation; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 54-56-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-56-03. Functions - Continuing appropriation.**

1. The committee may:
  - a. Plan for and coordinate delivery of services to children and adolescents who are abused, neglected, emotionally disturbed, mentally ill, medically disabled, runaways, homeless, deprived, school dropouts, school-age parents, chemical or alcohol abusers, unruly, or delinquent.
  - b. Foster primary prevention ideas and strategies and present those ideas and strategies to regional or tribal children's services coordinating committees.
  - c. Accept funds, services, or other assistance from any source. Any funds received under this section are appropriated on a continuing basis to the committee for the purpose of furthering the objectives of the committee.
2. The committee shall:
  - a. ~~Distribute funds due to regional or tribal committees within five days of receiving the funds.~~
  - b. ~~Distribute~~ distribute its grant funds appropriated or authorized by the legislative assembly to children's services organizations and programs, subject to specific approval by the legislative assembly or the budget section. No funds, grants, gifts, or services of an organization receiving funds distributed by the committee may be used for the purposes of direct provision of contraception services, abortion, or abortion referrals to minors.

**SECTION 2. AMENDMENT.** Section 54-56-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-56-04. Charter public corporations - Duties.** The children's services coordinating committee may designate up to twelve organizations to serve as regional and tribal children's services coordinating committees ~~to distribute grants received from the children's services coordinating committee.~~ The committee shall prescribe conditions for the creation, continuance, and duration of those designations. ~~The committee shall discontinue the designation of regional and tribal committees if grant funds are not available for distribution to the regional and tribal committees.~~

**SECTION 3. AMENDMENT.** Section 54-56-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-56-06. Regional or tribal children's services coordinating committee - Functions - Continuing appropriation.** A regional or tribal children's services coordinating committee, if established, must be composed of community volunteers and must maintain its own records and may accept funds, services, or other assistance from any source. Any funds received under this section are appropriated on a continuing basis to the regional or tribal committee for the purpose of furthering the objectives of the committee. ~~To foster and nurture the broadest base of community support and participation, at least one-third of regional or tribal committee members must be from the private sector.~~ A regional or tribal committee shall:

1. ~~Recruit local organizations to become participating entities to claim federal administrative cost reimbursements through the department of human services.~~
2. ~~Expend administrative funding received from the state children's services coordinating committee only for costs associated with salaries and benefits, mileage and travel, meals, conferences and workshops, contract services, telephone, office supplies, marketing, printing, postage, dues and subscriptions, and room rent.~~
3. ~~Reimburse a committee member only for expenses that are not reimbursed by the organization or entity that the member is representing on the regional or tribal committee.~~
4. ~~Submit all claims received from its participating entities claiming federal administrative cost reimbursements to the department of human services within ninety days of the end of each calendar quarter.~~
5. ~~Distribute fifty percent of the federal funds generated as a result of a participating entity claiming federal administrative cost reimbursements through the department of human services to the participating entity that generated the federal administrative cost reimbursement.~~
6. ~~Distribute funds due to participating entities within twenty days of receiving the funds.~~

~~A regional or tribal committee may not maintain an unobligated fund balance, excluding income received during the final thirty days of each fiscal year, which exceeds fifty thousand dollars at the end of each fiscal year.~~

**SECTION 4. REPEAL.** Section 54-56-07 of the North Dakota Century Code is repealed.

**SECTION 5. EXPIRATION DATE.** Sections 1 through 3 of this Act are effective through June 30, 2007, and after that date are ineffective.

Approved April 25, 2005  
Filed April 26, 2005

**CHAPTER 535****SENATE BILL NO. 2070**

(Judiciary Committee)

(At the request of the Office of Administrative Hearings)

**ADMINISTRATIVE LAW JUDGE QUALIFICATIONS**

AN ACT to amend and reenact subsection 3 of section 54-57-01 of the North Dakota Century Code, relating to employment of administrative law judges who are not attorneys.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 54-57-01 of the North Dakota Century Code is amended and reenacted as follows:

