

**Fifty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2004  
(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state department of health; to create and enact a new subsection to section 23-01-05 of the North Dakota Century Code, relating to the state health officer's duty to establish an environmental review process for commercial buildings; to amend and reenact subsection 1 of section 19-02.1-24, section 19-08-04, subsections 5 and 8 of section 23-09-01, and sections 23-09-16, 23-09-24, 23-09.1-02.2, and 23-10-03 of the North Dakota Century Code, relating to licensure of food vending machines, beverage sales, food and lodging establishments, assisted living facilities, pushcarts, mobile food units, salvaged food distributors, bed and breakfasts, mobile home parks, trailer parks, and campgrounds; to repeal sections 19-08-05, 23-09-17, 23-09.1-03, and 23-10-05 of the North Dakota Century Code, relating to license fee amounts for beverage sales, food and lodging establishments, mobile food units, pushcarts, bed and breakfasts, mobile home parks, trailer parks, and campgrounds; to provide for a report to the legislative council; to provide legislative intent; and to provide for a legislative council study.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the state department of health in section 3 of this Act as follows:

Salaries and wages	\$29,972,929
Operating expenses	24,151,257
Capital assets	3,204,837
Grants	36,690,628
Tobacco prevention and control	7,783,097
WIC food payments	17,680,000
Community health advisory	<u>100,000</u>
Total all funds - Base level	\$119,582,748
Less estimated income - Base level	<u>106,481,656</u>
Total general fund - Base level	\$13,101,092

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state department of health which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$2,080,994
Operating expenses	1,462,724
Capital assets	(1,690,368)
Grants	5,111,538
Tobacco prevention and control	902,898
WIC food payments	(1,930,000)
Community health advisory	<u>(100,000)</u>
Total all funds - Adjustments/enhancements	\$5,837,786
Less estimated income - Adjustments/enhancements	<u>5,602,356</u>
Total general fund - Adjustments/enhancements	\$235,430

**SECTION 3. 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 special funds derived from federal funds and other income, to the state department of health for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$32,053,923
Operating expenses	25,613,981
Capital assets	1,514,469
Grants	41,802,166
Tobacco prevention and control	8,685,995
WIC food payments	15,750,000
Total all funds	\$125,420,534
Less estimated income	112,084,012
Total general fund appropriation	\$13,336,522

**SECTION 4. ABANDONED MOTOR VEHICLE DISPOSAL FUND.** The estimated income line item included in section 3 of this Act includes \$250,000, or so much of the sum as may be necessary, to be made available to the state department of health from the abandoned motor vehicle disposal fund, under section 39-26-11, for the biennium beginning July 1, 2005, and ending June 30, 2007.

**SECTION 5. ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item included in section 3 of this Act includes \$252,808, or so much of the sum as may be necessary, to be made available to the state department of health from the environment and rangeland protection fund, for the biennium beginning July 1, 2005, and ending June 30, 2007. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

**SECTION 6. DOMESTIC VIOLENCE PREVENTION FUND.** The estimated income line item included in section 3 of this Act includes \$340,000, or so much of the sum as may be necessary, to be made available to the state department of health from the domestic violence prevention fund, for the biennium beginning July 1, 2005, and ending June 30, 2007.

**SECTION 7. ENVIRONMENTAL HEALTH PRACTITIONER LICENSURE FEE ADMINISTRATIVE FUND.** The estimated income line item included in section 3 of this Act includes \$1,000, or so much of the sum as may be necessary, to be made available to the state department of health from the environmental health practitioner licensure fee administrative fund, for the biennium beginning July 1, 2005, and ending June 30, 2007.

**SECTION 8. WASTEWATER OPERATORS CERTIFICATION FUND.** The estimated income line item included in section 3 of this Act includes \$21,214, or so much of the sum as may be necessary, to be made available to the state department of health from the wastewater operators certification fund, for the biennium beginning July 1, 2005, and ending June 30, 2007.

**SECTION 9. COMMUNITY HEALTH TRUST FUND.** The estimated income line item included in section 3 of this Act includes \$6,610,000, or so much of the sum as may be necessary, to be made available to the state department of health from the community health trust fund, for the biennium beginning July 1, 2005, and ending June 30, 2007.

**SECTION 10. INTENT - INDIRECT COST RECOVERIES.** Notwithstanding section 54-44.1-14, the state department of health may deposit indirect cost recoveries in its operating account.