3. The director of administrative hearings may preside as an administrative law judge at administrative hearings and may employ or appoint additional administrative law judges to serve in the office as necessary to fulfill the duties of office as described in section 54-57-04 and section 28-32-31 and to provide administrative law judges to preside at administrative hearings as requested by agencies. The director of administrative hearings may employ or appoint only such additional administrative law judges who are attorneys at law in good standing, admitted to the bar in the state, and currently licensed by the state board of law examiners. Administrative law judges employed by the director before August 1, 1995, need not be attorneys at law and may be designated by the director to preside at any administrative proceedings or adjudicative proceedings under section 54-57-03. The director may delegate to an employee the exercise of a specific statutory power or duty as deemed advisable, subject to the director's control, including the powers and duties of a deputy director. All administrative law judges must be classified employees, except that the director of administrative hearings must be an unclassified employee who only may be removed, during a term of office, for cause. Each administrative law judge must have a demonstrated knowledge of administrative practices and procedures and must be free of any association that would impair the person's ability to function officially in a fair and objective manner.

Approved March 7, 2005  
Filed March 8, 2005

**CHAPTER 536****HOUSE BILL NO. 1275**

(Representatives Skarphol, Glassheim, Svedjan)  
(Senators Andrist, Seymour, Wardner)

**INFORMATION TECHNOLOGY PROJECT REPORTING**

AN ACT to create and enact a new section to chapter 54-59 of the North Dakota Century Code, relating to executive branch, legislative branch, and judicial branch reporting of information technology projects to the information technology advisory committee; and to amend and reenact section 54-59-07 of the North Dakota Century Code, relating to the state information technology advisory committee.

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

**SECTION 1. 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; the commissioner of higher education or the commissioner's designee; 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. The members of the committee 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 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 and budgeting, services of the information technology department, and statewide information technology initiatives and policy and shall review reports on major information technology projects as required by this chapter.

**SECTION 2.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Information technology projects - Reports.**

1. An executive, legislative, or judicial branch agency, except for institutions under the control of the state board of higher education, shall report to the state information technology advisory committee according to guidelines developed by the department and reviewed by the state information technology advisory committee regarding the plan for and

status of any information technology project that is estimated to cost more than two hundred fifty thousand dollars.

2. During the life of the project, the agency shall notify the state information technology advisory committee if:
  - a. At a project milestone, the amount expended on project costs exceeds the planned budget for that milestone by twenty percent or more; or
  - b. At a project milestone, the project schedule extends beyond the planned schedule to attain that milestone by twenty percent or more.
3. A report under subsection 2 must specify corrective measures being undertaken to address any cost or time of completion issue. If the agency has not taken adequate corrective measures within ninety days after the report, the agency shall submit a report to the legislative council's information technology committee regarding the project.
4. Upon completion of the project, the agency shall notify the state information technology advisory committee if:
  - a. The budget for the project exceeded the original budget by twenty percent or more; or
  - b. The final project completion date extended beyond the original project scheduled completion date by twenty percent or more.

Approved April 20, 2005  
Filed April 20, 2005

**CHAPTER 537****HOUSE BILL NO. 1203**

(Representatives Keiser, Carlson)

(Senators Espegard, Flakoll)

**BUSINESS INCENTIVES, AGREEMENTS, AND  
REPORTS**

AN ACT relating to business incentives, agreements, and reports; to create and enact a new subdivision to subsection 7 of section 6-08.1-02 of the North Dakota Century Code, relating to disclosure of customer information by the Bank of North Dakota; to provide for a legislative council study; and to provide an effective date.

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

<sup>250</sup> **SECTION 1.** A new subdivision to subsection 7 of section 6-08.1-02 of the North Dakota Century Code is created and enacted as follows:

Recipient reports and grantor reports as required under sections 2 through 10 of this Act.

**SECTION 2. Definitions.** As used in sections 2 through 10 of this Act, unless the context otherwise requires:

1. "Benefit date" means the date on which the recipient receives the business incentive. If the business incentive involves the purchase, lease, or donation of physical equipment, the benefit date is the date when the recipient puts the equipment into service. If the business incentive is for improvements to property, the benefit date is the earlier of either when the improvements are finished for the entire project or when a business occupies the property. If a business occupies the property and the business incentive grantor expects that other businesses will also occupy the same property, the grantor may assign a separate benefit date for each subsequent business when that subsequent business first occupies the property.
2. "Business incentive" means a state or political subdivision direct cash transfer, loan, or equity investment; contribution of property or infrastructure; reduction or deferral of any tax or any fee; guarantee of any payment under any loan, lease, or other obligation; or preferential use of government facilities given to a business. To be considered a business incentive, the total assistance in all forms must be valued at twenty-five thousand dollars or more. Unless specifically provided otherwise, the term does not include:

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<sup>250</sup> Section 6-08.1-02 was also amended by section 1 of House Bill No. 1150, chapter 88.

- a. Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, or similar criteria.
  - b. Incentives resulting from Bank of North Dakota programs unless the incentive is a direct interest rate buydown, is made pursuant to the beginning entrepreneur loan guarantee program, or is an investment made pursuant to the North Dakota alternative and venture capital investments and early-stage capital funds program.
  - c. Public improvements to buildings or lands owned by the state or political subdivision which serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made.
  - d. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing such building stock up to code and assistance provided for designated historic preservation districts, provided that the assistance does not exceed seventy-five percent of the total cost.
  - e. Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services.
  - f. Assistance for housing.
  - g. Assistance for pollution control or abatement.
  - h. Assistance for energy conservation.
  - i. Tax reductions resulting from conformity with federal tax law.
  - j. Benefits derived from regulation.
  - k. Indirect benefits derived from assistance to educational institutions.
  - l. Except for a center of excellence award under section 15-10-41, assistance for a collaboration between a North Dakota institution of higher education and a business.
  - m. Redevelopment if the recipient's investment in the purchase of the site and in site preparation is seventy percent or more of the assessor's current year's estimated market value.
  - n. General changes in tax increment financing law and other general tax law changes of a principally technical nature.
  - o. Federal assistance provided through the state or a political subdivision until the assistance has been repaid to, and reinvested by, the state or political subdivision.
  - p. Federal or state assistance for the lignite research, development, and marketing program under chapter 54-17.5.
3. "Compensation" means the value of an employee's:

- a. Earnings, including wages, salary, bonus, and commissions; and
- b. Benefits, including:
  - (1) Health, disability, life, and retirement benefits or insurance premium paid by the employer;
  - (2) An employee's share of payroll taxes paid by the employer; and
  - (3) Other fringe benefits such as housing allowance and transportation expenses.
4. "Department" means the department of commerce.
5. "Grantor" means the state or any political subdivision that directly or indirectly grants a business incentive to a recipient.
6. "Political subdivision" means a unit of local government in this state which has direct or indirect authority to grant a business incentive. The term includes any authority, agency, special district, or entity created by, authorized by, under the jurisdiction of, or contracting with a political subdivision.
7. "Public purpose" includes assisting community development, increasing the tax base, directly creating employment opportunities, or indirectly creating employment opportunities through increased economic activity. Job retention is only a public purpose in cases in which job loss is specific and demonstrable.
8. "Recipient" means any individual or business entity that receives a business incentive.
9. "State" means any North Dakota state government agency that has the authority to directly or indirectly award business incentives.

### **SECTION 3. Scope - Public purpose - Notice.**

1. The application of sections 2 through 10 of this Act is limited to business incentives provided by grantors to recipients, unless otherwise provided.
2. A grantor may not grant a business incentive to a recipient unless that business incentive meets a public purpose.
3. A state business incentive in the form of a direct cash transfer must be structured as a loan, a forgivable loan, or as a preferred share that includes provisions for surrender.
4. A political subdivision business incentive in the form of a cash transfer of money may be structured as a loan, a forgivable loan, or as a preferred share that includes provisions for surrender.