**SECTION 11. AMENDMENT.** Subsection 1 of section 19-02.1-24 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~No An~~ establishment may not sell any type of prepackaged food from a food vending machine without first obtaining a license from the department. ~~A license may be issued upon payment of a fee of fifteen dollars annually.~~ The license expires on June thirtieth of

each year. The department may adopt rules establishing the amount and the procedures for the collection of license fees. License fees collected pursuant to this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

**SECTION 12. AMENDMENT.** Section 19-08-04 of the North Dakota Century Code is amended and reenacted as follows:

**19-08-04. License required.** The department may, ~~in its discretion,~~ require manufacturers, importers, jobbers, or other retailers to furnish suitable samples to the department for inspection and chemical analysis. If any beverage does not meet all requirements of law, the department shall refuse to license ~~the beverage~~ and shall prevent ~~its~~ sale of the beverage. The license fee must be paid annually during the month of December or ~~prior to~~ before placing the beverage on the market. The license expires December thirty-first next following its issuance. If the manufacturer or jobber secures a license for a product, subsequent sellers, including retailers and dispensers, need not again secure a license for the same product, and no dispenser may be required to secure a license for a product prepared for the dispenser's own use from a product already licensed. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees. License fees collected pursuant to this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

**SECTION 13.** A new subsection to section 23-01-05 of the North Dakota Century Code is created and enacted as follows:

- a. Establish a review process for instances in which the department is requested to conduct an epidemiological assessment of a commercial building. The epidemiological assessment must include:
  - (1) A statement of whether there are known environmental causes;
  - (2) If there are known environmental causes identified, a recommendation of how they can be remediated or mitigated; and
  - (3) If there are no known environmental causes identified, a statement that no known causes exist.
- b. Costs for remediation, mitigation, and consultant services are the responsibility of the building owner. Proof of remediation of any identified environmental concern related to the epidemiological assessment is the burden of the building owner.

**SECTION 14. AMENDMENT.** Subsections 5 and 8 of section 23-09-01 of the North Dakota Century Code are amended and reenacted as follows:

5. "Food establishment" means any fixed restaurant, limited restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, catering kitchen, delicatessen, bakery, grocery store, meat market, food processing plant, school, child care, or similar place in which food or drink is prepared for sale or service to the public on the premises or elsewhere with or without charge.
8. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to ~~four or more~~ transient guests. The term does not include a facility providing personal care services directly or through contract services as defined in section 23-09.3-01 or 50-32-01.

**SECTION 15. AMENDMENT.** Section 23-09-16 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-16. License - Application.** Before any food establishment, lodging establishment, pushcart, mobile food unit, or assisted living facility may be operated in this state, it must be licensed by the department. The department shall waive the license requirement for any food establishment, lodging establishment, or assisted living facility licensed by a city or district health unit if the local health unit's sanitation, safety, and inspection rules are approved by the department. Application for license must be made to the department during December of every year, or before the operating of the food establishment, lodging establishment, pushcart, mobile food unit, or assisted living facility, as the case may be. The application must be in writing on forms furnished by the department and must be accompanied by the required fee. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed before February first following the expiration date. A reduced license fee in the amount of one-half the applicable license fee must be charged for a new food establishment, lodging establishment, pushcart, mobile food unit, or assisted living facility beginning operations after July first of each year and for changes in ownership and location of such existing establishments after July first of each year. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees. The fees must be based on the cost of reviewing construction plans, conducting routine and complaint inspections, and necessary enforcement action. License fees collected pursuant to this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

**SECTION 16. AMENDMENT.** Section 23-09-24 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-24. Salvaged food - License required.** It is unlawful for a person to claim to be a salvaged food distributor or to engage in the activity of selling, distributing, or otherwise trafficking in distressed or salvaged food, or both, at wholesale, without a license issued under ~~section 23-09-17~~ this chapter authorizing that person to operate as a salvaged food distributor. A salvaged food distributor license may not be issued absent compliance with this section and any rules adopted to implement this section. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees under this section. License fees collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

**SECTION 17. AMENDMENT.** Section 23-09.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.1-02.2. License required - Application - Issuance.** Before any bed and breakfast facility may operate in this state ~~it, the facility~~ must be licensed by the department. Licenses expire on December thirty-first following the date of issuance unless canceled by failure to comply with this chapter or with any of the rules adopted ~~under to implement~~ this chapter. Renewal application for license must be made to the department during December of every year. A license must be issued upon compliance by the applicant with provisions of this chapter and any rules adopted ~~under to implement~~ this chapter. The application must be in writing on forms furnished by the department and must be accompanied by the required fee. Licenses issued by the department are not transferable nor applicable to any premises other than those for which the license was issued. The department may adopt rules establishing the amount of and the procedures for the collection of annual license fees. License fees collected pursuant to this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

**SECTION 18. AMENDMENT.** Section 23-10-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-10-03. License required - Application.** ~~No~~ A person may not establish, maintain, or enlarge a mobile home park, trailer park, or campground in this state without first obtaining a license from the department. The application for the license must be made in writing to the department and must state the location and type of the mobile home park, trailer park, or campground, the proposed

water supply, the proposed method of sewerage and garbage disposal, and such other information as may be required by the department. Application forms must be prepared by the department and distributed upon request. The department shall waive the license fee for any mobile home park, trailer park, or campground owned by the state, a municipality, or a nonprofit organization. The department shall waive all or a portion of the license fee for any mobile home park, trailer park, or campground that is subject to local sanitation, safety, and inspection requirements accepted by the department under section 23-10-02.1. A prorated annual license fee may be charged for new mobile home parks, trailer parks, and campgrounds. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees. License fees collected pursuant to this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

**SECTION 19. REPEAL.** Sections 19-08-05, 23-09-17, 23-09.1-03, and 23-10-05 of the North Dakota Century Code are repealed.

**SECTION 20. LEGISLATIVE COUNCIL STUDY - HEALTHY NORTH DAKOTA PROGRAM.** The legislative council shall consider studying, during the 2005-06 interim, the costs and benefits of adopting a comprehensive healthy North Dakota and workplace wellness program in collaboration with the state department of health, health insurers and other third-party payers, workforce safety and insurance, interested nonprofit health-related agencies, and others who have an interest in establishing accident and disease prevention programs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

**SECTION 21. LEGISLATIVE COUNCIL STUDY - PUBLIC HEALTH INFRASTRUCTURE AND FOOD AND LODGING INSPECTIONS.** The legislative council shall study, during the 2005-06 interim, the state's public health unit infrastructure and the ability of the public health units to respond to public health issues. The study must include an assessment of the efficiency of operations, given the personnel and financial resources available, and the effectiveness of services, given the lines of governmental authority of the current infrastructure. The study must include the efficiency of the food and lodging investigation services provided by the state department of health and the public health units and must develop a plan maximizing efficiencies through a coordinated system and fee structure. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

**SECTION 22. LEGISLATIVE COUNCIL STUDY - TOBACCO SETTLEMENT COLLECTIONS.** The legislative council shall consider studying, during the 2005-06 interim, whether to change guidelines for funding programs as a result of additional tobacco settlement collections that are anticipated to be received and deposited in the community health trust fund from 2008 through 2017. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

**SECTION 23. LEGISLATIVE INTENT - WORKSITE WELLNESS PILOT PROJECT.** It is the intent of the fifty-ninth legislative assembly that the state department of health may use federal funding to match nonstate funding and contract with a nonstate entity for a worksite wellness pilot project during the 2005-07 biennium. The state department of health shall provide a report on the pilot project to the sixtieth legislative assembly.

**SECTION 24. LEGISLATIVE INTENT - FUNDING FOR ABSTINENCE PROGRAMS.** It is the intent of the fifty-ninth legislative assembly that the state department of health pursue \$220,000 for abstinence programs from federal grants or other sources and that the new funding be in addition to existing funding for abstinence programs.

**SECTION 25. LEGISLATIVE INTENT - FEDERAL BIOTERRORISM FUNDING.** It is the intent of the fifty-ninth legislative assembly that the full-time equivalent employee positions funded with federal bioterrorism grants be discontinued when the funding for the programs ends.

**SECTION 26. BASIC CARE SURVEY PILOT PROJECT - LEGISLATIVE COUNCIL REPORT.** The state department of health shall develop a pilot project to test an announced basic care survey process. The pilot project must begin with fifty percent of the state-licensed basic care providers surveyed receiving an announced survey and the remaining receiving an unannounced survey. The state department of health shall evaluate the survey pilot project and submit a report to the legislative council during the 2005-06 interim. The report must include a recommendation of whether the unannounced survey process should continue for all basic care facilities. The pilot project must include standard basic care surveys and all complaint investigations must be unannounced.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2004.

Senate Vote:    Yeas    41        Nays    5        Absent    1

House Vote:    Yeas    83        Nays    5        Absent    6

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State