### **SECTION 4. Business incentive agreement.**

1. A recipient must enter a business incentive agreement with each grantor of a business incentive. The grantor and the recipient shall sign the agreement.
2. If a business incentive benefits more than one recipient, the grantor shall assign a proportion of the business incentive to each recipient that signs a business incentive agreement. The proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share of the total benefits of the project.
3. A business incentive agreement must include:
  - a. A description of the business incentive, including the value of the business incentive, which may be the amount of the incentive, the fair market value of the property conveyed to the recipient, or the fair market value of other in-kind benefits provided to the recipient; the type of incentive; and the type of district if the incentive is tax increment financing.
  - b. A statement of the public purposes of the business incentive.
  - c. Goals for the business incentive. The goals must include the number of jobs to be created and the average compensation of the new jobs created. The information on average compensation must include identification of the average benefits and the average earnings to be provided by the employer on all jobs to be created or retained in association with the incentive. The job and average compensation goals may include separate goals for the number of part-time or full-time jobs to be created or, in cases in which potential job loss is specific and demonstrable, goals for the number of jobs to be retained. In addition to other specific goal timeframes, the job and average compensation goals must contain specific goals to be attained within two years of the benefit date.
  - d. A description of the financial obligation of the recipient if the goals are not met. This financial obligation must include an exception for any unmet goal that results from an act of God or terrorism.
  - e. A commitment by the recipient to continue operations in the jurisdiction in which the business incentive is used for five years or more after the benefit date.
  - f. The name and address of the parent company of the recipient, if any.
  - g. A list of all financial assistance by all grantors for the project.
  - h. The recipient's obligation if the recipient does not fulfill the business incentive agreement.

#### **SECTION 5. Failure to meet goals - Modification of goals.**

1. At a minimum, the financial obligation provision of a business incentive agreement must require a recipient that fails to meet business incentive agreement goals to pay back to the grantor the assistance, prorated to reflect any partial fulfillment of goals. A grantor may extend for up to

one year the period for meeting the business incentive agreement goals if the grantor determines that circumstances have made it impossible for the recipient to achieve the required goals. A grantor may extend the period for meeting business incentive agreement goals by another additional year by documenting in writing the reason for the extension and attaching a copy of the documentation to the grantor's next annual report. Notwithstanding the five-year commitment in the business incentive agreement, a grantor may authorize a recipient to move from the jurisdiction in which the business incentive is used within the five-year period after the benefit date if, after a public hearing, the grantor approves the recipient's request to move. If after extending the period for achieving the goals of the business incentive agreement for two years a grantor determines that a business incentive agreement goal of creation or retention of jobs has changed and justifies a decrease, after a public hearing, the grantor may decrease the job goals in the agreement to a lesser number or to zero and may adjust the average compensation goals to reflect changed circumstances. Justification for decreasing job goals may include that other public benefits adequately offset the failure to meet the initial job goals.

2. A recipient that fails to meet the terms of a business incentive agreement may not receive a business incentive from any grantor for a period of five years from the date of failure or until a recipient satisfies the repayment obligation under this section, whichever occurs first. For purposes of this subsection, if the recipient is an individual, the disqualification attaches to the individual and if the recipient is a business entity, the disqualification attaches to the business and to each owner or shareholder of twenty percent or more of the business.

#### **SECTION 6. State grantor recipient reports.**

1. The department shall create state grantor recipient report forms that include:
  - a. The name and address of the recipient;
  - b. The type, public purpose, and value of the business incentive;
  - c. The number of new jobs to be created or retained in association with the business incentive;
  - d. The average compensation of all jobs to be created or retained in association with the business incentive, including identification of the average benefits and the average earnings provided by the employer on all jobs created or retained in association with the business incentive;
  - e. The date the job and average compensation goals are expected to be reached;
  - f. A statement of goals identified in the business incentive agreement and an update on achievement of these goals, including the actual number of jobs created or retained and the average compensation of jobs created or retained at that point, including identification of the average benefits actually provided and the average earnings actually provided by the employer on all jobs created or retained;

- g. The location of the recipient prior to receiving the business incentive;
  - h. The name and address of the parent corporation of the recipient, if any;
  - i. A list of business incentives by all grantors for the project; and
  - j. Other information the department and grantor may request.
2. Each state grantor shall use recipient report forms created by the department to monitor the progress by each state grantor recipient in achieving business incentive agreement goals. At a minimum, each of these recipients shall provide the state grantor with an annual recipient report for two years following the benefit date or until the goals are met, whichever is later. If the business incentive agreement goals are not met, the state grantor recipient shall continue to provide recipient reports to the state grantor until the incentive is repaid. A state grantor shall file with the department a copy of each completed recipient report.
3. Before March 1, 2007, and each March first thereafter, a state grantor recipient shall file with the state grantor the recipient report for the previous calendar year. If a state grantor recipient fails to file a recipient report before March eighth, the state grantor shall mail the recipient a warning letter. If a noncompliant state grantor recipient fails to file the recipient report within fourteen days of the postmarked date of the warning letter, the recipient shall pay to the state grantor a penalty of one hundred dollars for each subsequent day until the report is filed. The maximum penalty under this section may not exceed one thousand dollars.

**SECTION 7. State grantor reports.** Before April 1, 2007, and each April first thereafter, each state agency that has granted a business incentive within the last five calendar years shall file an annual state grantor report with the department. The department shall create the state grantor report form required under this section. A state grantor report must include a list of all recipients, each recipient's business incentive agreement goals, and a report on each recipient's progress toward the goals. If the department does not receive a state grantor report before May first, the department shall issue a warning letter to the noncompliant grantor. If the department has not received a state grantor report from the noncompliant grantor before June first, that noncompliant grantor may not award any business incentive until the past-due grantor report is filed with the department.

**SECTION 8. Compilation and summary - Report to legislative council.**

1. Beginning in 2007 and annually thereafter, the department shall publish a compilation and summary of the results of the state grantor reports for the previous calendar year. Beginning in 2007 and annually thereafter, the department of commerce shall file the reports of the state grantors and the compilation and summary with the legislative council. The department shall organize the compilation and summary so that useful comparisons across time periods and across grantors can be made. The department may add other information to the compilation and summary as deemed necessary to evaluate business incentives.
2. The compilation and summary must include:

- a. The number of jobs targeted to be created or retained by each recipient receiving a business incentive in that year.
- b. The number of jobs achieved in comparison to the jobs targeted for each business year by year.
- c. The average compensation of jobs targeted to be created or retained by each recipient that year, including identification of the average benefits and average earnings to be provided by the employer for these jobs.
- d. The average compensation of jobs created or retained compared to the targeted average compensation for each business year by year.
- e. A distribution of business incentives by type of business and by public purpose.
- f. The percentage of business incentives that reached goals within two, three, four, and five years from the benefit date.
- g. The percentage of business incentives that did not meet goals and that did not receive repayment.

**SECTION 9. Political subdivision grantor annual reports.**

1. A political subdivision shall maintain records of business incentives provided to recipients.
2. Before April 1, 2007, and each April first thereafter, each political subdivision that granted a business incentive during the previous calendar year shall prepare an annual political subdivision grantor report. This annual report must include:
  - a. The names of the businesses receiving business incentives during that year;
  - b. The number of jobs expected to be created or retained by each business as a result of the business incentives;
  - c. The average compensation expected to be provided by the employer for the jobs expected to be created or retained as a result of the business incentives, including identification of the average benefits and average earnings to be provided by the employer for these jobs; and
  - d. The total dollar value of all business incentives provided by the political subdivision during that year.

**SECTION 10. Appropriation requests.** A state agency may not request an appropriation for the purpose of providing a business incentive in the form of a direct cash transfer unless the agency includes with the request a statement of the expected benefits associated with the direct cash transfer.

**SECTION 11. LEGISLATIVE COUNCIL STUDY - ECONOMIC DEVELOPMENT BY SCHOOL DISTRICT TAX ABATEMENTS.** The legislative

council shall consider studying, during the 2005-06 interim, the current system under which property taxes levied by school districts are abated for the purpose of furthering economic development and whether this practice of abating property taxes levied by school districts should continue to be a part of economic development efforts in this state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

**SECTION 12. LEGISLATIVE COUNCIL STUDY - LOCAL ECONOMIC DEVELOPERS SYSTEM.** The legislative council shall consider studying, during the 2005-06 interim, the system of local economic developers to determine whether the existing system provides the most effective and efficient system; whether the system could be improved by providing for increased uniformity in the provision of local economic development services or uniform applications, project investment standards, and economic development authority governance; and whether there are undesirable gaps or duplications in local economic development services, particularly in rural communities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

**SECTION 13. EFFECTIVE DATE.** Sections 1 through 10 of this Act become effective on January 1, 2006.

Approved April 18, 2005  
Filed April 20, 2005

**CHAPTER 538****SENATE BILL NO. 2027**

(Legislative Council)  
(Criminal Justice Committee)

**LEGAL COUNCIL FOR INDIGENTS COMMISSION**

AN ACT to establish the commission on legal counsel for indigents for the purpose of providing indigent defense services; to amend and reenact section 27-20-49, subsection 2 of section 28-32-01, and subsections 1 and 4 of section 29-07-01.1 of the North Dakota Century Code, relating to the commission; to provide for a report to the legislative council; to provide an appropriation; to provide for transition; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Commission on legal counsel for indigents - Membership.**

1. The commission on legal counsel for indigents is established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services for indigents which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. The commission shall provide indigent defense services for those individuals determined by the court to be eligible for and in need of those services.
2. The commission consists of the following members:
  - a. Two members appointed by the governor, one of whom must be appointed from a county with a population of not more than ten thousand.
  - b. Two members of the legislative assembly, one from each house, appointed by the chairman of the legislative council.
  - c. Two members appointed by the chief justice of the supreme court, one of whom must be appointed from a county with a population of not more than ten thousand.
  - d. One member appointed by the board of governors of the state bar association of North Dakota.
3. Appointing authorities shall make their initial appointments to the commission before August 1, 2005.
4. Initially, as determined by lot, one member will serve for one year, three members will serve for two years, and three members will serve for three years. At the expiration of the initial terms, the appointing authorities designated in subsection 2 shall make appointments for three-year terms. A member may not serve more than two consecutive three-year terms plus any initial term of less than three years.

5. Individuals appointed to the commission should have experience in the defense of criminal cases or other cases in which appointed counsel services are required or should have demonstrated a commitment to quality representation in indigent defense matters. Membership of the commission may not include any individual, or the employee of that individual, who is actively serving as a judge, state's attorney, assistant state's attorney, contract counsel or public defender, or law enforcement officer.
6. A member of the commission is entitled to reimbursement for travel and expenses as provided by law for other state officers. If not otherwise employed by the state of North Dakota, a member is entitled to receive per diem compensation of sixty-two dollars and fifty cents for each day devoted to attending meetings or performing other duties relating to the official business of the commission.
7. One of the two appointees of the chief justice, as determined by the chief justice, shall convene the commission's first meeting no later than August 15, 2005. The members of the commission shall select the chairman of the commission within thirty days after the commission's first meeting and annually thereafter.

## **SECTION 2. Commission responsibilities.**

1. The commission shall:
  - a. Develop standards governing the delivery of indigent defense services, including:
    - (1) Standards governing eligibility for indigent defense services;
    - (2) Standards for maintaining and operating regional public defender offices if established;
    - (3) Standards prescribing minimum experience, training, and other qualifications for contract counsel and public defenders;
    - (4) Standards for contract counsel and public defender caseloads;
    - (5) Standards for the evaluation of contract counsel and public defenders;
    - (6) Standards for independent, competent, and efficient representation of clients whose cases present conflicts of interest;
    - (7) Standards for the reimbursement of expenses incurred by contract counsel; and
    - (8) Other standards considered necessary and appropriate to ensure the delivery of adequate indigent defense services.
  - b. Establish and implement a process of contracting for legal counsel services for indigents.

- c. Establish public defender offices in the regions of the state as the commission considers necessary and appropriate.
  - d. Establish a method for accurately tracking and monitoring caseloads of contract counsel and public defenders.
  - e. Approve and submit a biennial budget request to the office of the budget.
2. Upon the request of a county or city, the commission may agree to provide indigent defense services in the county or city for those cases in which the county or city is otherwise required to provide such services. Moneys received by the commission in accordance with an agreement under this subsection must be deposited in the indigent defense administration fund.
  3. The commission shall adopt rules for the exercise of its authority under this chapter in a manner generally consistent with the notice and comment provisions of section 28-32-11.

### **SECTION 3. Commission director - Responsibilities.**

1. The commission shall appoint a director who must be chosen on the basis of training, experience, and other qualifications considered appropriate. The director must be an attorney licensed and eligible to practice law in this state at the time of appointment and at all times during service as director. The director may be removed for cause by a majority vote of commission members.
2. The director shall:
  - a. Assist the commission in developing standards for the delivery of adequate indigent defense services;
  - b. Administer and coordinate delivery of indigent defense services and supervise compliance with commission standards;
  - c. Recommend the establishment of public defender offices when considered necessary and appropriate to the delivery of adequate indigent defense services;
  - d. Conduct regular training programs for contract counsel and public defenders;
  - e. Subject to policies and procedures established by the commission, hire the professional, technical, and support personnel, including attorneys to serve as public defenders, considered reasonably necessary for the efficient delivery of indigent defense services;
  - f. Prepare and submit to the commission a proposed biennial budget for the provision of indigent defense services; an annual report containing pertinent data on the operation, needs, and costs of the indigent defense contract system and any established public defender offices; and any other information as the commission may require;

- g. Submit the annual report required under subdivision f to the legislative council; and
- h. Perform other duties as the commission may assign.

**SECTION 4. Records, files, and information - Accessibility - Confidentiality.** Any file, record, or information regarding representation of a defendant under sections 1 through 3 of this Act which are attorney work-product or otherwise subject to any attorney-client privilege are confidential and may not be disclosed except in accordance with a court order or in response to applicable discovery rules. All other case-related records are exempt from disclosure except as otherwise provided in rules adopted by the commission.

**SECTION 5. AMENDMENT.** Section 27-20-49 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-49. Costs and expenses for care of child.**

1. The following expenses are a charge upon the funds of the county upon certification thereof by the court:
  - a. The cost of medical and other examinations and treatment of a child ordered by the court.
  - b. The cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children, or to a private agency or individual other than a parent.
  - c. The cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court unless the child is in the legal custody of a state agency.
2. ~~The supreme court~~ commission on legal counsel for indigents shall pay reasonable compensation for services and related expenses of counsel appointed by the court for a party and ~~the supreme court shall pay~~ reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be reimbursed to the county by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.
3. If, after due notice to the parents or other persons legally obligated to care for and support the child, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsection 1, and expenses payable by the supreme court under subsection 2, the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the county or the state to the county treasurer of the county or to the state treasurer.

<sup>251</sup> **SECTION 6. 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, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
  - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
  - b. The adjutant general with respect to the 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.

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<sup>251</sup> Section 28-32-01 was also amended by section 11 of House Bill No. 1016, chapter 16, section 14 of House Bill No. 1169, chapter 406, section 13 of House Bill No. 1088, chapter 195, and section 29 of Senate Bill No. 2074, chapter 89.

- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The attorney general with respect to 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 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.
- w. The commission on legal counsel for indigents.

<sup>252</sup> **SECTION 7. AMENDMENT.** Subsection 1 of section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Lawyers appointed to represent indigent persons must be compensated at a reasonable rate to be determined by the ~~court~~ commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person, when approved by the judge, must be paid by the state if the action is prosecuted in district court and by the city in which the alleged offense took place if the action is prosecuted in municipal court. The city shall also pay the expenses in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19. A defendant requesting representation by appointed counsel, or for whom appointed counsel without a request is considered appropriate by the court, shall submit an application for appointed defense services. For an application for appointed defense services in the district court, a nonrefundable application fee of twenty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection

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<sup>252</sup> Section 29-07-01.1 was also amended by section 8 of Senate Bill No. 2027, chapter 538.

must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

<sup>253</sup> **SECTION 8. AMENDMENT.** Subsection 4 of section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The indigent defense administration fund is a special fund in the state treasury. The state treasurer shall deposit in the fund all application fees collected under subsection 1. All moneys in the indigent defense administration fund are appropriated on a continuing basis to the ~~judicial branch commission on legal counsel for indigents~~ to be used in the administration of the indigent defense system ~~and the collection of indigent defense costs and expenses required to be reimbursed under this section.~~

**SECTION 9. REPORT TO LEGISLATIVE COUNCIL.** During the 2005-06 interim, the commission on legal counsel for indigents shall report periodically to the legislative council regarding the implementation of this Act. The commission shall present its first report to the legislative council before December 1, 2005.

**SECTION 10. APPROPRIATION.** Any moneys not expended by the supreme court for indigent defense services by December 31, 2005, are appropriated to the commission on legal counsel for indigents and must be transferred to the commission on January 1, 2006.

**SECTION 11. TRANSITION.** All contracts for indigent defense services awarded by the supreme court after June 30, 2005, must expire no later than December 31, 2005.

**SECTION 12. EFFECTIVE DATE.** Sections 5 and 7 of this Act become effective on January 1, 2006.

Approved April 7, 2005  
Filed April 12, 2005

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<sup>253</sup> Section 29-07-01.1 was also amended by section 7 of Senate Bill No. 2027, chapter 538.

**CHAPTER 539****SENATE BILL NO. 2349**

(Senators Mathern, Erbele, Heitkamp)  
(Representatives Kaldor, Kerzman, Wald)

**FAITH-BASED INITIATIVES OFFICE AND  
COMMISSION**

AN ACT to provide for an office of faith-based and community initiatives and an advisory commission on faith-based and community initiatives.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Office of faith-based and community initiatives established.**

The office of faith-based and community initiatives is established within the governor's office. The office of faith-based and community initiatives has lead responsibility to establish policies, priorities, and objectives for the state's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and community organizations to the extent permitted by law. The governor shall designate a member of the governor's staff to serve as director of the office of faith-based and community initiatives. The governor may designate other members of the governor's staff to assist the director.

**SECTION 2. Functions.** The principal functions of the office of faith-based and community initiatives are to:

1. Develop, lead, and coordinate the state's policy agenda affecting faith-based and community programs and initiatives; expand the role of those efforts in communities; and increase their capacity through executive action, legislation, federal and private funding, and regulatory relief;
2. Coordinate public education activities designed to mobilize public support for faith-based and community initiatives through volunteerism, special projects, demonstration pilots, and public and private partnerships;
3. Encourage private charitable giving to support faith-based and community initiatives;
4. Bring concerns, ideas, and policy options to the governor and legislative assembly for assisting, strengthening, and replicating successful faith-based and community programs;
5. Provide policy and legal education to state, local, and community policymakers and public officials seeking ways to empower faith-based and community organizations and to improve the opportunities, capacity, and expertise of those groups;
6. Develop and implement strategic initiatives to strengthen the institutions of civil society and the state's families and communities;

7. Encourage innovative grassroots, nonprofit organizations, and civic initiatives; and
8. Ensure that the efforts of faith-based and community organizations meet high standards of excellence and accountability.

**SECTION 3. Advisory commission.** The advisory commission on faith-based and community initiatives is composed of seven members to include the following: the executive director of the department of human services or the director's designee; the director of the department of corrections and rehabilitation or the director's designee; two members of the legislative assembly, one of whom must be selected by the members of the legislative council representing the majority faction and one of whom must be selected by the members of the legislative council representing the minority faction; and three public members appointed by the governor, one of whom must represent a minority population. The term of office for the public members is three years. Of the first public members appointed, one must be appointed for a term of one year, one must be appointed for a term of two years, and one must be appointed for a term of three years. No public member may be appointed to more than two consecutive terms. A chairman of the commission must be chosen annually from the membership of the commission by a majority of its members at the first meeting of the advisory commission each year. The advisory commission shall advise the director of the office of faith-based and community initiatives and the governor in the establishment of policy regarding matters affecting the faith-based and community organizations, including making recommendations to the governor concerning the future of existing state programs and initiatives. The advisory commission on faith-based and community initiatives shall report periodically to the governor and provide the governor with information and recommendations for the governor's consideration. The members of the advisory commission are entitled to mileage and expenses as provided by law for state officers and employees.

Approved March 25, 2005

Filed March 25, 2005